



# **TOWN OF KITTERY**

**200 Rogers Road, Kittery, ME 03904  
Telephone: (207) 475-1313 Fax: (207) 439-6806**

## **WORKSHOP**

**Town Council and Planning Board**

**Title 16 – Solar Energy Systems and Affordable Housing**

**March 14, 2022**

**Council Chambers**

**5:30PM**

The public may view the workshop via Zoom webinar. Register in advance for the webinar at:

<https://us02web.zoom.us/j/82071459597?pwd=Z3c3V2trRzR6NjE2akxyL0RPZTVjQT09>

After registering, you will receive a confirmation email containing information about joining the webinar.

**The meeting will be broadcast on Channel 22, Facebook, and live broadcast from the Town's website.**



**TOWN OF KITTERY**  
**200 Rogers Road, Kittery, ME 03904**  
**Telephone: 207-475-1329**

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**REPORT TO TOWN COUNCIL**

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Date: March 14, 2022  
From: Kendra Amaral, Town Manager  
CC: Dutch Dunkelberger, Planning Board Chair, Cameron Wake, Climate Adaptation  
Committee Chair  
Subject: Title 16 – Solar Energy Systems  
Councilor Sponsor: Chairperson Judy Spiller

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**SUMMARY**

Please see the attached report from Adam Causey, Director of Planning and Development.

**PROPOSED SOLUTION/RECOMMENDATION**

Adopt amendment to Title 16 as proposed.

**ATTACHMENTS**

- Staff Memo summarizing the changes and process
- Draft Title 16 – Solar Energy Systems
- Draft Title 16 – Solar Energy Systems Enactment



**TOWN OF KITTERY**  
**Planning and Development Department**  
**200 Rogers Road, Kittery, ME 03904**  
**Telephone: 207-475-1307**

**TO:** KENDRA AMARAL  
**FROM:** ADAM CAUSEY, DIRECTOR OF PLANNING & DEVELOPMENT  
**SUBJECT:** TITLE 16 AMENDMENTS RELATED TO SOLAR ENERGY SYSTEMS  
**DATE:** MARCH 3, 2022

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Solar energy systems, sometimes referred as “solar farms,” are devices or systems used to collect, store, and distribute solar energy. You may have seen these being developed in other areas of the country or here in Maine more recently. Kittery’s current land use code does not provide for the regulation of solar energy systems, other than small roof-mounted systems for a single residential use. Changes to state law have made these systems easier to develop on a larger scale. Solar energy collection is becoming a more efficient and standardized way to power homes and businesses and is part of the state’s strategy in reducing greenhouse gas emissions. Staff have prepared zoning amendments to regulate ground and building mounted systems.

The Climate Adaptation Committee, and the Kittery Land Issues Committee was engaged in the development and review of the proposed ordinance amendment.

At their February 24, 2022 regular meeting, the Planning Board voted unanimously to recommend that Title 16 be amended to provide regulations for the development of solar energy systems.

Below is a summary of the changes proposed for Title 16 Land Use & Development Code:

### **16.1 General Provisions**

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Nonconforming structures:

1. Given the excess of legally nonconforming structures in Kittery, the possibility of dimensional standards becoming more restrictive, and the importance of allowing solar energy systems to exist, this provision will allow for such systems to be vested in its use, replacement, and expansion if proven to become less nonconforming.

### **16.3 Definitions**

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1. Creates new environmental definitions related to habitat and its inhabitants.
2. Identifies the different scales, type of equipment, and effects of solar energy system.
3. Amends an existing definition of Public Utility Facility so as to clarify that a solar energy system is considered a separate entity and is to be regulated differently.

### **16.4 Land Use Zone Regulations**

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1. Indicates the location solar energy systems are to be permitted within the town.
2. For the sake of brevity, a land use table was used to illustrate the use, zoning districts and level of permissibility.

### **16.5 General Performance Standards**

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1. Creates two new sections:
  - A. Ground-Mounted; and
  - B. Roof / building integrated solar energy systems
2. Within those sections are performance standards that guide how solar energy systems are built and decommissioned.

### **16.7 Site Plan Review**

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1. Establishes the thresholds for review and determines which land use board / permitting entity has jurisdiction.

### **RECOMMENDATION**

**TITLE 16**  
**GENERAL PERFORMANCE STANDARDS**  
**SOLAR ENERGY SYSTEMS**

1 **1. AMEND §16.1.8.C Nonconformance to include solar energy systems as follows:**

2 §16.1.8.C Nonconformance

3 b. Nonconforming structure repair and/or expansion.

4 i. The Code Enforcement Officer may approve the repair and/or expansion of a nonconforming  
5 structure provided the proposed expansion is not located in the base zone setback of the Shoreland  
6 Overlay Zone or at any location in the Resource Protection Overlay Zone and meets either of the  
7 following criteria:

8 a. A vertical expansion that follows the existing building footprint;

9 b Will not result in setbacks less than those existing;

10 [c. Installation or replacement of solar energy systems.](#)

11 **2. AMEND §16.3 Definitions to include solar energy systems as follows:**

12 **HEIGHT OF BUILDING**

13 The vertical measurement from the average grade between the highest and lowest elevation of the original  
14 ground level to the highest point of the roof beams in flat roofs; to the highest point on the deck of mansard  
15 roofs; to a level midway between the level of the eaves and highest point of pitched roofs or hip roofs; or to a  
16 level 2/3 of the distance from the level of the eaves to the highest point of gambrel roofs. For this purpose,  
17 the level of the eaves is taken to mean the highest level where the plane of the roof intersects the plane of the  
18 outside wall on a side containing the eaves. This is not intended to include weather-vanes, [roof mounted or](#)  
19 [building integrated solar energy systems,](#) or residential antennas that protrude from a roof, but does include  
20 all towers, excepting those utilized for amateur radio communications, and other structures. Building height  
21 restrictions do not apply to roadside utility poles approved by the Town Council of less than 45 feet in height  
22 above ground.

23 **HEIGHT OF STRUCTURE**

24 The vertical distance between the mean original grade at the downhill side of the structure and the highest  
25 point of the structure, excluding chimneys, steeples, antennas, [roof mounted or building integrated solar](#)  
26 [energy systems,](#) and similar appurtenances which have no floor area.

27 **PUBLIC UTILITY FACILITY**

28 Buildings, structures, and facilities, including generating and switching stations, poles, lines, pipes, pumping  
29 stations, repeaters, antennas, transmitters and receivers, valves, and all buildings and structures relating to the  
30 furnishing of utility services, such as electric, gas, telephone, water and sewer, to the public. [This definition](#)  
31 [excludes solar energy system facilities.](#)

32 **3. ADD the following definitions to §16.3:**

33 [BENEFICIAL HABITAT](#)

34 [An area of land that provides native perennial vegetation and foraging habitat fitting for game birds,](#)  
35 [songbirds, pollinators and other symbiotic species.](#)

36 POLLINATOR

37 Bees, birds, bats, and other insects or wildlife that pollinate flowering plants, and includes both wild and  
38 managed insects.

39 SOLAR ACCESS

40 Space open to the sun and clear of overhangs or shade so as to permit either or both the use of active and  
41 passive solar energy systems on individual properties.

42 SOLAR COLLECTOR

43 A solar photovoltaic cell, panel, or array or solar thermal collector device, that relies upon solar radiation as  
44 an energy source for the generation of electricity or transfer of stored heat.

45 SOLAR ENERGY

46 Radiant energy received from the sun that can be collected in the form of heat or light by a solar collector.

47 SOLAR ENERGY SYSTEM

48 A device or structural design feature, a substantial purpose of which is to provide daylight for interior  
49 lighting or provide for the collection, storage and distribution of solar energy for space heating or cooling,  
50 electricity generation, or water heating

51 SOLAR ENERGY SYSTEM, ACTIVE

52 A solar energy system whose primary purpose is to harvest energy by transforming solar energy into another  
53 form of energy or transferring heat from a collector to another medium using mechanical, electrical, or  
54 chemical means.

55 SOLAR ENERGY SYSTEM, BUILDING-INTEGRATED

56 Photovoltaic materials that are used to replace conventional building materials in parts of a building envelope

57 SOLAR ENERGY SYSTEM, EQUIPMENT

58 Electrical material, hardware, inverters, conduit, storage devices, or other electrical and photovoltaic  
59 apparatuses associated with the production of electricity.

60 SOLAR ENERGY SYSTEM, GLARE

61 The effect by reflections of light with intensity sufficient as determined in a commercially reasonable manner  
62 to cause annoyance, discomfort, or loss in visual performance and visibility in any material respects.

63 SOLAR ENERGY SYSTEM, GROUND-MOUNTED

64 An active solar energy system that is structurally mounted to the ground and is not roof-mounted nor a  
65 component of a building; may be of any size (small-, medium-or large-scale).

66 SOLAR ENERGY SYSTEM, LARGE SCALE

67 An Active Solar Energy System whose physical size based on total airspace projected over the ground is  
68 greater than 5,000 square feet.

69 SOLAR ENERGY SYSTEM, MEDIUM-SCALE

70 An Active Solar Energy System whose physical size based on total airspace projected over the ground is  
71 greater than 1,000 square feet but less than or equal to 5,000 square feet.

72 SOLAR ENERGY SYSTEM, ROOF-MOUNTED

73 An Active Solar Energy System that is mounted on the roof of a building or structure.

74 SOLAR ENERGY SYSTEM, SMALL-SCALE

75 An Active Solar Energy System whose physical size based on total airspace projected over the ground is  
76 equal to or less than 1,000 square feet

77 VEGETATION, NATIVE

78 Vegetation that is native to Maine and does not include invasive species.

79 VEGETATION MANAGEMENT PLAN

80 Either or both a written document and site plan that includes short-and long-term site management practices  
81 that will provide and maintain native and naturalized vegetation, and in the instances of a dual-use  
82 application, the reestablishment of prime agricultural land in the instance fertile land becomes discontinued  
83 from agricultural production to accommodate the solar energy system.

84 **4. AMEND §16.4 Land Use Zone to include solar energy systems in specific zones as follows:**

85 **16.4.10 Residential-Rural (R-RL)**

86 B. Permitted uses

87 (19) Solar Energy System, Building-Integrated and Roof-Mounted

88 (20) Solar Energy System, Ground-Mounted Small-, Medium- & Large-Scale (under 20,000-sf)

89 C. Special exception use:

90 (18) Solar Energy System, Ground-Mounted Large-Scale (above 20,000-sf)

91 E. Shoreland Overlay Zone OZ-SL

92 (1) Permitted uses

93 (e) Solar Energy System, Building-Integrated and Roof-Mounted

94 (f) Solar Energy System, Ground-Mounted Small-, Medium- and Large-Scale (under 20,000-sf)

95 (2) Special exception uses

96 (p) Solar Energy System, Ground-Mounted Large-Scale (above 20,000-sf)

97 F. Resource Protection Overlay Zone OZ-RP

98 (1) Permitted uses

99 (c) Solar Energy System, Building-Integrated and Roof-Mounted

100 (2) Special exception uses

101 (k) Solar Energy System, Ground-Mounted Small-, Medium- and Large-Scale (under 20,000-sf)

102 **16.4.11 Residential-Suburban (R-S)**

103 B. Permitted uses

104 (23) Solar Energy System, Building-Integrated and Roof-Mounted

105 (24) Solar Energy System, Ground-Mounted Small-, Medium- and Large-Scale (under 20,000-sf)

106 C. Special exception uses

107 (10) Solar Energy System, Ground-Mounted Large-scale (above 20,000-sf)

108 E. Shoreland Overlay Zone OZ-SL

109

110 (1) Permitted uses

111 (e) Solar Energy System, Building-Integrated and Roof-Mounted

112 (f) Solar Energy System, Ground-Mounted Small-, Medium- and Large-Scale (under 20,000-sf)

113 (2) Special exception uses

114 (m) Solar Energy System, Ground-Mounted Large-Scale (above 20,000-sf)

115 F. Resource Protection Overlay Zone OZ-RP

116 (1) Permitted uses

117 (b) Solar Energy System, Building-Integrated and Roof-Mounted

118 (2) Special exception uses

119 (h) Solar Energy System, Ground-Mounted Small-, Medium- and Large-Scale (under 20,000-sf)

120 **16.4.12 Residential-Kittery Point Village (R-KPV)**

121 B. Permitted uses

122 (18) Solar Energy System, Building-Integrated and Roof-Mounted

123 (19) Solar Energy System, Ground-Mounted Small-Scale

124 C. Special exception uses

125 (9) Solar Energy System, Ground-Mounted Medium-and Large-Scale (under 20,000-sf)

126 E. Shoreland Overlay Zone OZ-SL

127 (1) Permitted uses

128 (e) Solar Energy System, Building-Integrated and Roof-Mounted



129 (f) Solar Energy System, Ground-Mounted Small-Scale

130 (2) Special exception uses

131 (j) Solar Energy System, Ground-Mounted Medium- and Large-Scale (under 20,000-sf)

132 F. Resource Protection Overlay Zone OZ-RP

133 (1) Permitted uses

134 (b) Solar Energy System, Building-Integrated and Roof-Mounted

135 (2) Special exception uses

136 (g) Solar Energy System, Ground-Mounted Small-, Medium- and Large-Scale (under 20,000-sf)

137 **16.4.13 Residential-Urban (R-U)**

138 B. Permitted uses

139 (22) Solar Energy System, Building-Integrated and Roof-Mounted

140 (23) Solar Energy System, Ground-Mounted Small-Scale

141 C. Special exception uses

142 (13) Solar Energy System, Ground-Mounted Medium-and Large-Scale (under 20,000-sf)

143 E. Shoreland Overlay Zone OZ-SL

144 (1) Permitted uses

145 (e) Solar Energy System, Building-Integrated and Roof-Mounted

146 (f) Solar Energy System, Ground-Mounted Small-Scale

147 (2) Special exception uses

148 (p) Solar Energy System, Ground-Mounted Medium- and Large-Scale (under 20,000-sf)

149 F. Resource Protection Overlay Zone OZ-RP

150 (1) Permitted uses

151 (b) Solar Energy System, Building-Integrated and Roof-Mounted

152 (2) Special exception uses

153 (f) Solar Energy System, Ground-Mounted Small-, Medium- and Large-Scale (under 20,000-sf)

154 **16.4.14 Residential-Village (R-V)**

155 B. Permitted uses

156 (13) Solar Energy System, Building-Integrated and Roof-Mounted

157 (14) Solar Energy System, Ground-Mounted Small-Scale

158 C. Special exception uses

159 (5) Solar Energy System, Ground-Mounted Medium-and Large-Scale (under 20,000-sf)

