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MEMORANDUM

TO: Adam Causey, AICP, Director of Planning and Development

CC: Jamie Steffen, Town Planner  
Carl Eppich, AICP, North Star Planning  
Open Space Advisory Committee (OSAC)

From: Ben Smith, AICP, North Star Planning 

RE: Code Audit – Kittery Title 16 Land Use and Development

Date: January 18, 2019

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North Star Planning is working with the Town of Kittery on a project to recodify and provide ordinance updates for Title 16. Task 1.3 in the Scope of Work approved for that project is a Code Diagnosis, which is an audit or technical review of Title 16's structure and organization, to locate important content areas and then to identify topics not addressed or immediately found in the code. Additionally, we examine how the development review and approval process is structured and how projects are reviewed.

This review and the comments that follow from the perspective of experienced, outside eyes. Observations and suggestions will be discussed further in future meetings, and will be combined with feedback from town staff and the OSAC regarding the weak spots and troublesome aspects of the ordinance prior suggesting changes for committee review. It is also possible that some of the questions and comments below might have easy responses that were just not immediately accessible or clear to someone new to working with this ordinance. With those caveats in mind, we offer the following observations.

**Structural and Organizational Review**

At first blush, the online version of the Code accessed through the Kittery town website via the eCode platform from General Code is well organized into 12 subsections, complete with a Table of Contents that is always available on the left side of the screen. When looking for specific sections or specific standards, though, we often had to resort to keyword searches, which was great to have, but often brought up suggestions that were not relevant.

The ability to navigate and find relevant portions of the ordinance can be improved.

A clear table of contents that includes all 1<sup>st</sup> and 2<sup>nd</sup> level headings should be found at the beginning of the ordinance document. Additionally, a table of contents for each section of Title 16 could be useful. Navigating the ordinance could also be improved through page numbering specific to each section. An attempt at this has been made in the PDF version downloaded from eCode, but it is not set up properly. Another alternative to consider would be to separate sections through the use of colored headers, footers or tabs on the edge of pages.

Administrative and Enforcement provisions seem to be scattered throughout Title 16, rather than appearing together in one section at the front or the end of Title 16.

General Provisions (16.1) contain some of the basic administrative elements like the establishment of various boards, how to deal with conflicts and amendments and a severability clause. Enforcement and dealing with violations are in a separate Administration and Enforcement section (16.4). Permit thresholds and procedures for building permits and certificates of occupancy are in Building/Regulated Activity Permits (16.5), while appeals and variances are in another (16.6). These sections should be reviewed for consolidation opportunities.

Some definitions do not appear later in the ordinance while others probably don't need to be defined at all.

Uses that are not allowed in the ordinance do not need to be defined in the ordinance. It is possible that uses were defined and then specifically left out of the list of Permitted Uses for each zoning district to indicate that such uses are not allowed anywhere in town, but this is not a best practice. Examples include Gambling Casino and Game of Chance. Also, commonly used words with dictionary definitions, references to other legislations or units of measure do not need to be defined in Title 16. Examples include Acre, Character, Clean Water Act, Compact or Built-up Section, Day, FCC, Fill, and Glare.

Performance Standards should not be included in Definitions.

Some definitions include conditions or standards that a use must meet in order to be permitted or continue operating. These should be moved to a section of the ordinance dealing with performance standards. See the definitions for Nursery School, Open Space, and Parking Space for examples.

Permitted Uses in zoning districts and in the Shoreland Overlay Zones.

Lists of uses should be in alphabetical order, just as they are in the Definitions (16.2). It is also confusing to have lists of uses in the zoning district and then to have a second list of permitted and conditional uses for each zoning district in the Shoreland Overlay zones. A single table of uses would be useful at the

beginning of Section 16.3 or as an Appendix to Title 16. This use table would be a single source of information that would allow users to find information on a specific zone, a specific use or to compare permitted uses across multiple districts.

Design and Performance Standards for the Natural and Built Environment should be reworked.