160 E. Shoreland Overlay Zone OZ-SL

161 (1) Permitted uses

162 (e) Solar Energy System, Building-Integrated and Roof-Mounted

163 (f) Solar Energy System, Ground-Mounted Small-Scale

164 (2) Special exception uses

165 (f) Solar Energy System, Ground-Mounted Medium- and Large-Scale (under 20,000-sf)

166 F. Resource Protection Overlay Zone OZ-RP

167 (1) Permitted uses

168 (a) Solar Energy System, Building-Integrated and Roof-Mounted

169 (2) Special exception uses

170 (f) Solar Energy System, Ground-Mounted Small-, Medium- and Large-Scale (under 20,000-sf)

171 **16.4.15 Residential-Rural Conservation (R-RC)**

172 B. Permitted uses

173 (11) Solar Energy System, Building-Integrated and Roof-Mounted

174 (12) Solar Energy System, Ground-Mounted Small-Scale

175 C. Special exception uses

176 (13) Solar Energy System, Ground-Mounted Medium-and Large-Scale (under 20,000-sf)

177 E. Shoreland Overlay Zone OZ-SL

178 (1) Permitted uses

179 (g) Solar Energy System, Building-Integrated and Roof-Mounted

180 (h) Solar Energy System, Ground-Mounted Small-Scale

181 (2) Special exception uses

182 (k) Solar Energy System, Ground-Mounted Medium- and Large-Scale (under 20,000-sf)

183 F. Resource Protection Overlay Zone OZ-RP

184 (1) Permitted uses

185 (d) Solar Energy System, Building-Integrated and Roof-Mounted

186 (2) Special exception uses

187 (i) Solar Energy System, Ground-Mounted Small-, Medium- and Large-Scale (under 20,000-sf)

188 **16.4.16 Residential-Conservation (R-CON)**

189 B. Permitted uses

190 (6) Solar Energy System, Building-Integrated and Roof-Mounted

191 (7) Solar Energy System, Ground-Mounted Small-Scale

192 C. Special exception uses

193 (2) Solar Energy System, Ground-Mounted Medium-and Large-Scale (under 20,000-sf)

194 E. Shoreland Overlay Zone OZ-SL

195 (1) Permitted uses

196 (f) Solar Energy System, Building-Integrated and Roof-Mounted

197 (g) Solar Energy System, Ground-Mounted Small-Scale

198 (2) Special exception uses

199 (b) Solar Energy System, Ground-Mounted Medium- and Large-Scale (under 20,000-sf)

200 F. Resource Protection Overlay Zone OZ-RP

201 (1) Permitted uses

202 (a) Solar Energy System, Building-Integrated and Roof-Mounted

203 (2) Special exception uses

204 (b) Solar Energy System, Ground-Mounted Small-, Medium- and Large-Scale (under 20,000-sf)

205 **16.4.17 Business-Local (B-L)**

206 B. Permitted uses

207 (36) Solar Energy System, Building-Integrated and Roof-Mounted

208 (37) Solar Energy System, Ground-Mounted Small-,Medium-and Large-Scale (under 20,000-sf)

209 E. Shoreland Overlay Zone OZ-SL

210 (1) Permitted uses

211 (d) Solar Energy System, Building-Integrated and Roof-Mounted

212 (e) Solar Energy System, Ground-Mounted Small-,Medium-and Large-Scale (under 20,000-sf)

213 F. Resource Protection Overlay Zone OZ-RP

214 (1) Permitted uses

215 (b) Solar Energy System, Building-Integrated and Roof-Mounted

216 (2) Special exception uses

217 (g) Solar Energy System, Ground-Mounted Small-, Medium- and Large-Scale (under 20,000-sf)

218 **16.4.18 Business-Local 1 (B-L1)**

219 B. Permitted uses

220 (35) Solar Energy System, Building-Integrated and Roof-Mounted

221 (36) Solar Energy System, Ground-Mounted Small-,Medium-and Large-Scale (under 20,000-sf)

222 E. Shoreland Overlay Zone OZ-SL

223 (1) Permitted uses

224 (d) Solar Energy System, Building-Integrated and Roof-Mounted

225 (e) Solar Energy System, Ground-Mounted Small-,Medium-and Large-Scale (under 20,000-sf)

226 F. Resource Protection Overlay Zone OZ-RP

227 (1) Permitted uses

228 (b) Solar Energy System, Building-Integrated and Roof-Mounted

229 (2) Special exception uses

230 (f) Solar Energy System, Ground-Mounted Small-, Medium- and Large-Scale (under 20,000-sf)

231 **16.4.19 Commercial 1, Route 1 Commercial Zone (C-1)**

232 B. Permitted uses

233 (40) Solar Energy System, Building-Integrated and Roof-Mounted

234 (41) Solar Energy System, Ground-Mounted Small-,Medium-and Large-Scale (under 20,000-sf)

235 C. Special exception uses

236 (19) Solar Energy System, Ground-Mounted Large-Scale (above 20,000-sf)

237 F. Shoreland Overlay Zone OZ-SL

238 (1) Permitted uses

239 (q) Solar Energy System, Building-Integrated and Roof-Mounted

240 (r) Solar Energy System, Ground-Mounted Small-,Medium-and Large-Scale (under 20,000-sf)

241 (2) Special exception uses

242 (cc) Solar Energy System, Ground-Mounted Large-Scale (above 20,000-sf)

243 G. Resource Protection Overlay Zone OZ-RP

244 (1) Permitted uses

245 (b) Solar Energy System, Building-Integrated and Roof-Mounted

246 (2) Special exception uses

247 (g) Solar Energy System, Ground-Mounted Small-, Medium- and Large-Scale (under 20,000-sf)

248 **16.4.20 Commercial 2, Route 236 Commercial Zone (C-2)**

249 B. Permitted uses

250 (44) Solar Energy System, Building-Integrated and Roof-Mounted

251 (45) Solar Energy System, Ground-Mounted Small-,Medium-and Large-Scale (under 20,000-sf)

252 E. Shoreland Overlay Zone OZ-SL

253 (1) Permitted uses

254 (ee) Solar Energy System, Building-Integrated and Roof-Mounted

255 (ff) Solar Energy System, Ground-Mounted Small-,Medium-and Large-Scale (under 20,000-sf)

256 F. Resource Protection Overlay Zone OZ-RP

257 (1) Permitted uses

258 (b) Solar Energy System, Building-Integrated and Roof-Mounted

259 (2) Special exception uses

260 (d) Solar Energy System, Ground-Mounted Small-, Medium- and Large-Scale (under 20,000-sf)

261 **16.4.21 Commercial 3, Bypass/Old Post Road Commercial Zone (C-3)**

262 B. Permitted uses

263 (45) Solar Energy System, Building-Integrated and Roof-Mounted

264 (46) Solar Energy System, Ground-Mounted Small-,Medium-and Large-Scale (under 20,000-sf)

265 C. Special exception uses

266 (20) Solar Energy System, Ground-Mounted Large-Scale (above 20,000-sf)

267 F. Shoreland Overlay Zone OZ-SL

268 (1) Permitted uses

269 (s) Solar Energy System, Building-Integrated and Roof-Mounted

270 (t) Solar Energy System, Ground-Mounted Small-,Medium-and Large-Scale (under 20,000-sf)

271 (2) Special exception uses

272 (dd) Solar Energy System, Ground-Mounted Large-Scale (above 20,000-sf)

273 F. Resource Protection Overlay Zone OZ-RP

274 (1) Permitted uses

275 (b) Solar Energy System, Building-Integrated and Roof-Mounted

276 (2) Special exception uses

277 (f) Solar Energy System, Ground-Mounted Small-, Medium- and Large-Scale (under 20,000-sf)

278 **16.4.22 Industrial (IND)**

279 B. Permitted uses

280 (6) Solar Energy System, Building-Integrated and Roof-Mounted

281 (7) Solar Energy System, Ground-Mounted Small-,Medium-and Large-Scale (under 20,000-sf)

282 (8) Solar Energy System, Ground-Mounted Large-Scale (above 20,000-sf)

283 F. Shoreland Overlay Zone OZ-SL

284 (1) Permitted uses

285 (e) Solar Energy System, Building-Integrated and Roof-Mounted

286 (f) Solar Energy System, Ground-Mounted Small-,Medium-and Large-Scale (under 20,000-sf)

287 (g) Solar Energy System, Ground-Mounted Large-Scale (above 20,000-sf)

288 F. Resource Protection Overlay Zone OZ-RP

289 (1) Permitted uses

290 (b) Solar Energy System, Building-Integrated and Roof-Mounted

291 (2) Special exception uses

292 (f) Solar Energy System, Ground-Mounted Small-, Medium- and Large-Scale (under 20,000-sf)

293 **16.4.24 Mixed-Use (MU)**

294 B. Permitted uses

295 (39) Solar Energy System, Building-Integrated and Roof-Mounted

296 (40) Solar Energy System, Ground-Mounted Small-Scale

297 C. Special exception uses

298 (6) Solar Energy System, Ground-Mounted Medium-and Large-Scale (under 20,000-sf)

299 E. Shoreland Overlay Zone OZ-SL

300 (1) Permitted uses

301 (l) Solar Energy System, Building-Integrated and Roof-Mounted

302 (m) Solar Energy System, Ground-Mounted Small-Scale

- 303 (2) Special exception uses
- 304 (hh) Solar Energy System, Ground-Mounted Medium-and Large-Scale (under 20,000-sf)
- 305 F. Resource Protection Overlay Zone OZ-RP
- 306 (1) Permitted uses
- 307 (c) Solar Energy System, Building-Integrated and Roof-Mounted
- 308 (2) Special exception uses
- 309 (g) Solar Energy System, Ground-Mounted Small-, Medium- and Large-Scale (under 20,000-sf)
- 310 **16.4.24 Mixed-Use—Badgers Island (MU-BI)**
- 311 B. Permitted uses
- 312 (30) Solar Energy System, Building-Integrated and Roof-Mounted
- 313 (31) Solar Energy System, Ground-Mounted Small-Scale
- 314 C. Special exception uses
- 315 (6) Solar Energy System, Ground-Mounted Medium-and Large-Scale (under 20,000-sf)
- 316 E. Shoreland Overlay Zone OZ-SL
- 317 (1) Permitted uses
- 318 (f) Solar Energy System, Building-Integrated and Roof-Mounted
- 319 (g) Solar Energy System, Ground-Mounted Small-Scale
- 320 (2) Special exception uses
- 321 (z) Solar Energy System, Ground-Mounted Medium-and Large-Scale (under 20,000-sf)
- 322 F. Resource Protection Overlay Zone OZ-RP
- 323 (1) Permitted uses
- 324 (c) Solar Energy System, Building-Integrated and Roof-Mounted
- 325 (2) Special exception uses
- 326 (f) Solar Energy System, Ground-Mounted Small-, Medium- and Large-Scale (under 20,000-sf)
- 327 **16.4.25 Mixed-Use—Kittery Foreside (MU-KF)**
- 328 B. Permitted uses
- 329 (34) Solar Energy System, Building-Integrated and Roof-Mounted
- 330 (35) Solar Energy System, Ground-Mounted Small-Scale
- 331 C. Special exception uses

332 (3) Solar Energy System, Ground-Mounted Medium-and Large-Scale (under 20,000-sf)

333 E. Shoreland Overlay Zone OZ-SL

334 (1) Permitted uses

335 (c) Solar Energy System, Building-Integrated and Roof-Mounted

336 (d) Solar Energy System, Ground-Mounted Small-Scale

337 (2) Special exception uses

338 (s) Solar Energy System, Ground-Mounted Medium-and Large-Scale (under 20,000-sf)

339 F. Resource Protection Overlay Zone OZ-RP

340 (1) Permitted uses

341 (b) Solar Energy System, Building-Integrated and Roof-Mounted

342 (2) Special exception uses

343 (f) Solar Energy System, Ground-Mounted Small-, Medium- and Large-Scale (under 20,000-sf)

344 **16.4.26 Mixed-Use—Neighborhood (MU-N)**

345 B. Permitted uses

346 (36) Solar Energy System, Building-Integrated and Roof-Mounted

347 (37) Solar Energy System, Ground-Mounted Small-,Medium-and Large-Scale (under 20,000-sf)

348 C. Special exception uses

349 (14) Solar Energy System, Ground-Mounted Large-Scale (above 20,000-sf)

350 **5. ADD to §16.5 General Performance Standards the following regulations regarding Solar Energy**  
351 **Systems (Solar fields) as follows:**

352 **§16.5.34 Solar Energy System, Ground-Mounted**

353 **A. Purpose**

354 (1) Pursuant to the land use and coastal community resilience goals of the Town of Kittery’s  
355 Comprehensive Plan, it is deemed to be in the public interest to promote, integrate and regulate  
356 sustainable, renewable, non-polluting energy systems that foster the generation, usage and distribution of  
357 clean energy; offset demand from the regional power system, and eliminate fossil fuel dependency and  
358 emissions.

359 (2) The purpose of this section is to encourage the development of ground-mounted solar energy systems  
360 while protecting the health, safety and welfare of the public. The standards herein shall include, but not  
361 limited to the site location, development, construction, operation, monitoring, modification and removal  
362 of such installations that address public safety, minimize impacts on scenic, natural and historic  
363 resources, protect residential neighborhoods and properties, and secure as applicable adequate financial



364 assurance for the eventual decommissioning of installations.

365 B. Applicability and Standards

366 (1) Applicability

367 (a). Notwithstanding the provision of 1 M.R.S. Section 302 or any other law to the contrary, the  
368 requirements under §16.5.34 shall apply to all ground-mounted solar energy systems modified or  
369 installed after the date of its enactment.

370 (b). All solar energy systems shall be designed, erected, and installed in accordance with all  
371 applicable local, state and federal codes, regulations and standards.

372 (c). Any upgrade, modification or structural change that materially alters the size, placement or  
373 output of an existing solar energy system shall comply with the provisions of §16.7.13.C

374 (2) General Standards

375 (a). Small-, medium- and large-scale (under 20,000-sf.) solar energy systems shall comply with the  
376 following:

377 [1] Emergency services. The applicant shall provide, at the minimum, a copy of the project  
378 summary, electrical schematic, and site plan to the Code Enforcement Officer and Fire Chief.  
379 Upon request, the applicant shall cooperate with the Fire Department in developing an  
380 emergency response plan. All means of shutting down the system shall be clearly marked.

381 [2] Fencing. Where fencing is used, fences shall be constructed to the dimensional standards of a  
382 Solid Lock Game Fence that consists of 8-inch x 12-inch openings at the fence's base with  
383 progressively small openings at the top. An alternative fence may be use that is elevated at a  
384 minimum of 5-inches from the ground with the purpose of allowing the passage of small  
385 terrestrial animals. Additionally, at least one (1) corner of the fence's perimeter shall have the  
386 placement of five-inch or larger diameter wooded escape poles as an alternative means for  
387 wildlife escape.

388 [3] Glare. Solar panels are designed specifically to absorb only sun light and are by their very  
389 nature less reflective than other varnished or glass exterior housing pieces. Nevertheless, all solar  
390 panels shall contain an anti-reflective coating and a copy of the solar panel's design specification  
391 shall be provided, which shall include at the minimum data on the amount of glare intended to  
392 project from the solar panels. Moreover, the applicant shall submit information on the methods  
393 used to determine the best location of the solar panels for the purpose of averting the  
394 encroachment of solar glare onto abutting properties or roadways to the maximum extent  
395 practicable.

396 [4] Land clearing, soil erosion, and habitat impacts. Clearing of natural vegetation shall be  
397 limited to what is necessary for the construction, operation and maintenance of ground-mounted  
398 solar energy systems or as otherwise prescribed by applicable laws, regulations, and Title 16.  
399 Ground-mounted facilities shall minimize mowing to the extent practicable. Removal of mature  
400 trees shall be avoided to the extent possible. Native, pollinator-friendly seed mixtures shall be

401 used to the extent possible. Herbicide and pesticide use is prohibited, unless demonstrated by the  
402 applicant as unequivocally necessary to manage vegetation growth. No prime agricultural soil or  
403 significant volume of topsoil shall be removed from the site to install the ground-mounted  
404 system or its appurtenant infrastructure.

405 [5] Laws, Ordinances, and Regulations. The construction and operation of ground mounted solar  
406 energy systems in conjunction with their appurtenant structures shall adhere to all applicable  
407 local, state, and federal regulations and requirements, including but not limited to safety,  
408 construction, electrical, and communication requirements.

409 [6] Natural Resources and Wildlife. No large-scale solar energy system shall be located within  
410 areas identified as “Significant Wildlife Habitats” under Maine’s Natural Resources Protection  
411 Act nor within critical habitat areas as designated by Maine Department of Inland Fisheries and  
412 Wildlife.

413 [7] Safety. If storage batteries are located on site as part of the solar energy system, they shall  
414 adhere to the requirements of any applicable fire prevention and building code provision when in  
415 use and, when no longer used, shall be disposed of in accordance with applicable federal, state  
416 and local laws and regulations.

417 [8] Utility connections. All on-site utility lines, excluding the main service connection at the  
418 utility right-of-way shall be underground within the facility unless demonstrated by the applicant  
419 to be physically impracticable.

420 (b). Large-scale solar energy systems (above 20,000-sf.) shall comply with the following:

421 [1] Emergency services. The applicant proposing a large-scale ground-mounted solar energy  
422 system larger shall provide, at a minimal, a copy of the project summary, electrical schematic,  
423 and site plan to the Code Enforcement Officer and Fire Chief. Upon request, the applicant shall  
424 cooperate with the Fire Department in developing an emergency response plan. All means of  
425 shutting down the system shall be clearly marked. The applicant shall provide to the Code  
426 Enforcement Officer the name and contact information of a responsible person for public  
427 inquires throughout the life of the installation.

428 [2] Financial surety. The deposit, executions, or filing with the Town Clerk of cash, bond, or  
429 other form of security reasonably acceptable to the Town of Kittery, shall be in an amount  
430 sufficient to ensure the good faith performance of the terms and conditions of the permit issued  
431 pursuant hereto and to provide for the removal and restorations of the site subsequent to removal.  
432 The amount of the bond or security shall be 125 % of the cost of removal of the large-scale solar  
433 energy system and restoration of the property with an escalator of [2] % annually for the life of  
434 the solar energy system. The decommissioning amount shall be reduced by the amount of the  
435 estimated salvage value of the solar energy system. In the event of default upon performance of  
436 such conditions, after proper notice and expiration of any cure periods, the cash deposit, bond, or  
437 security shall be forfeited to the Town of Kittery, which shall be entitled to maintain an action  
438 thereon. The cash deposit, bond, or security shall remain in full force and effect until restoration

439 of the property as set forth in the decommissioning plan is completed. In the event of default or  
440 abandonment of the solar energy system, the system shall be decommissioned as set forth in  
441 §16.5.34.B(2)(d) herein.

442 [3] Fencing. Where fencing is used, fences shall be constructed to the dimensional standards of a  
443 Solid Lock Game Fence that consists of 8-inch x 12-inch openings at the fence’s base with  
444 progressively small openings at the top. Alternatively, the Planning Board may modify this  
445 standard by permitting a different type of fence that is elevated at a minimum of 5-inches from  
446 the ground with the purpose of allowing the passage of small terrestrial animals. Additionally, at  
447 least four (4) corners of the fence’s perimeter shall have the placement of five-inch or larger  
448 diameter wooded escape poles as an alternative means for wildlife escape.

449 [4] Glare. Solar panels are designed specifically to absorb only sun light and are by their very  
450 nature less reflective than other varnished or glass exterior housing pieces. Nevertheless, all solar  
451 panels shall contain an anti-reflective coating and a copy of the solar panel’s design specification  
452 shall be provided, which shall include at the minimum data on the amount of glare intended to  
453 project from the solar panels. Moreover, the applicant shall submit information on methods used  
454 to determine the best location of the solar panels for the purpose of averting the encroachment of  
455 solar glare onto abutting properties or roadways to the maximum extent practicable.

456 [5] Land clearing and erosion control. Clearing of natural vegetation shall be limited to what is  
457 necessary for the construction, operation and maintenance of ground-mounted solar energy  
458 systems or as otherwise prescribed by applicable laws, regulations, and standards within Title 16.  
459 Herbicide and pesticide use is prohibited, unless demonstrated unequivocally as necessary to  
460 manage vegetation growth. No prime agricultural soil or significant volume of topsoil shall be  
461 removed from the site to install the ground-mounted system or its appurtenant infrastructure.  
462 Removal of mature trees is discouraged and the imposition of mitigation measures or restrictions  
463 on tree clearing shall be prescribed by the Planning Board in order to prevent habitat  
464 fragmentation of existing forested landscapes and to protect hydrological regimes and other  
465 essential ecosystem functions. In the instance a site’s vegetation is disturbed or must be remove  
466 to provide for solar access during the construction of the project, a vegetation management plan  
467 is required, demonstrating the creation of a beneficial habitat by using native or noninvasive  
468 vegetation in all disturbed areas of the site not used to achieve operational efficacy of the solar  
469 energy system. Nevertheless, the Planning Board may approve an alternative vegetation plan that  
470 uses native or noninvasive vegetation, but does not necessarily establish a beneficial habitat.

471 [6] Laws, Ordinances, and Regulations. The construction and operation of ground mounted solar  
472 energy systems in conjunction with their appurtenant structures shall adhere to all applicable  
473 local, state, and federal regulations and requirements, including but not limited to safety,  
474 construction, electrical, and communication requirements.

475 [7] Natural Resources and Wildlife. No large-scale solar energy system shall be located within  
476 areas identified as “Significant Wildlife Habitats” under Maine’s Natural Resources Protection  
477 Act nor within critical habitat areas as designated by Maine Department of Inland Fisheries and

478 Wildlife. Moreover, no

479 [8] Operation and Maintenance Plan. A large-scale ground mounted application shall include a  
480 plan for the operation and maintenance of the proposed large-scale ground-mounted solar energy  
481 system, which shall include, but not limited to measures for maintaining safe access to the  
482 installation, stormwater controls, general procedures for operational maintenance of the  
483 installation and a vegetation management plan.

484 [9] Safety. The solar energy system owner or project proponent shall provide a copy of the site  
485 plan review application to the Fire Chief for review and comment. The Fire Chief shall base any  
486 recommendations of the application upon review of the fire safety of the proposed system. The  
487 solar energy systems shall be maintained in good working order and in accordance with industry  
488 standards. Site access shall be maintained, including snow removal at a level acceptable to the  
489 Fire Department. If storage batteries are located as part of the solar energy system, they shall  
490 meet the requirements of any applicable fire prevention and building code when in use and, when  
491 no longer used, shall be disposed of in accordance with applicable federal, state and local laws or  
492 regulations.

493 [10] Signage. A sign shall be placed on a large-scale solar energy system to identify the owner  
494 and provide a 24-hour emergency contact phone number.

495 [11] Utility connections. All on-site utility lines, excluding the main service connection at the  
496 utility right-of-way, shall be underground within the facility unless demonstrated by the applicant  
497 to be physically impracticable or as prescribed by the public utility provider.

498 [12] Use type. Large-scale ground-mounted solar energy systems greater than 20,000-sf. Shall  
499 not be considered as an accessory use.

500 [13] Visual Impact. Reasonable effort, as determined by the Planning Board, shall be made to  
501 minimize undue visual impacts by preserving native vegetation, screening abutting properties, or  
502 other appropriate measures, including adherence to height standards and setback requirements.  
503 To demonstrate compliance with this standard, an analysis of the potential visual impacts from  
504 the project including solar panels, roads and fencing along with measures used to avoid,  
505 minimize, or mitigate inappropriate visual effects is required. Furthermore, all appurtenant  
506 structures, including but not limited to equipment, shelters, storage facilities, transformers, and  
507 substations, shall be architecturally compatible with each other.

508 (c). Additional standards for solar energy systems.

509 [1] In addition to the standards under §16.5.34.B(2) the following standards shall be followed:

510 [a] In the instance a solar energy system is proposed to be located on agricultural land, a  
511 solar energy system shall be designed with the objective of prioritizing primary agricultural  
512 activity and constructed in a manner that avoids, to the extent practicable, the  
513 discontinuance of agricultural land identified by the Natural Resources Conservation  
514 Services as “Prime Farmland” or “Farmland of Statewide Importance”, or otherwise cause

515 productive farmland to be removed from production.

516 [b] In the instant the applicant satisfactorily demonstrates that prime agricultural land is  
517 incapable of being preserved, a vegetation management plan shall be provided to the  
518 Planning Board for approval.

519 (d). Change of ownership, decommissioning, and abandonment of large-scale solar energy systems.

520 [1] Ownership change. If the owner or operator of the solar energy system changes or the owner  
521 of the property changes, the approved site plan shall remain in effect, provided that the successor  
522 owner or operator assumes in writing all of the obligations of the site plan approval. A new  
523 owner or operator of the solar energy system shall notify the Code Enforcement Officer of such  
524 change in ownership or operator within 30 days of the ownership change.

525 [2] Decommissioning. Solar energy systems that have reached the end of their useful life or are  
526 abandoned shall be removed. The owner or operator shall physically remove the installation no  
527 more than 180 days after the date of discontinued operations. The owner or operator shall notify  
528 the Code Enforcement Officer by certified mail of the propose date of discontinued operations  
529 and plans for removal. Notification of discontinuance shall be no less than 180-days prior to the  
530 anticipated date of discontinuance. Decommissioning shall consist of the following:

531 [a] Physical removal of all solar energy systems, structures, equipment, security barriers,  
532 and transmission lines from the site.

533 [b] Disposal of all solid and hazardous waste in accordance with local, state and federal  
534 waste disposal regulations.

535 [c] Stabilization or re-vegetation for the site as necessary to minimize erosion and restore  
536 disturbed habitat in accordance with the site's vegetation management plan.

537 [3] Absent notice of proposed date of decommissioning or written notice of extenuating  
538 circumstances, a large-scale ground-mounted solar energy system shall be considered abandoned  
539 when it fails to operate for more than one (1) year without having first obtained the written  
540 consent of the Code Enforcement Officer.

541 [4] If the owner or operator of the solar energy system fails to remove the installation within 180  
542 days of abandonment or the proposed date of decommissioning, the Town of Kittery retains the  
543 right to use all available means to cause an abandoned, hazardous, or decommissioned large-  
544 scale ground-mounted solar energy system to be removed.

545 C. Dimensional Standards

546 (1) Small- and medium-scale solar energy systems shall comply with the following dimensional  
547 standards:

548 (a). Setbacks. Notwithstanding any other provision in this title to the contrary, the setbacks for  
549 ground-mounted solar energy systems shall be as follows:

550 [1] Minimal front yard

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[a] Residential Zones

i. For residential zoning districts, no part of the ground-mounted solar energy system may be placed closer to the front property line (and side property line in a case of a corner lot) than the principal structure to the street

ii. Notwithstanding 16.5.34.C(1)(a)[1][a][i], the Planning Board may permit a ground-mounted solar energy system to be closer to the front property line than the principle building under the following conditions:

[A]. There is no other suitable location on the property for the ground-mounted solar energy system.

[B]. The front setback is maintained.

iii. In the instance no building nor distinct principal building is present on the lot or multiple lots, the ground mounted solar energy system shall adhere to the base zone setback and buffered from the road.

[b] Commercial, Business and Mixed-Use Zones

i. Whatever the front yard setback for the zoning district, but no less than 10 ft.

[2] Minimum rear yard and side yard

i. Whatever the back yard setback for the zoning district, but no less than 10 ft.

(b). Lot coverage. Solar energy systems that have vegetation or pervious materials underneath are exempt from lot coverage standards.

(c). Height. No taller than 10-ft. in height or a height equal to ½ the distance to the nearest lot line, to a maximum of 20-ft.

[1] Additional setbacks may be required to mitigate visual and functional impacts.

(2) Large-scale solar energy systems shall comply with the following dimensional standards

(a). Setbacks. Notwithstanding any other provision in this title to the contrary, the setbacks for ground-mounted solar energy systems shall be as follows:

[1] Minimal front yard

[a] For residential zoning districts, no part of the ground-mounted solar energy system may be placed closer to the front property line (and side property line in a case of a corner lot) than the principal structure to the street.

i. Notwithstanding 16.5.34.C(2)(a)[1][a], the Planning Board may permit a ground-mounted solar energy system to be closer to the front property line than the principle building under the following conditions:

[A]. There is no other suitable location on the property for the ground-mounted



584 solar energy system.

585 [B]. The front setback is maintained.

586 [b] In the instance no building nor distinct principal building is present on the lot or  
587 multiple lots, the ground mounted solar energy system shall be setback at least 100-ft and  
588 buffered from the road.