These standards should be listed in alphabetical order for ease of navigation. Ultimately, the town should consider consolidating these two separate sections into a single Performance Standards section that would apply to all development in Kittery. Some of these standards appear to only apply to projects that require Planning Board review, such as Buffer areas, Conservation of Wetlands, Monuments, Street Signage, Street Design Standards, Parking, Loading and Traffic and several others. The town should consider moving these standards to the Site Plan and Subdivision review standards in Section 16.10.

Planning Board procedures are scattered throughout Title 16.

Plan submissions and agendas/scheduling and performance guarantee provisions are located in Administration and Enforcement (16.4). Applicability and procedures are in Development Plan Application and Review (16.10) and Post Approval activities like plan amendments and performance guarantees and site inspections are in Sections 16.1, 16.4, and 16.8.

Mandatory Shoreland Zoning provisions required by the state seem to be disbursed through Title 16, rather than appearing as an ordinance section on its own or in a separate Shoreland Zoning Ordinance.

It is also common to see Post-Construction Stormwater Ordinances as a standalone ordinance. There is nothing inherently wrong with including definitions and standards for either of these integrated into a Land Use Ordinance like Title 16, but calling these standards out might add clarity to municipal regulations.

**Development Review Process**

Procedures for Planning Board review of applications for site plan, subdivision, and Shoreland development are primarily located in Section 16.10, Development Plan Application and Review. As noted above, there are several categories of information dealing with the review and approval of these applications found in other sections of the ordinance.

Aside from bringing all of these disparate pieces into a single ordinance sections, there are several ordinance provisions within Section 16.10 that could be reorganized

and new wording that could be added to add clarity to the review and approval process. Initial thoughts on this work are offered below.

Move an explanation of which development activities or changes of use require review and which require a building permit only and which are exempt from municipal review to the front of this Section.

Section 16.10.1.1 states “the purpose of this chapter is to outline the application and review process for development of any type within the Town.” However, it is not until Section 16.10.3.2 where exemptions to Planning Board review are listed. It would be more user friendly to list the types of projects that require Planning Board review at the front of this section.

Project classification should be described at the front of this section as well.

It would be very helpful for applicants to understand when the requirements of subdivision, site plan, shoreland development review or a combination of these standards will apply. Ordinance sections that follow should be based on these classifications.

Consider breaking out subdivision review process and submission requirements from site plan review process and submission requirements.

Related to the suggestion immediately above, it would be more clear to have a pathway through the ordinance based on the type of project proposed, rather than sectioning the ordinance primarily based on the review stage. It appears the ordinance is attempting to make the stage of review the primary applicant and Board concern so that the type of application or the size of the project are irrelevant. Does every type of application require sketch, preliminary and final plan review by the Planning Board?

Add an explanation of what a Master Site Development Plan is and when it is required.

After reading Section 16.10.2.1-6, and reading the definition of Master Site Development Plan in Section 16.2, we are still confused as to the requirements of this plan, when it is required by the Board, and how it relates to the Board review stages for ultimate project approval

Consider a tiered system of project review that would differentiate between smaller, low impact projects and larger projects that would have more impact on municipal resources and abutting properties.

Some communities have ordinance provisions that differentiate between smaller and larger projects. The differentiation may involve a higher bar for submission requirements in order to show how larger projects meet the standards of the ordinance. For example, a larger project may need to submit

a high intensity soil survey, while a smaller project may be able to simply show a medium intensity soil survey. Additionally, larger projects may have to go through all three stages of sketch, preliminary and final plan review, while smaller projects may go from sketch to final plan review. Some communities have staff review committees that review small site plans rather than the Planning Board.

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MEMORANDUM

TO: Adam Causey, AICP, Director of Planning and Development

CC: Jamie Steffen, Town Planner  
Carl Eppich, AICP, North Star Planning  
Open Space Advisory Committee (OSAC)

From: Ben Smith, AICP, North Star Planning 

RE: Code Framework – Kittery Title 16 Land Use and Development

Date: January 23, 2019

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North Star Planning is working with the Town of Kittery on a project to recodify and provide ordinance updates for Title 16. Task 2.1 in the Scope of Work approved for that project is to draft up a framework for a restructured Title 16.