589 [c] Commercial, Business and Mixed-Use Zones

590 i. No part of the ground-mounted solar energy system may be placed closer to the front  
591 property line (and side property line in a case of a corner lot) than the principal structure  
592 to the street. In the instance no building nor distinct principal building is present on the  
593 lot or multiple lots, the ground mounted solar energy system shall be setback at least 75-  
594 ft and buffered from the road.

595 [2] Minimum rear and side yard: 50-ft.

596 [3] Lot coverage. Solar energy systems that have vegetation or pervious materials underneath  
597 are exempt from lot coverage standards.

598 [4] Height. Shall not exceed 20-ft. in height. The height of any solar panel from the ground level  
599 shall not exceed 20-ft.

600 [5] Additional setbacks may be required to mitigate visual and functional impacts.

601 **§16.5.35 Solar Energy System, Roof-Mounted and Building-Integrated**

602 A. Applicability

603 (1) Roof-mounted, building-mounted and building-integrated solar energy systems and equipment are  
604 permitted by-right, unless they are deemed by the Code Enforcement Officer, with input from the Fire  
605 Chief, to present one or more unreasonable safety risks, including but not limited to, the following:

606 (a) Weight load;

607 (b) Wind resistance;

608 (c) Ingress or egress in the event of fire or other emergency; or

609 (d) Proximity of a ground-mounted system relative to buildings.

610 B. General requirements

611 (1) All solar energy systems installations shall be installed in compliance with the photovoltaic systems  
612 standards of the latest addition of the National Fire Protection Association (NFPA1) and of the National  
613 Electrical Code (NEPA 70), as adopted pursuant to §16.2.8.F(5)(c).

614 (2) Roof-mounted solar energy systems shall not extend more than 10-ft. above the highest point of the  
615 roof.

616 C. Inspections

617 (1) Prior to operation, electrical connections must be inspected and approved by the Code Enforcement  
 618 Officer, or designee.

619 **6. ADD solar energy systems to Table 16.5.28 Minimum Setbacks from Wetlands and Waterbodies as**  
 620 **follows:**

Structure/Activity	Less than 501 square feet (feet)	501 square feet to 1 acre and Intermittent Streams (feet)	Greater than 1 acre (feet)
<u>Solar Energy Systems</u>	<u>0</u>	<u>50</u>	<u>100</u>

621

622 **7. AMEND §16.7.3 Site Plan Review to incorporate solar energy systems as follows:**

623 §16.7.3 Applicability

624 C. Unless subject to a shoreland development plan review or Right of Way Plan per § 16.7.3A, the  
 625 following do not require Planning Board approval:

626 (1) Single and duplex family dwellings.

627 (2) Division of land into lots (i.e., two lots), which division is not otherwise subject to Planning  
 628 Board review as a subdivision.

629 (3) Business use as provided in § 16.2.6.D.

630 (4) Small-scale ground-mounted solar energy systems below or equal to one thousand (1,000) square  
 631 feet in area.

632 §16.7.6. Classification of Projects

633 (1) Minor Site Plans shall include the following

634 (d) Projects that involve ground mounted solar energy systems greater than one thousand (1,000) square  
 635 feet, but less than five thousand (5,000) square feet in area.

636 (2) Major Site Plans shall include projects involving:

637 h. Projects that involve ground-mounted solar energy systems equal to and above five thousand (5,000)  
 638 square-feet in area.



**KITTERY TOWN CODE –  
TITLE 16  
SOLAR ENERGY SYSTEMS**

1 **AN ORDINANCE** relating to the municipality’s authority for Town governance to give due and  
2 proper attention to its many demands pursuant to the Town Charter, Federal law, and Maine  
3 Revised Statutes, and more particularly where set forth in Maine Revised Statutes Title 30-A,  
4 Municipalities and Counties.

5 **WHEREAS**, the Kittery Town Council is authorized to enact this Ordinance, as specified in  
6 Sections 1.01 and 2.07(3) of the Town Charter; and 30-A MRS §3001 and §4352, pursuant to its  
7 powers that authorize the town, under certain circumstances, to provide for the public health,  
8 welfare, morals, zoning, and safety, and does not intend for this Ordinance to conflict with any  
9 existing state or federal laws; and

10 **WHEREAS**, the Town of Kittery’s Comprehensive Plan identifies in its coastal community  
11 resilience goals and land use goals the promotion, integration and regulation of sustainable,  
12 renewable, non-polluting energy systems that foster the generation, usage, and distribution of  
13 clean energy, offset demand from the regional power system, and eliminate fossil fuel  
14 dependency and emissions; and

15 **WHEREAS**, the Town of Kittery seeks to establish land use regulations that encourage the  
16 development of ground-mounted solar energy systems, while protecting the health, safety, and  
17 welfare of the public; and

18 **NOW THEREFORE**, IN ACCORDANCE WITH TITLE 30-A MRS §3001 and §4352, AND  
19 TOWN CHARTER §2.14, THE TOWN OF KITTERY HEREBY ORDAINS THE AMENDMENT  
20 OF TITLE 16, LAND USE and DEVELOPMENT CODE, §16.4 and §16.5 AS PRESENTED.

21 **INTRODUCED** and read in a public session of the Town Council on the \_\_\_\_ day of \_\_\_\_\_,  
22 20\_\_\_\_, by: \_\_\_\_\_ {NAME} Motion to approve by Councilor  
23 \_\_\_\_\_ {NAME}, as seconded by Councilor \_\_\_\_\_ {NAME} and  
24 passed by a vote of \_\_\_\_\_.

25 **THIS ORDINANCE IS DULY AND PROPERLY ORDAINED** by the Town Council of Kittery,  
26 Maine on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, {NAME}, \_\_\_\_\_, Chairperson

27 **Attest:** {NAME}, \_\_\_\_\_ Town Clerk



**TOWN OF KITTERY**  
**200 Rogers Road, Kittery, ME 03904**  
**Telephone: 207-475-1329**

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**REPORT TO TOWN COUNCIL**

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Date: March 14, 2022  
From: Kendra Amaral, Town Manager  
CC: Dutch Dunkelberger, Planning Board Chair, Matt Brock, Housing Committee Chair  
Subject: Title 16 – Affordable Housing BL & BL-1 Zones  
Councilor Sponsor: Chairperson Judy Spiller

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**SUMMARY**

Please see the attached report from Adam Causey, Director of Planning and Development.

**PROPOSED SOLUTION/RECOMMENDATION**

Adopt amendment to Title 16 as proposed.

**ATTACHMENTS**

- Staff Memo summarizing the changes and process
- Draft Title 16 – Affordable Housing Business Local (BL) Zone
- Draft Title 16 – Affordable Housing Business – Local 1 (BL-1) Zone
- Draft Title 16 – Affordable Housing Enactment



**TOWN OF KITTERY**  
**Planning and Development Department**  
**200 Rogers Road, Kittery, ME 03904**  
**Telephone: 207-475-1307**

**TO:** KENDRA AMARAL, TOWN MANAGER  
**FROM:** ADAM CAUSEY, DIRECTOR OF PLANNING & DEVELOPMENT  
**SUBJECT:** BUSINESS-LOCAL AND BUSINESS LOCAL-1 ZONES  
**DATE:** MARCH 3, 2022

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This memo outlines the changes being proposed to the B-L and B-L1 zoning districts. For details on these zone locations, please consult the Town's zoning map, available through the Town's on-line GIS here: <https://www.axisgis.com/KitteryME/>. Click "agree" and select Layers on the left and then click the Zoning checkbox.

The intent of these amendments is to encourage and incentivize a variety of housing types, including modestly priced housing for sale or rent, within these zones. The zones currently allow multi-family and/or mixed-use structures, along with various types of commercial uses, but setbacks and density requirements make it difficult to develop housing projects in reality. With these amendments, the Town's affordable housing policy becomes a requirement in these zones, such that any development that includes five or more dwelling units will be required to provide affordable housing or a payment-in-lieu. It is important to note that these changes make a distinction between those areas that are on Town sewer. Areas within these zones that are not connected to public sewer will not be able to take advantage of increased density standards.

Highlights include:

- Multi-family dwellings of 3-4 dwelling units are permitted by minor site plan review
- Density incentive for a mixed-use building that proposes 5 or more units of housing and at least one commercial use on the first floor
- Density incentive for affordable housing
- Setback adjustments
- Reduced parking for studio and one-bedroom dwelling units or affordable units
- Reduced parking if within ¼ mile of public transit stop in the B-L1 zone
- Impervious surface limits replace building coverage limits
- Stormwater standards strengthened
- Landscaping requirements clarified

These amendments have been reviewed by the Housing Committee, the Economic Development Committee, and the Kittery Land Use Issues Committee within the last 18 months with subsequent

suggestions incorporated. The Planning Board reviewed these proposed changes at their February 24, 2022 meeting and voted unanimously to recommend it for adoption by Town Council.

**TITLE 16**  
**AFFORDABLE HOUSING**  
**BUSINESS LOCAL ZONE**

**1. AMEND §16.4.17 Business – Local (B-L) to include affordable housing provisions as follows:**

1 16.4.17 Business – Local Zone (B-L)

2 A. Purpose

3 The purpose of the Business – Local B-L Zone is to provide local ~~sales retail~~, services, and business  
4 space as well as a variety of housing types within a walkable context. Much of this zone serves a well-  
5 traveled corridor through Kittery with many buildings, including residential structures, oriented within  
6 the Town, to Route 1. Other portions of the zone serve as business hubs for the neighborhoods they are  
7 situated in.

8 B. Permitted uses

9 The following uses are permitted in the B-L Zone:

- 10 (1) Accessory Dwelling Unit
- 11 (2) Dwelling, Attached Single-Family
- 12 (3) Dwelling, Manufactured Housing
- 13 (4) Dwelling, Multi-Family
  - 14 a. Development proposing three or four dwelling units are permitted through minor site plan
  - 15 review;
  - 16 (4)b. Development proposing five or more dwelling units are permitted through major site plan
  - 17 review;
- 18 (5) Dwelling, Single-Family
- 19 (6) Dwellings Two-Family
- 20 ~~(6)~~(7) Dwelling Units as part of a Mixed-Use Building
- 21 ~~(7)~~(8) Convalescent Care Facility
- 22 ~~(8)~~(9) Nursing Care Facility, Long-term
- 23 ~~(9)~~(10) Residential Care Facility
- 24 ~~(10)~~(11) Accessory Buildings, Structures, and Uses
- 25 ~~(11)~~(12) Home Occupation, Major
- 26 ~~(12)~~(13) Home Occupation, Minor
- 27 ~~(13)~~(14) Day Care Facility
- 28 ~~(14)~~(15) Hospital
- 29 ~~(15)~~(16) Nursery School
- 30 ~~(16)~~(17) Private Assembly
- 31 ~~(17)~~(18) Public Facility
- 32 ~~(18)~~(19) Public or Private School
- 33 ~~(19)~~(20) Religious Use
- 34 ~~(20)~~(21) Recreation, Public Open Space

- 35 ~~(21)~~(22) \_\_\_ Aquaculture
- 36 ~~(22)~~(23) \_\_\_ Commercial Fisheries/Maritime Activities (provided only incidental cleaning and
- 37 cooking of seafood occur at the site)
- 38 ~~(23)~~(24) \_\_\_ Commercial School
- 39 ~~(24)~~(25) \_\_\_ Art Studio or Gallery
- 40 ~~(25)~~(26) \_\_\_ Business & Professional Offices
- 41 ~~(26)~~(27) \_\_\_ Business Service
- 42 ~~(27)~~(28) \_\_\_ Conference Center
- 43 ~~(28)~~(29) \_\_\_ Personal Service
- 44 ~~(29)~~(30) \_\_\_ Restaurant
- 45 ~~(30)~~(31) \_\_\_ Retail Sales (excluding those of which the principal activity entails outdoor sales and/or
- 46 storage and excluding those specifically mentioned under Subsection C of this section)
- 47 ~~(31)~~(32) \_\_\_ Retail Sales, Building Materials & Garden Supply (excluding those of which the
- 48 principal activity entails outdoor sales and/or storage)
- 49 ~~(32)~~(33) \_\_\_ Retail Sales, Convenience
- 50 ~~(33)~~(34) \_\_\_ Specialty Food and/or Beverage Facility
- 51 ~~(34)~~(35) \_\_\_ Mass Transit Station
- 52 ~~(35)~~(36) \_\_\_ Parking Area

53 C. Special exception uses

54 The following uses are permitted as special exception uses in the B-L Zone:

55 (1) Dwellings, cottage cluster

- 56 ~~(1)~~(2) \_\_\_ Motel
- 57 ~~(2)~~(3) \_\_\_ Hotel
- 58 ~~(3)~~(4) \_\_\_ Inn
- 59 ~~(4)~~(5) \_\_\_ Rooming House
- 60 ~~(5)~~(6) \_\_\_ Funeral Home
- 61 ~~(6)~~(7) \_\_\_ Gasoline Service Station
- 62 ~~(7)~~(8) \_\_\_ Public Assembly Area
- 63 ~~(8)~~(9) \_\_\_ Theater
- 64 ~~(9)~~(10) \_\_\_ Public Utility Facility
- 65 ~~(10)~~(11) \_\_\_ Mechanical Service
- 66 ~~(11) Residential Dwelling Units, as part of a mixed-use building~~

67 D. Standards.

68 All development and the use of land in the B-L Zone must meet the following standards. Kittery's  
69 Design Handbook illustrates how these standards can be met. In addition, the design and performance  
70 standards of Chapters §16.5, §16.7 and §16.8 must be met.

71 (1) The following space and dimensional standards apply:

72 (a) Minimum land area per dwelling unit:

73 [1] If served by on-site sewage disposal: 20,000 square feet;

74 [2] If served by the public sewerage system and:

75 [a] All floors are residential: 3,000 square feet; or

76 [b] When less than five dwelling units are proposed with, at minimum, one  
77 nonresidential use to be located on the first floor facing State Road or Route 1  
78 Bypass such that the use will be visible from the street:3,000 square feet. Such a  
79 nonresidential use or uses need not occupy the entire first floor but must be an  
80 independent nonresidential use, e.g., not a home office marketed with a dwelling  
81 unit as a work/live unit.

82 [c] When five or more dwelling units are proposed with, at minimum, one  
83 nonresidential use to be located on the first floor facing State Road or Route 1  
84 Bypass such that the use will be visible from the street: 2,500 square feet. Such a  
85 nonresidential use or uses need not occupy the entire first floor but must be an  
86 independent nonresidential use, e.g. not a home office marketed with a dwelling  
87 unit as a work/live unit; or

88 [d] 25% or more of the dwelling units will be affordable housing units as defined by  
89 this code: 2,000 square feet.

90 Note: Except as otherwise required by the buffer provisions of this title.

91 ~~(b)(4) Parking. One row of parking spaces and a related access drive may be located between the~~  
92 ~~front property line and the front wall of the building extending the full width of the lot. All~~  
93 ~~other parking must be located to the side and/or rear of the building. All new or revised~~  
94 ~~parking must be visually screened through the use of landscaping, earthen berms and/or~~  
95 ~~fencing from adjacent public streets or residential properties. (See the Design Handbook for~~  
96 ~~appropriate examples.)~~ Parking requirements are to be met on site. If meeting the parking  
97 requirements is not possible, the parking demand may be satisfied off site or through joint-  
98 use agreements as specified herein. Notwithstanding the off-street parking requirements in §  
99 16.7.11.F(4), minimum parking requirements for the uses below are modified as specified:

100 [1] Dwelling units: 1.5 parking space per dwelling unit; unless:

101 [a] Affordable housing as defined by this code is proposed in which case the parking  
102 requirements may be reduced to one parking space per dwelling unit at the  
103 Planning Board’s discretion; and/or

104 [b] Some or all of the proposed dwelling units are one-bedroom or studio type units in  
105 which case parking requirements for these types of units may be reduced to one  
106 parking space for each unit so described.

107 [2] For multifamily dwellings, if more than ten parking spaces are required, up to 20% of  
108 the parking may be designated for compact cars. See § 16.7.11.F.(4) Off-Street Parking  
109 Standards.

110 [3] Electric car charging stations are allowed and encouraged in parking lots but must not  
111 interfere with pedestrian movement on sidewalks.

112 (c) Off-site parking. Required off-street parking may be satisfied at off-site locations, provided  
113 such parking is on other property owned by the applicant or is under the terms of a contractual  
114 agreement that will ensure such parking remains available for the uses served. Applicant  
115 must present evidence of a parking location and a contractual agreement prior to final

116 approval and file the same with Planning and Code office each time the contract is renewed.  
117 Any changes to the contractual agreement must be reviewed by the Code Enforcement  
118 Officer and if the location of the off-site parking changes, will require approval from the  
119 municipal permitting authority which originally approved the off-site parking.

120 (d) Joint-use parking. Required off-street parking may also be satisfied by the joint use of parking  
121 space by two or more uses if the applicant can show that parking demand is nonconflicting  
122 and will reasonably provide adequate parking for the multiple uses without parking  
123 overflowing into undesignated areas. Nonconflicting periods may consist of daytime as  
124 opposed to evening hours of operation or weekday as opposed to weekends or seasonal  
125 variation in parking demand.

126 [1] Such joint parking areas must be held under ownership of the applicant or under terms  
127 of a contractual agreement that ensures such parking remains available to all users of  
128 the shared parking spaces. Applicant must present evidence of the parking location and  
129 a contractual agreement prior to final approval and file the same with the Planning and  
130 Code office each time the contract is renewed. Any changes to the contractual agreement  
131 must be reviewed by the Code Enforcement Officer and if the municipal permitting  
132 authority which originally approved the off-site parking.

133 [2] Determination of parking adequacy will be based on a most frequent basis, not a "worst  
134 case" scenario;

135 [3] Joint use parking areas must be located within 1,500 feet to the use served, but do not  
136 need to be located on the same lot as the uses served;

137 [4] Ease and safety of pedestrian access to shared parking by the users served must be  
138 demonstrated, including any proposed improvements or shuttle service that may be  
139 offered and its requisite loading/unloading areas;

140 [5] Such joint parking areas must not be located in residential zones of the Town.

141 (e) In making determinations on off-site or joint-use parking under a development plan review,  
142 the municipal permitting authority with jurisdiction to review and approve will make a final  
143 determination of the joint-use and/or off-site spaces that constitute an acceptable combination  
144 of spaces to meet the required parking demand.

145 (f) Special parking and access situations.

146 [1] In instances where one row of parking spaces and/or a related access drive is located  
147 between the front property line and the front wall of the building extending the full width  
148 of the lot and was utilized in accordance with previous permits or approvals, for parking,  
149 display, storage, building or necessary vehicle circulation, the Planning Board may  
150 allow such improvements to remain provided all other parking meets the location  
151 requirements and provided that a landscaping plan for the property frontage is reviewed  
152 and approved by the Planning Board.

153 (g) Minimum lot size: none.

154 NOTE: Except that all screening, open space, buffering and landscaping requirements must  
155 be met or in instances where the Planning Board may modify such requirements, such  
156 modifications must be found satisfactory by the Board.

157 (h) Minimum street frontage: none.

158 NOTE: All lots must meet the requirements of § 16.5.13 Lots unless specifically modified  
159 by this section (§ 16.4.17). Street frontage must provide sufficient vehicular and pedestrian  
160 access for the uses proposed while meeting public health and safety requirements (e.g. Fire  
161 Department, Department of Public Works). The applicant must demonstrate to the municipal



162 permitting authority that the street frontage and lot design meet these requirements to the  
163 extent practicable.

164 (i) Maximum-front setback: 20 feet.

165 NOTE: Except when a multistory building comprising 1) three or more residential dwelling  
166 units; 2) nonresidential uses or 3) a combination of residential and nonresidential uses is  
167 proposed directly across the street from a residential district or single-family use; in which  
168 case a minimum of 15 is required.

169 Note: The Planning Board may, at its discretion, allow a greater setback when public  
170 amenities such as pocket parks, outdoor dining or seating areas are proposed within the front  
171 setback. Pocket parks must be at least 200 square feet with a minimum of three trees and a  
172 bench for sitting required. Park must be vegetated with ground cover except for walkways.  
173 Outdoor dining areas must meet any additional requirements specific to that use. Parking is  
174 prohibited in the front setback except as allowed in subsection (1).(f).[1] above. ).

175 (j) Minimum rear and side: setbacks: 10 feet.

176 NOTE: Except as otherwise required by the buffer provisions of this title, and except where  
177 the side and/or rear setbacks about a residential district or single-family use; in which case a  
178 minimum of 15 feet or 50% of the building height is required, whichever is greater.

179 (k) Maximum building height: 40 feet. Solar apparatus is excluded from height determinations.

180 NOTE: Except that height standards for single- and two-family residential uses are the same  
181 as for those of the Urban Residential District.

182 (l) Impervious surface: No maximum allowable, but all open space, landscaping, setbacks,  
183 buffers, screening and street tree requirements apply. For development that is proposing 70%  
184 or more impervious surface, the stormwater requirements in (m) below may not be modified.

185 (m) Stormwater: All new development must use LID (Low Impact Development) and BMP (Best  
186 Management Practices), based on Maine DEP's Maine Stormwater Best Management  
187 Practices Manual Volumes 1-III as amended from time to time, to manage 100% of the total  
188 stormwater generated on-site. The stormwater report and plan demonstrating that this  
189 requirement is met must be included with the application at the time of submission. A request  
190 for a modification may be submitted to the Planning Board but it is incumbent on the  
191 applicant to prove to the Planning Board's satisfaction that such a modification is necessary.  
192 The Town reserves the right to submit such modification requests for independent  
193 engineering review at the applicant's expense. The Board may also require additional  
194 landscaping/plantings and/or LID-design features when granting such concessions.

195 (n) A minimum of fifteen percent of each lot must be designated as open space. See subsection  
196 (4).(e).

197 (o) Minimum setback from functionally water dependent uses: zero feet.

198 (p) Minimum setback from streams, water bodies and wetlands: in accordance with § 16.5.30  
199 and Appendix A, Fee Schedules.

200 (2) Parking design.

201 (a) Parking must be located to the side or rear of the building. If all parking cannot be located to  
202 the rear or side, the Planning Board may allow limited parking in front of the building, but it  
203 is incumbent upon the applicant to demonstrate why such a modification request should be  
204 granted. In granting this concession, the Board may require more intensive landscape  
205 plantings and/or LID-design features.

206 (b) Shared access between buildings and/or lots must be provided where feasible. Feasibility  
207 criteria include:

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- [1] Fewer curb cuts required;
- [2] Improved or new pedestrian access between buildings or lots;
- [3] Improved internal circulation between buildings or lots; and
- [4] Improved overall site design with shared access.

(c) Screening through the use of plantings and/or fencing is required for all new or revised parking abutting public streets and/or single-family uses or residential zones. Such screening does not require that the parking lot and vehicles within it be completely obscured from view, rather the screening must provide visual interest and distraction from the parking area beyond, as well as buffer vehicle headlight trespass.

[1] A landscape plan showing screening and other landscaping requirements prepared by a registered landscape architect is a submission requirement. However, a landscape plan done by other design professionals may be allowed at the Planning Board’s discretion.

[2] Any required plantings that do not survive must be replaced within one year. This requirement does not expire and runs with the land.

[3] Surface parking lots designed for five or more cars that will service multi-family or mixed-use buildings with dwelling units and which abut a street, single-family use or residential zone must provide screening in one of the following ways:

[a] Any combination of trees, shrubs, tall ornamental grasses or perennial plants in a planting bed at least eight (8) feet wide. Climate-change tolerant Northeastern native plants are preferred. Plantings must be sufficient, as determined by the Planning Board, to screen the parking area from the street except for necessary vehicular and pedestrian access. Planting beds may be mulched but no dyed mulching material may be used. Drip irrigation is recommended.

[b] One tree per 25 feet of street frontage within a planting bed at least eight (8) feet wide which will include other plantings such as perennials. Plantings must be sufficient to screen the parking area from the street except for necessary vehicular and pedestrian access. To ensure survival, trees must be planted using silva cells, bioretention cells or tree wells. Trees must be at least 2.5-inch caliper and 12 feet high at the time of planting. Existing large healthy trees must be preserved if practical and will count towards this requirement. Trees proposed within the public right-of-way must remain under 20 feet tall at maturity. Trees native to the Northeast, selected for climate change tolerance, are preferred and must be drought and salt tolerant when used along streets. A diversity of tree species (three to five species per every 12 trees) is required to provide greater resiliency to threats from introduced insect pests and diseases. Planting beds may be mulched but no dyed mulching material may be used. Drip irrigation is recommended for plantings proposed to accompany the trees.

[c] Fencing, no taller than six (6) feet, of a type that screens rather than blocks a view and made of a material compatible with surrounding buildings. Chain link fences are not allowed unless they have a PVC color coating to blend in with surroundings. Stockade fences may only be allowed to buffer a parking lot along

249 the lot line that abuts a single-family use or residential zone. A planting bed at least  
250 six (6) feet wide, including the fence, is required, with a combination of trees,  
251 shrubs and perennials located on the proposed development's side of the fence.  
252 Planting beds may be mulched but no dyed mulching material may be used. Drip  
253 irrigation is recommended.

254 (d) A minimum of 10% of any surface parking area consisting of 10 or more spaces must be  
255 landscaped with trees and vegetated islands. This requirement is in addition to other required  
256 landscaping and street tree requirements.

257 (e) If 20% or more of the proposed development will be affordable dwelling units built rather  
258 than using payment-in-lieu for required units, the Planning Board may, at its discretion,  
259 modify surface parking lot screening and landscaping requirements under subsections (c) and  
260 (d).

261 **A(3)** Building design standards. Kittery's characteristic buildings reflect its historic seacoast past. The  
262 primary architectural styles are New England Colonial (such as Cape Cod and saltbox), Georgian,  
263 Federal and Classical Revival. New buildings must be compatible with Kittery's characteristic  
264 styles in form, scale, material and color. In general, buildings should be oriented with the front  
265 of the building facing the street on which the building is located. The front or street facade must  
266 be designed as the front of the building. The front elevation must contain one or more of the  
267 following elements: 1) a "front door," although other provisions for access to the building may  
268 be provided; 2) windows; or 3) display cases. (See Design Handbook for examples of acceptable  
269 materials and designs.) Strict imitation is not required. Design techniques can be used to maintain  
270 compatibility with characteristic styles and still leave enough flexibility for architectural variety.  
271 To achieve this purpose, the following design standards apply to new and modified existing  
272 building projects:

273 (a) Exterior building materials and details. Building materials and details strongly define a  
274 project's architectural style and overall character. (See Design Handbook for examples of  
275 acceptable materials, building scale and designs.) "One-sided" schemes are prohibited; similar  
276 materials and details must be used on all sides of a building to achieve continuity and  
277 completeness of design. Predominant exterior building materials must be of good quality and  
278 characteristic of Kittery, such as horizontal wood board siding, vertical wood boards, wood  
279 shakes, brick, stone or simulated stone, glass and vinyl, or metal clapboard.

280 (b) Roofs. A building's prominent roofs must be pitched a minimum of 4:12 unless demonstrated  
281 to the Planning Board's satisfaction that this is not practicable. Acceptable roof styles are  
282 gabled, gambrel, and hipped roofs. Flat roofs, shed roofs and roof facades (such as "stuck on"  
283 mansards) are not acceptable as prominent roof forms except as provided above. Roof colors  
284 must be muted. (See Design Handbook for examples.) The roof design must screen or  
285 camouflage rooftop protrusions to minimize the visual impact of air-conditioning units, air-  
286 handler units, exhaust vents, transformer boxes, and the like. (See Design Handbook for  
287 examples of appropriate treatments.)

288 (c) Loading docks and overhead doors. Loading docks and overhead doors must be located on  
289 the side or rear of the building and screened from view from adjacent properties in residential  
290 use.

291 ~~(e)~~(d) Lighting plans, including outdoor lighting fixture designs and photometric plans, must be  
292 included at the time of application submission. All lighting fixtures must be cutoff (dark sky

293 compliant).

294 (4) Landscaping and site design standards. A landscape plan prepared by a registered landscape  
295 architect is a submission requirement. However, a landscape plan done by other design  
296 professionals may be allowed at the Planning Board’s discretion. To achieve attractive and  
297 environmentally sound site design ~~and appropriate screening of parking areas~~, in addition to the  
298 landscaping standards contained in ~~Chapters 16.7 and 16.8~~ 16.5, the following landscaping  
299 requirements apply to new and modified existing developments:

300 ~~B~~

301 (a) Landscape planter strip. A vegetated landscape planter strip must be provided a minimum of  
302 15 feet in depth adjacent to the right-of-way of all public roads or the sidewalk if it already  
303 exists. If a sidewalk does not yet exist on-site but sidewalks do exist on adjacent properties,  
304 the planting strip must be located so that it does not interfere with connectivity to existing  
305 sidewalks. Planting strips which demonstrate LID functionality to assist in stormwater capture  
306 are preferred.. The Planning Board may reduce the required ~~depth~~ width of the landscape  
307 planter ~~ing~~ strip ~~if a sidewalk~~ is provided in front of the parcel and the area between the front  
308 property line and the front wall of the building will be designed and used as a pedestrian space,  
309 outdoor dining as defined by this title, or a seating area.. The landscape planter ~~ing~~ strip must  
310 include the following landscape elements:

311 (a)

312 [1] ~~Ground cover~~ Plantings. The entire landscape planter ~~ing~~ strip must be vegetated with a  
313 combination of shrubs, perennials, and ornamental grasses except for approved  
314 driveways, walkways, bikeways and screened utility equipment. Climate-change tolerant  
315 Northeastern native plants are preferred. Planting beds may be mulched but no dyed  
316 mulching material may be used. Street trees required below may be included in this  
317 planting strip. Drip irrigation is recommended.

318 (b)

319 [2] Street-side trees. A minimum of one tree must be planted for each 25 feet of street  
320 frontage. The trees may be spaced along the frontage or grouped or clustered to enhance  
321 the visual quality of the site. (See Design Handbook for examples.) The trees must be a  
322 minimum ~~two and one half inch~~ 2.5-inch caliper and be at least 12 feet high at the time  
323 of planting. Trees must be planted to ensure survival, using silva cells, bioretention cells  
324 or tree wells. The species must be selected from the ~~A~~ list of ~~approved~~ street-side trees  
325 can be found in the Design Handbook. Trees native to the Northeast, selected for climate  
326 change tolerance, are preferred and must be drought and salt tolerant when used along  
327 streets. A diversity of tree species (three to five species per every 12 trees) is required to  
328 provide greater resiliency to threats from introduced insect pests and diseases. Existing  
329 large healthy trees must be preserved if practical and will count toward this requirement.  
330 Trees located within the public right-of-way must not exceed 20 feet in height at maturity.

331 [3] Any required plantings that do not survive must be replaced within one year. This  
332 requirement does not expire and runs with the land.

333 (e)(b) Special situations.

334 [1]. [a]. Expansions of less than 1,000 square feet to existing uses including single-family  
335 or two-family dwellings are exempt from the landscaping standard of this  
336 subsection.

337 ~~{2}.[b].~~ Depth Width-of landscape planter strip. In instances where the required minimum  
338 depth width of the landscape planter strip is legally utilized in accordance with  
339 previous permits or approvals, for parking, display, storage, building or necessary  
340 vehicle circulation, the ~~depth width~~ may be narrowed by the Planning Board to the  
341 minimum extent necessary to achieve the objective of the proposed project,  
342 provided that shrubs and perennials are planted along the street frontage to soften  
343 the appearance of the development from the public street.

344 ~~{3}.[c].~~ Additions and changes in use. For additions to existing buildings and changes of  
345 residential structures to a nonresidential use, one street-side tree (see list of street  
346 trees in Design Handbook) is required to be planted for every 1,000 square feet of  
347 additional gross floor area added or converted to nonresidential use. In instances  
348 where parking, display area, storage, building or necessary vehicle circulation  
349 exists ~~at the time of enactment of this section~~, the required trees may be clustered  
350 and/or relocated away from the road as is necessary to be practicable. The  
351 preservation of existing large trees is encouraged; therefore, the Planning Board  
352 may permit the preservation of existing healthy, large, mature trees within the  
353 landscape planter ering strip or other ~~developed~~ landscaping areas of the site to be  
354 substituted for the planting of new trees.

355 (c). Outdoor service and storage areas. Service and storage areas must be located to the side or rear  
356 of the building. ~~Facilities for waste storage such as dumpsters must be located within an~~  
357 ~~enclosure and be visually buffered by fencing, landscaping and/or other treatments. (See~~  
358 ~~Design Handbook for examples of appropriate buffering.)~~ All service areas for dumpsters,  
359 compressors, generators and similar items must be screened by a fence at least six feet tall,  
360 constructed of a material similar to surrounding buildings, and must surround the service area  
361 except for the necessary ingress/egress.

362 ~~€(d)~~ Traffic and circulation standards. Sidewalks and roadways must be provided ~~within the site~~ to  
363 internally join abutting properties that are determined by the Planning Board using the criteria  
364 in subsection D.(2).(b). ~~to be compatible.~~ In addition, safe pedestrian route(s) must be provided  
365 to allow pedestrians to move within the site and between the principal customer entrance and  
366 the front lot line where a sidewalk exists or will be provided or where the Planning Board  
367 determines that such a route is needed for adequate pedestrian safety and movement. (See  
368 Design Handbook for appropriate examples.)

369 (e) Open space standards. A minimum of fifteen percent of the total area of a lot must be provided  
370 as o ~~Open space must be provided as a percentage of the total area of the lot,~~ including freshwater  
371 wetlands, water bodies, streams and setbacks. ~~Fifteen percent of each lot must be designated as~~  
372 ~~open space. Required open space must be shown on the plan with a note dedicating it as "open~~  
373 ~~space."~~ The open space must be located to create an attractive environment on the site, minimize  
374 environmental impacts, protect significant natural features or resources on the site and maintain  
375 wildlife habitat. Individual large, healthy trees and areas with mature tree cover should be  
376 included in the open space. Where possible, the open space must be located to allow the creation  
377 of continuous open space networks in conjunction with existing or potential open space on  
378 adjacent properties. The required amount of designated open space is reduced to 10% of each  
379 lot that is less than 40,000 square feet in size.

380 ~~D—[1]~~ In cases where creating or preserving open space to meet the 15% requirement above  
381 is not practicable, the Planning Board may allow the required landscaping in 4.(a) above



382 to count towards meeting the open space requirement provided the proposed landscaped  
383 planting strip is expanded beyond the required width and the Planning Board finds that  
384 all criteria for open space above has been met to the greatest extent possible.

385 ~~E—The following space standards apply:~~

386 ~~(a)—Minimum land area per dwelling unit when all floors are residential: 20,000 square feet if~~  
387 ~~served by on-site sewage disposal; 8,000 square feet if served by the public sewerage system.~~

388 ~~(NOTE: Except as otherwise required by the buffer provisions of this title, and except where the~~  
389 ~~side and/or rear yards abut a residential district or use; in which case a minimum of 15 feet or~~  
390 ~~50% of the building height is required.)~~

391 ~~(b).—Minimum land area per dwelling unit when the entire first floor is used for nonresidential~~  
392 ~~uses: 20,000 square feet if served by on-site sewage disposal; 4,000 square feet if served by the~~  
393 ~~public sewerage system.~~

394 ~~(c).—Minimum lot size: none.~~

395 ~~(NOTE: Except as otherwise required by the buffer provisions of this title, and except where the~~  
396 ~~side and/or rear yards abut a residential district or use; in which case a minimum of 15 feet or~~  
397 ~~50% of the building height is required.)~~

398 ~~(d).—Minimum street frontage: none.~~

399 ~~(NOTE: Except as otherwise required by the buffer provisions of this title, and except where the~~  
400 ~~side and/or rear yards abut a residential district or use; in which case a minimum of 15 feet or~~  
401 ~~50% of the building height is required.)~~

402 ~~(e).—Minimum front yard: 15 feet.~~

403 ~~(NOTE: Except as otherwise required by the buffer provisions of this title, and except where the~~  
404 ~~side and/or rear yards abut a residential district or use; in which case a minimum of 15 feet or~~  
405 ~~50% of the building height is required.)~~

406 ~~(f).—Maximum front setback of the principal building: 60 feet.~~

407 ~~(g).—Minimum rear and side yards: 10 feet.~~

408 ~~(NOTE: Except as otherwise required by the buffer provisions of this title, and except where the~~  
409 ~~side and/or rear yards abut a residential district or use; in which case a minimum of 15 feet or~~  
410 ~~50% of the building height is required.)~~

411 ~~(h).—Maximum building height: 40 feet.~~

412 ~~(NOTE: Except that space standards for single and two-family residential uses are the same as~~  
413 ~~for those of the Urban Residential District.)~~

414 ~~(i).—Maximum building and outdoor stored material coverage: none, except that side, rear and~~  
415 ~~front yards must be maintained~~

416 ~~(j).—Minimum water body setback for functionally water-dependent uses: zero feet.~~

417 ~~(k).—Minimum setback from streams, water bodies and wetlands: in accordance with Table~~  
418 ~~16.5.30, § 16.4.28 and Appendix A, Fee Schedules.~~

419 (5) Cottage cluster requirements:

420 (a) Cottage cluster dwelling units must either face the required common open space or the street.

421 The required open space must be held in common for use by all the cottage cluster residents  
422 and must be immediately accessible to each dwelling unit, via either the front or the back of  
423 each unit.

424 (b) Each cottage cluster dwelling unit must be no greater than 1,200 square feet. Spacing between  
425 units must comply with the requirements of the Fire Department and/or the State Fire  
426 Marshall's office.

427 (c) Shared parking areas must be connected to each dwelling unit via a sidewalk.

428 (6) Affordable housing requirements:

429 (a) All requirements in § 16.5.4 Affordable Housing must be met.

430

431 (b) Density incentives outlined above in subsection D.(1).(a).[2].[d] may be applied to projects that  
432 create affordable housing units, as defined by this code. No proportional payment-in-lieu is  
433 required if the affordable dwelling unit requirements for the density incentives are met.

434 ~~(4)~~(7) Gasoline Sales

435 (a). Gasoline Sales must not be located within 1,000 feet of an existing station;

436 (b). not be located within 1,000 feet of any private residence; and

437 ~~(a)~~(c). not be located within 150 feet of any existing structure.

438 E. Shoreland Overlay Zone OZ-SL – Business – Local Zone (B-L)

439 (1) Permitted uses.

440 (a) Accessory Buildings, Structures, and Uses

441 (b) Dwellings if located farther than 100 feet from the normal high-water line of any water  
442 bodies, or the upland edge of a wetland

443 [1] Dwelling, Attached Single-family

444 [2] Dwelling, Manufactured housing

445 [3] Dwelling, Multi-family

446 [4] Dwelling, Single-family

447 [5] Dwelling, Two-Family

448 ~~(b)~~(c) Recreation, Public Open Space

449 (2) Special exception uses.

450 (a). Art Studio or Gallery

451 (b). Retail Sales, Building Materials & Garden Supply (excluding those of which the principal  
452 activity entails outdoor sales and/or storage)

453 (c). Business Services

454 (d). Business & Professional Offices

455 (e). Commercial Fisheries/Maritime Activities (provided only incidental cleaning and cooking of  
456 seafood occur at the site)

457 (f). Parking Area

458 (g). Conference Center

459 (h). Retail Sales, Convenience

460 (i). Home Occupation, Major

461 (j). Home Occupation, Minor

462 (k). Mass Transit Station

- 463 (l). Motel
- 464 (m). Hotel
- 465 (n). Inn
- 466 (o). Rooming House
- 467 (p). Personal Services
- 468 (q). Public Assembly Area
- 469 (r). Theater
- 470 (s). Public Utility Facility
- 471 (t). Restaurant
- 472 (u). Retail Sales, but (excluding those of which the principal activity entails outdoor sales and/or
- 473 storage)
- 474 (v). Commercial School
- 475 (w). Public or Private School
- 476 (x). Nursery School
- 477 (y). Day Care Facility
- 478 (z). Elder Care Facility
- 479 (aa). Hospital
- 480 (bb). Nursing Care Facility, Long-term
- 481 (cc). Convalescent Care Facility
- 482 (dd). Public Facility
- 483 (ee). Religious Use
- 484 (ff). Private Assembly
- 485 (gg). Specialty Food and/or Beverage Facility

486 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL

487 E. Resource Protection Overlay Zone OZ-RP – Business – Local (B-L).

488 (1) Permitted Uses.

489 (a) Recreation, Public Open Space

490 (2) Special Exception Uses.

491 (a) Accessory Uses & Buildings

492 (b) Aquaculture

493 (c) Home Occupations, Major

494 (d) Home Occupations, Minor

495 (e) Public Utility Facilities,

496 (f) Dwelling, Single-Family

497 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone RP-SL



**TITLE 16  
AFFORDABLE HOUSING  
BUSINESS – LOCAL 1 ZONE**

**1. AMEND §16.4.18 Business – Local 1 (B-L1) to ) to include affordable housing provisions as follows:**

1 16.4.18 Business – Local 1 (B-L1)

2 A. Purpose

3 The purpose of the Business – Local 1 B-L1 Zone is to encourage a compact village ~~smart growth/urban~~  
4 design pattern that will serve as a focal point for the provision of local sales, urban residences, services  
5 and business space. The goal of this section is to create an attractive, functional and vibrant pedestrian-  
6 scaled neighborhood supporting a mix of commercial and residential uses. ~~This type of development~~  
7 ~~reflects a traditional New England pattern of building, where commercial uses are located on the first~~  
8 ~~floor and housing on the upper floors.~~

9 B. Permitted uses

10 The following uses are permitted in the B-L1 Zone:

11 (1) Accessory Dwelling Unit

12 (2) Dwelling, Attached Single-Family

13 (3) Dwelling, Manufactured Housing

14 (4) Dwelling, Multi-Family

15 (a) Development proposing three or four dwelling units are permitted through minor site plan  
16 review;

17 (b) Development proposing five or more dwelling units are permitted through major site plan  
18 review;

19 (5) Dwelling, Single-Family

20 ~~(6)~~ Dwelling, Two-Family

21 ~~(6)~~~~(7)~~ Dwelling Units as part of a Mixed-Use Building

22 ~~(7)~~~~(8)~~ Convalescent Care Facility

23 ~~(8)~~~~(9)~~ Nursing Care Facility, Long-term

24 ~~(9)~~~~(10)~~ Residential Care Facility

25 ~~(10)~~~~(11)~~ Accessory Buildings, Structures, and Uses

26 ~~(11)~~~~(12)~~ Home Occupation, Major

27 ~~(12)~~~~(13)~~ Home Occupation, Minor

28 ~~(13)~~~~(14)~~ Inn

29 ~~(14)~~~~(15)~~ Day Care Facility

30 ~~(15)~~~~(16)~~ Hospital

31 ~~(16)~~~~(17)~~ Nursery School

32 ~~(17)~~~~(18)~~ Private Assembly

- 33 ~~(18)~~(19) Public Facility
- 34 ~~(19)~~(20) Public or Private School
- 35 ~~(20)~~(21) Religious Use
- 36 ~~(21)~~(22) Recreation, Public Open Space
- 37 ~~(22)~~(23) Commercial School
- 38 ~~(23)~~(24) Art Studio or Gallery
- 39 ~~(24)~~(25) Business & Professional Offices
- 40 ~~(25)~~(26) Business Services
- 41 ~~(26)~~(27) Conference Center
- 42 ~~(27)~~(28) Personal Services
- 43 ~~(28)~~(29) Restaurant
- 44 ~~(29)~~(30) Retail Sales (excluding those of which the principal activity entails outdoor sales and/or storage and excluding those specifically mentioned under Subsection C of this section)
- 45
- 46 ~~(30)~~(31) Retail Sales, Building Materials & Garden Supply (excluding those of which the principal activity entails outdoor sales and/or storage)
- 47
- 48 ~~(31)~~(32) Retail Sales, Convenience
- 49 ~~(32)~~(33) Specialty Food and/or Beverage Facility
- 50 ~~(33)~~(34) Mass Transit Station
- 51 ~~(34)~~(35) Parking Area

52 C. Special exception uses

53 The following uses are permitted as special exception uses in the B-L1 Zone:

- 54 (1) Motel
- 55 (2) Hotel
- 56 (3) Rooming House
- 57 (4) Funeral Home
- 58 (5) Gasoline Service Station
- 59 (6) Public Assembly Area
- 60 (7) Theater
- 61 (8) Public Utility Facility
- 62 (9) Farmers Market
- 63 (10) Mechanical service
- 64 (11) Dwellings, cottage cluster; and
- 65 ~~(10)~~(12) Buildings and structures over 40 feet that conform to the provisions of Title 16.

66 D. Standards

67 All development and the use of land in the B-L1 Zone must meet the following standards. Kittery's  
68 Design Handbook illustrates how these standards can be met. In addition, the design and performance  
69 standards of Chapter § 16.5, 16.7 and 16.8 must be met.

70

71 (1) The following space and dimensional standards apply:

72 (a) Minimum land area per dwelling unit:

73 [1] When all floors are residential: ~~8,000~~2,500 square feet

74 [2] When less than five dwelling units are proposed with, at minimum, one nonresidential  
75 use to be located on the first floor facing State Road or Shapleigh Road such that the use  
76 will be visible from the street: 2,500 square feet. Such a nonresidential use or uses need  
77 not occupy the entire first floor but must be an independent nonresidential use, e.g., not a  
78 home office marketed with a dwelling unit as a work/live unit. ~~When the entire first floor~~  
79 ~~is in nonresidential use: 3,500 square feet.~~

80 [3] When five or more dwelling units are proposed with, at minimum, one nonresidential use  
81 to be located on the first floor facing State Road or Shapleigh Road such that the use will  
82 be visible from the street: 2,000 square feet. Such a nonresidential use or uses need not  
83 occupy the entire first floor but must be an independent nonresidential use, e.g., not a  
84 home office marketed with a dwelling unit as a work/live unit.

85 ~~[2]~~[4] When 25% or more of the dwelling units will be affordable housing units as  
86 defined by this code, the minimum land area per dwelling unit is: 1,500 square feet.

87 (b) Parking:

88 Parking requirements are to be met on-site. If meeting the parking requirements is not  
89 possible, the parking demand may be satisfied off-site or through joint-use agreements as  
90 specified in 16.4.17.D.(1).(c) - 16.4.17.D.(1).(e) under the B-L Zone. Notwithstanding the  
91 off-street parking requirements in 16.7.11.F.(4), minimum parking requirements for the uses  
92 below are modified as specified:

93 [1] Dwelling units: 1.5 parking spaces per dwelling unit; unless:

94 [i] Affordable housing as defined by this code is proposed in which case the parking  
95 requirements may be reduced to a minimum of 1/2 spaces per dwelling unit at the  
96 Planning Board's discretion; and/or

97 [ii] Housing is proposed within ¼ mile of a public transit stop, in which case the parking  
98 requirements may be reduced to a minimum of 1/2 spaces per dwelling unit at the  
99 Planning Board's discretion; and/or

100 [iii] Some or all of the proposed dwelling units are one-bedroom or studio type units in  
101 which case parking requirements for these types of units are reduced to one parking space  
102 for each unit so described.

103 [2] For multifamily dwellings, if more than ten parking spaces are required, up to 20% of  
104 the parking may be designated for compact cars. See 16.7.11.F.(4) Off-Street Parking  
105 Standards.

106 ~~(b)~~ [3] Electric car charging stations are allowed and encouraged in parking lots but must not  
107 interfere with pedestrian movement on sidewalks. ~~Minimum parking spaces per dwelling~~  
108 ~~unit: 1.5.~~

109 (c) Minimum lot size: ~~20,000 square feet~~None. (NOTE: Except that all screening, open space,  
110 buffering and landscaping requirements must be met or in instances where the Planning  
111 Board may approve modifications to such requirements, such modifications must be found  
112 satisfactory by the Board.

113 (d) Minimum street frontage per ~~building~~lot: 50 feet.

- 114 (e) Maximum front ~~yard~~setback: ~~30~~20 feet.  
115 (NOTE: This area must be designed to promote a pedestrian public space, which includes,  
116 but is not limited to, landscaping, sidewalks and sitting areas. The Planning Board may, at its  
117 discretion, allow a greater setback when public amenities such as pocket parks, outdoor  
118 dining or seating areas are proposed within the front setback. Pocket parks must be at least  
119 200 square feet with a minimum of three trees and a bench for sitting required. Park must be  
120 vegetated with ground cover except for walkways. Outdoor dining areas must meet any  
121 additional requirements specific to that use. ~~Parking and outdoor~~Outdoor storage ~~are~~is  
122 prohibited anywhere in the front yard of the structure, except for seasonal sales items.  
123 Parking is also prohibited in the front setback except as allowed in subsection (2).(e)  
124 below ).)
- 125 (f) Minimum rear and side ~~yards~~setbacks: 10 feet.  
126 (NOTE: Except as otherwise required by the buffer provisions of this title, and except where  
127 the side and/or rear ~~yards~~setbacks abut a residential zone or single-family use; in which case  
128 a minimum of 15 feet or 50% of the building height, whichever is greater, is required.)
- 129 (g) Maximum building height: 40 feet. Solar apparatus is excluded from height determinations.  
130 Buildings and structures higher than 40 actual feet from the lowest point of grade to the  
131 highest point of the building or structure (see Height of Building in 16.3), permitted as a  
132 special exception, must have side, rear and front setbacks of sufficient depth to adequately  
133 protect the health, safety and welfare of abutting properties, which may not be less than 50%  
134 of the actual height of the proposed building.
- 135 (h) ~~Maximum building and outdoor stored material coverage: 50%~~ The maximum impervious  
136 surface is:-  
137 [1] 70%; or  
138 [2] The Planning Board may, at its discretion, allow greater than 70% if:  
139 (i) Additional landscaped or natural areas are proposed or preserved and such areas are  
140 integrated into the site design in an environmentally conscious way utilizing LID to  
141 provide stormwater filtration and/or water quality improvements. Such areas must exceed  
142 the requirement that 15% of the lot be landscaped or natural. See (4) Landscaping/Site  
143 Improvements. When granting such a concession, the Board must find that the proposed  
144 additional landscaping and/or natural areas and the site design provide enough benefit to  
145 outweigh the impact of greater impervious surface; or  
146 (ii) Affordable housing to be built, rather than a payment-in-lieu, is proposed.  
147 ~~(h)~~ Note: If using either option above, the stormwater requirements in (i) below may not  
148 be modified.
- 149 (i) Stormwater: All new development must use LID (Low Impact Development) and BMP (Best  
150 Management Practices), based on Maine DEP’s Maine Stormwater Best Management  
151 Practices Manual Volumes I-III as amended from time to time, to manage 100% of the total  
152 stormwater generated on-site. The stormwater report and plan demonstrating that this  
153 requirement is met must be included with the application at the time of submission. A request  
154 for a modification may be submitted to the Planning Board but it is incumbent on the  
155 applicant to prove to the Planning Board’s satisfaction that such a modification is necessary.  
156 The Town reserves the right to submit such modification requests for independent  
157 engineering review at the applicant’s expense. The Board may also require additional

158 landscaping/plantings and/or LID features when granting such concessions.

159 (j) Minimum area dedicated to landscaped or natural areas: 15%.

160 [1] For the purposes of this zone, a natural area is an area that is not regularly mowed, and  
161 contains trees and/or shrubs which may not have been deliberately planted. Invasive plants,  
162 as defined by the State of Maine, must be removed.

163 (k) [2] For multifamily dwellings, mixed-use buildings with dwelling units and attached  
164 single-family dwellings, in cases where the property cannot meet the 15% requirement due to  
165 existing development (including parking areas), and where redevelopment will remain at the  
166 same or a lower percentage of the lot, the Planning Board may, at its discretion, allow a  
167 smaller percentage of landscaped and/or natural area. In granting this concession, the Board  
168 may require more intensive landscape plantings and/or LID-designed features.

169 (k) Hours of operation must be noted on the final site plan and are determined by the  
170 Planning Board on a case-by-case basis. All lighting other than designated security lighting  
171 must be extinguished outside of noted hours of operation.

172 (l) Minimum ~~water body~~ setback for functionally water-dependent uses: zero feet.

173 (m) Minimum setback from streams, water bodies and wetlands: in accordance with Table  
174 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

175 ~~(m) Gasoline Sales must a) not be located within 1,000 feet of an existing station; (b) not be~~  
176 ~~located within 1,000 feet of any private residence; and (c) not be located within 150 feet of~~  
177 ~~any existing structure.~~

178 (2) Parking design.

179 (a) Parking must be located ~~on~~ to the side or ~~back~~ rear of the building yard; If all parking cannot  
180 be located to the rear or side, the Planning Board may allow limited parking in front of the  
181 building but it is incumbent upon the applicant to demonstrate why such a modification  
182 request should be granted. In granting this concession, the Board may require more intensive  
183 landscape plantings and/or LID-designed features.

184 (b) Shared access between buildings and/or lots must be provided where feasible; and  
185 Feasibility criteria include:

186 [1] Fewer curb cuts required;

187 [2] Improved or new pedestrian access between buildings or lots;

188 [3] Improved internal circulation between buildings or lots; and

189 ~~(b)~~ [4] Improved overall site design with shared access.

190 (c) Screening through the use of plantings and/or fencing is required for all new or revised  
191 parking abutting public streets and/or single-family uses or residential zones. Such screening  
192 does not require that the parking lot and vehicles within it be completely obscured from view,  
193 rather the screening must provide visual interest and distraction from the parking area  
194 beyond, as well as buffer vehicle headlight trespass. ~~New or revised parking must be~~  
195 ~~visually screened through the use of landscaping, earthen berms and/or fencing from adjacent~~  
196 ~~public streets or residential properties. (See the Design Handbook for appropriate examples.)~~

197 [1] A landscape plan showing screening and other landscaping requirements prepared by a  
198 registered landscape architect is a submission requirement. However, a landscape plan done  
199 by other design professionals may be allowed at the Planning Board's discretion.

200 [2] Any required plantings that do not survive must be replaced within one year. This

201 requirement does not expire and runs with the land.

202 [3] Surface parking areas designed for less than five cars must use solid fencing, berms  
203 and/or stone walls along the parking lot where it abuts any single-family use or residential  
204 zone must be used to prevent vehicle headlights trespass. from shining on any abutting  
205 residential property. Incorporating flowering vines and other plantings such as trees and  
206 shrubs on next to fences and blank exterior walls is encouraged.

207 [4] Surface parking lots designed for five or more cars that will service multi-family or  
208 mixed-use buildings with dwelling units and which abut a street, single-family use or  
209 residential zone must provide screening in one of the following ways:

210 i. Any combination of trees, shrubs, tall ornamental grasses or perennial plants in a  
211 planting bed at least eight (8) feet wide. Plantings must be sufficient, as determined by  
212 the Planning Board, to screen the parking area from the street except for necessary  
213 vehicular and pedestrian access. Climate-change tolerant Northeastern native plants are  
214 preferred. Planting beds may be mulched but no dyed mulching material may be used.  
215 Drip irrigation is recommended.

216 ii. One tree per 25 feet of street frontage within a planting bed at least eight (8) feet  
217 wide which will include other plantings such as perennials. Plantings must be sufficient,  
218 as determined by the Planning Board, to screen the parking area from the street except  
219 for necessary vehicular and pedestrian access. To ensure survival, trees must be planted  
220 using silva cells, bioretention cells or tree wells. Trees must be at least 2.5-inch caliper  
221 and 12 feet high at the time of planting. Existing large healthy trees must be preserved if  
222 practical and will count towards this requirement. Trees proposed within the public  
223 right-of-way must remain under 20 feet tall at maturity. Trees native to the Northeast,  
224 selected for climate change tolerance, are preferred and must be drought and salt tolerant  
225 when used along streets. A diversity of tree species (three to five species per every 12  
226 trees) is required to provide greater resiliency to threats from introduced insect pests and  
227 diseases. Planting beds may be mulched but no dyed mulching material may be used.  
228 Drip irrigation is recommended for plantings proposed to accompany the trees.

229 iii. Fencing, no taller than six (6) feet, of a type that screens rather than blocks a view  
230 and made of a material compatible with surrounding buildings. Chain link fences are not  
231 allowed unless they have a PVC color coating to blend in with surroundings. Stockade  
232 fences may only be allowed to buffer a parking lot along the lot line that abuts a single-  
233 family use or residential zone. A planting bed at least six (6) feet wide, including the  
234 fence, is required, with a combination of trees, shrubs and perennials located on the  
235 proposed development's side of the fence. Climate-change tolerant Northeastern native  
236 plants are preferred. Planting beds may be mulched but no dyed mulching material may  
237 be used. Drip irrigation is recommended.

238 (d) A minimum of 10% of any surface parking area consisting of 10 or more spaces must be  
239 landscaped with trees and vegetated islands. This requirement is in addition to other required  
240 landscaping and street tree requirements.

241 (e) In instances where one row of parking spaces and/or a related access drive is located  
242 between the front property line and the front wall of the building extending the full width of the  
243 lot and was utilized in accordance with previous permits or approvals, for parking, display,  
244 storage, building or necessary vehicle circulation, the Planning Board may allow such  
245 improvements to remain provided all other parking meets the location requirements and



246 provided that a landscaping plan for the property frontage is reviewed and approved by the  
 247 Planning Board.

248 (f) If 20% or more of the proposed development will be affordable dwelling units built rather  
 249 than using payment-in-lieu for required units, the Planning Board may, at its discretion, modify  
 250 surface parking lot screening and landscaping requirements under subsections (c) and (d).

251 (3) Building design standards

252 Kittery's characteristic buildings reflect its historic seacoast past. The primary architectural styles  
 253 are New England Colonial (such as Cape Cod and saltbox), Georgian, Federal and Classical  
 254 Revival. New buildings must be compatible with Kittery's characteristic styles in form, scale,  
 255 material and color. In general, buildings should be oriented to the street with the front of the  
 256 building facing the street from which the building derives its street frontage. Architectural design  
 257 and structure location must reinforce the human scale and pedestrian nature of the neighborhood  
 258 by using orientation and building massing, exterior building materials, and roofing as set forth  
 259 below. The front or street facade must be designed as the front of the building. The front  
 260 elevation must contain one or more of the following elements: 1) a "front door," although other  
 261 provisions for access to the building may be provided; 2) windows; or 3) display cases. (See  
 262 Design Handbook for examples of acceptable materials and designs.) Main entries should be  
 263 clearly visible from the street and provide adequate cover from the weather. Strict imitation is  
 264 not required. Design techniques can be used to maintain compatibility with characteristic styles  
 265 and still leave enough flexibility for architectural variety. To achieve this purpose, the following  
 266 design standards apply to new and modified existing building projects:

267 (a) Exterior building materials and details. Building materials and details strongly define a  
 268 project's architectural style and overall character. (See Design Handbook for examples of  
 269 acceptable materials, building scale, and designs.) "One-sided" schemes are prohibited;  
 270 similar materials and details must be used on all sides of a building to achieve continuity and  
 271 completeness of design. Predominant exterior building materials must be of good quality and  
 272 characteristic of Kittery, such as horizontal wood board siding, vertical wood boards, wood  
 273 shakes, brick, stone or simulated stone, glass and vinyl, or metal clapboard.

274 (b) Roofs. ~~A building's prominent roofs must be pitched a minimum of 4:12 unless demonstrated~~  
 275 ~~to the Planning Board's satisfaction that this is not practicable. Acceptable roof~~ Roof styles  
 276 ~~are such as~~ gabled, gambrel and hipped roofs are preferred. ~~Flat roofs, shed~~ Shed roofs and  
 277 roof facades (such as "stuck on" mansards) are not acceptable as prominent roof forms unless  
 278 demonstrated to the Planning Board' satisfaction that another design is not practicable, except  
 279 ~~as provided above~~. Roof colors must be muted. (See Design Handbook for examples.) Flat  
 280 roofs proposed to locate heating, cooling, or other such mechanical or electrical apparatus off  
 281 the ground, are acceptable provided that such apparatus are screened from view and the  
 282 screening is designed as an integral part of the building to aid both aesthetics and noise  
 283 attenuation. Flat roofs proposed for the purpose of solar array installations are also  
 284 acceptable. The roof design must screen or camouflage rooftop protrusions to minimize the  
 285 visual impact of air conditioning units, air handler units, exhaust vents, transformer boxes  
 286 and the like. (See Design Handbook for examples of appropriate treatments.)

287 (c) Loading docks and overhead doors. Loading docks and overhead doors must be located on  
 288 the side or rear of the building and must be screened from view from adjacent properties in  
 289 residential use.

290 (d) Lighting plans, including outdoor lighting fixture designs and photometric plans, must be

291 included at the time of application submission. All lighting fixtures must be cutoff (dark sky  
 292 compliant).

293 (4) Landscaping/site improvements.

294 A landscape plan prepared by a registered landscape architect is a submission requirement.

295 However, a landscape plan done by other design professionals may be allowed at the Planning  
 296 Board’s discretion. Climate change-tolerant Northeastern native plants are preferred. To achieve  
 297 attractive and environmentally sound site design ~~and appropriate screening of parking areas~~, in  
 298 addition to the landscaping standards contained in § 16.7-5 ~~and § 16.8~~, the following landscaping  
 299 requirements apply to new and modified existing developments:

- 300 (a) Fifteen percent of site area must be landscaped and/or in a natural state as described in  
 301 D.(1).(j).[1], unless otherwise provided above;
- 302 (b) Outdoor spaces must be created to reinforce commercial and community activities and  
 303 pedestrian-friendly access. Outdoor spaces are encouraged throughout the site ~~with special~~  
 304 ~~attention along~~ especially in those areas to the front and sides of buildings when viewed from  
 305 the sidewalk and street. Architectural features such as decorative pavers, planters and  
 306 ~~benches~~ seating areas, as well as outdoor dining where applicable, are encouraged in the  
 307 creation of these spaces;
- 308 (c) The ~~space~~ setback between the ~~roadway~~ street and any buildings must be attractively  
 309 landscaped using trees, ~~flowers~~, shrubs, perennials, ornamental grasses, fencing or stone  
 310 walls to reinforce the site's unique character and building design and complement the public  
 311 use of the space;
- 312 (d) ~~A-Required~~ buffer setbacks that function as buffers between commercial and residential  
 313 zones/single-family uses must be ~~established and be~~ landscaped at minimum with a  
 314 combination of trees and shrubs in a planting bed at least six (6) feet wide. Planting beds may  
 315 be mulched but no dyed mulching material may be used; ~~visually pleasing mixed planting~~  
 316 ~~type;~~
- 317 (e) ~~Solid fencing, berms and/or stone walls must be used to prevent headlights from shining on~~  
 318 ~~abutting residential property. Incorporating flowering vines and other plantings on fences and~~  
 319 ~~blank exterior walls is encouraged;~~
- 320 (f)(e) Provide street trees in a pattern reflecting the existing streetscape. For new buildings, a  
 321 minimum of one street tree must be planted for each 25 feet of street frontage. The trees may  
 322 be spaced along the frontage or grouped or clustered to enhance the visual quality of the site.  
 323 (See Design Handbook for examples.) The trees must be a minimum two-and-one-half-inch  
 324 caliper and be at least 12 feet high at the time of planting. ~~The species must be selected from~~  
 325 the A list of approved street trees may be found in the Design Handbook. Trees native to the  
 326 Northeast, selected for climate change tolerance, are preferred and must be drought and salt  
 327 tolerant when used along streets. A diversity of tree species (three to five species per every  
 328 12 trees) is required to provide greater resiliency to threats from introduced insect pests and  
 329 diseases. Trees located within the public right-of-way must not exceed 20 feet at maturity.  
 330 Existing large healthy trees must be preserved if practical and will count toward this  
 331 requirement.
- 332 (g)(f) For additions to existing buildings and changes of residential structures to a  
 333 nonresidential use, one street-side tree (see list of street trees in Design Handbook) is  
 334 required to be planted for every 1,000 square feet of additional gross floor area added or  
 335 converted to nonresidential use. In instances where parking, display area, storage, building or



336 necessary vehicle circulation exists at the time of enactment of this section, the required trees  
337 may be clustered and/or relocated away from the road as is necessary to be practicable. The  
338 preservation of existing large trees is encouraged; therefore, the Planning Board may permit  
339 the preservation of existing healthy, large, mature trees within developed areas of the site to  
340 be substituted for the planting of new trees;

341 ~~(h)~~(g) Service and storage areas must be located to the rear of the building ~~and be shielded using~~  
342 ~~plantings and/or fencing. Facilities for waste storage such as dumpsters must be located~~  
343 ~~within an enclosure and be visually buffered by fencing, landscaping and/or other treatments~~  
344 ~~(see Design Handbook for examples of appropriate buffering);~~ All service areas for  
345 dumpsters, compressors, generators and similar items must be screened by a fence at least six  
346 feet tall, constructed of a material similar to surrounding buildings, and must surround the  
347 service area except for the necessary ingress/egress.

348 ~~(h)~~(h) No storage may be in front of buildings except seasonal sales items;

349 ~~(i)~~(i) Lighting, including lighting fixture designs and photometric plans, and landscape plans  
350 must be provided and approved as a part of final plan; and

351 (j) Lighting along the street must be of a pedestrian scale using a full cutoff fixture in an  
352 architectural style fixture appropriate to the neighborhood.

353 (k) Any required plantings that do not survive must be replaced within one year. This  
354 requirement does not expire and runs with the land.

355 ~~(k)~~ (l) If 15% or more of the proposed development will be affordable dwelling units,  
356 the Planning Board may, at its discretion, modify landscaping requirements under [c], [d] and [e]  
357 above.

358 (5) Traffic and circulation standards.

359 Sidewalks and roadways must be provided ~~within the site~~ to internally join abutting properties  
360 ~~that are~~ determined by the Planning Board using the criteria in subsection D.(2).(b).to be  
361 ~~compatible~~. In addition, safe pedestrian route(s) must be provided to allow pedestrians to move  
362 within the site and between the principal customer entrance and the front lot line where a  
363 sidewalk exists or will be provided or where the Planning Board determines that such a route is  
364 needed for adequate pedestrian safety and movement. (See Design Handbook for appropriate  
365 examples.)

366 (6) Cottage cluster requirements:

367 (a) Cottage cluster dwelling units must either face the required common open space or the  
368 street. The required open space must be held in common for use by all the cottage cluster  
369 residents and must be immediately accessible to each dwelling unit, via either the front or the  
370 back of each unit.

371 (b) Each cottage cluster dwelling unit must be no greater than 1,200 square feet. Spacing  
372 between units must comply with the requirements of the Fire Department and/or the State Fire  
373 Marshall's office.

374 (c) Shared parking areas must be connected to each dwelling unit via a sidewalk.

375 (7) Affordable housing requirements:

376 (a) All requirements in 16.5.4 Affordable Housing must be met.

377 (b) Density incentives outlined above in subsection D.(1).(a).[4] may be applied to projects  
378 that create affordable housing units, as defined by this code. No proportional payment-in-lieu is

379 required if the affordable dwelling unit requirements for the density incentives are met.

380 (8) Gasoline Sales must a) not be located within 1,000 feet of an existing station; (b) not be located  
381 within 1,000 feet of any private residence; and (c) not be located within 150 feet of any existing  
382 structure.

383 E. Shoreland Overlay Zone OZ-SL – Business Local Zone (B-L1)

384 (1) Permitted uses

- 385 (a) Accessory Uses & Building
- 386 (b) Aquaculture
- 387 (c) Recreation, Public Open Space

388 (2) Special exception uses

- 389 (a) Art Studio or Gallery
- 390 (b) Business & Professional Offices
- 391 (c) Business Services
- 392 (d) Retail Sales, Building Materials & Garden Supply (excluding those of which the principal
- 393 activity entails outdoor sales and/or storage)
- 394 (e) Conference Center
- 395 (f) Retail Sales, Convenience
- 396 (g) Commercial Fisheries/Maritime Activities (provided only incidental cleaning and cooking of
- 397 seafood occur at the site)
- 398 (h) Parking Area
- 399 (i) Dwelling, Manufactured Housing
- 400 (j) Dwelling, Single-Family
- 401 (k) Dwelling, Two-Family
- 402 (l) Farmers market
- 403 (m) Funeral Home
- 404 (n) Home Occupation, Major
- 405 (o) Home Occupation, Minor
- 406 (p) Inn
- 407 (q) Mass Transit Station
- 408 (r) Motel
- 409 (s) Hotel
- 410 (t) Inn
- 411 (u) Rooming House
- 412 (v) Personal Service
- 413 (w) Public Assembly Area
- 414 (x) Theater
- 415 (y) Public Utility Facility
- 416 (z) Restaurant
- 417 (aa) Retail Sales (excluding those of which the principal activity entails outdoor sales and/or
- 418 storage)
- 419 (bb) Specialty Food and/or Beverage Facility

420 (3) See § 16.4.28 for purpose and standards in the Shoreland Overlay Zone OZ-SL

421 F. Resource Protection Overlay Zone OZ-RP – Business – Local Zone (B-L1)

- 422 (1) Permitted Uses
- 423 (a) Recreation, Public Open Space
- 424 (2) Special Exception Uses
- 425 (a) Accessory Uses & Buildings
- 426 (b) Home Occupations, Major
- 427 (c) Home Occupations, Minor
- 428 (d) Public Utility Facility
- 429 (e) Dwelling, Single-Family, including modular homes
- 430 (3) See § 16.4.29 for purpose and standards in the Resource Protection Overlay Zone OZ-RP

**KITTERY TOWN CODE –  
TITLE 16  
AFFORDABLE HOUSING**

1 **AN ORDINANCE** relating to the municipality’s authority for Town governance to give due and  
2 proper attention to its many demands pursuant to the Town Charter, Federal law, and Maine  
3 Revised Statutes, and more particularly where set forth in Maine Revised Statutes Title 30-A,  
4 Municipalities and Counties.

5 **WHEREAS**, the Kittery Town Council is authorized to enact this Ordinance, as specified in  
6 Sections 1.01 and 2.07(3) of the Town Charter; and 30-A MRS §3001, pursuant to its powers  
7 that authorize the town, under certain circumstances, to provide for the public health, welfare,  
8 morals, and safety, and does not intend for this Ordinance to conflict with any existing state or  
9 federal laws; and

10 **WHEREAS**, the Town of Kittery desires to promote and retain a diverse community of residents  
11 who provide essential services to the Town, cultural enrichment, a variety of ages and  
12 backgrounds, or who currently live in Kittery on modest means; and

13 **WHEREAS**, the Town of Kittery recognizes that municipal support provided through a  
14 combination of policy, ordinances, and funds is needed for the creation, rehabilitation, and  
15 retention of affordable housing units in Kittery; and

16 **WHEREAS**, the Town of Kittery seeks to remove barriers and incentivize the creation,  
17 rehabilitation, and retention of affordable housing units through its zoning code;

18 **NOW THEREFORE**, IN ACCORDANCE WITH TITLE 30-A MRS §3001, AND TOWN  
19 CHARTER §2.14, THE TOWN OF KITTERY HEREBY ORDAINS AMENDMENTS TO TOWN  
20 CODE, TITLE 16, LAND USE and DEVELOPMENT CODE, BUSINESS LOCAL AND  
21 BUSINESS LOCAL-1 ZONES, AS PRESENTED.

22 **INTRODUCED** and read in a public session of the Town Council on the \_\_\_\_ day of \_\_\_\_\_,  
23 20\_\_\_\_, by:\_\_\_\_\_ {NAME} Motion to approve by Councilor  
24 \_\_\_\_\_ {NAME}, as seconded by Councilor \_\_\_\_\_ {NAME} and  
25 passed by a vote of \_\_\_\_\_.

26 **THIS ORDINANCE IS DULY AND PROPERLY ORDAINED** by the Town Council of Kittery,  
27 Maine on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, {NAME}, \_\_\_\_\_, Chairperson

28 **Attest:** {NAME}, \_\_\_\_\_ Town Clerk