This framework takes the form of a table of contents to provide an outline of where ordinance elements should be placed in relation to each other to increase clarity and the ability of staff, volunteers, applicants and the public to use and understand the document.

The meeting to be scheduled in early March for Kittery's elected officials and appointed volunteers is going to be the introductory meeting for this important stakeholder group. This draft framework is envisioned to be a centerpiece of that introductory discussion. As a result, fine tuning this draft will be another important work item for this committee.

## **Title 16: Land Use and Development Code**

### **Section 100 – General Provisions**

- 101. Title
- 102. Purpose
- 103. Conflicting Requirements
- 104. Severability
- 105. Rules of Construction
- 106. Amendments

### **Section 200 – Administration and Enforcement**

- 201. Planning Board
- 202. Board of Appeals
- 203. Port Authority
- 204. Town Planner
- 205. Code Enforcement Officer (CEO)
- 206. Violations
- 207. Enforcement and Penalties

### **Section 300 – Definitions**

### **Section 400 – Land Use Zone Regulations**

- 401. General
- 402. Establishment of Zones
- 403. Zoning Map
- 404. Zoning District Boundaries
- 405. Overlay Zones
- 406. Zone Definitions, Uses and Standards
  - a. Residential – Rural (R-RL)
  - b. Residential – Suburban (R-S)
  - c. Residential – Kittery Point Village (R-KPV)
  - d. Residential – Urban (R-U)
  - e. Residential – Village (R-V)
  - f. Residential – Rural Conservation (R-RLC)
  - g. Conservation (CON)
  - h. Business – Local (B-L)
  - i. Business – Local 1 (B-L1)
  - j. Business – Park (B-PK)
  - k. Commercial 1 (C-1)
  - l. Commercial 2 (C-2)
  - m. Commercial 3 (C-3)
  - n. Industrial (IND)
  - o. Mixed-Use (MU)
  - p. Mixed-Use – Badger Island (MU-BI)
  - q. Mixed-Use – Kittery Foreside (MU-KF)
  - r. Transportation – Maine Turnpike (T-MT)
- 407. Overlay Zones
  - a. Shoreland Overlay Zone – Water Body/Wetland Protection Area – 250 feet (OZ-SL-250)
  - b. Shoreland Overlay Zone – Stream Protection Area – 75 Feet (OZ-SL-75)
  - c. Commercial Fisheries/Maritime Uses Overlay Zone (OZ-CFMU)
  - d. Resource Protection Overlay Zone (OZ-RP)

## **Section 500 – General Performance Standards**

*(This section will contain Performance Standards that apply to uses Town-wide, as opposed to zone standards for uses specific to particular zones in Section 406, or to Performance Standards that are part of Site Plans and Subdivisions, Section 704 and 804, respectively.)*

- 501. Signs
- 502. Mobile Home Parks, Seasonal Trailer Parks and Campgrounds
- 503. Manufactured Housing
- 504. Junkyards and/or Automobile Salvage Yards
- 505. Piers, Wharves, Marinas and other uses projecting into water bodies
- 506. Lots
- 507. Sprinkler Systems
- 508. Temporary Intrafamily Dwelling Unit
- 509. Home Occupation
- 510. Wireless Communication Services Facilities
- 511. Accessory Dwelling Units
- 512. Campgrounds and Campsites
- 513. Essential Services
- 514. Single and Duplex Family Dwellings
- 515. Agriculture
- 516. Mineral/Earth Material Exploration and Removal

## **Section 700 – Site Plan Review**

- 701. Applicability
- 702. Review Procedures
  - a. Pre-Application and Conference
  - b. Sketch Plan Review Process
  - c. Final Plan Review Process
- 703. Submission Requirements
  - a. Pre Application and Conference
  - b. Sketch Plan Submission
    - i. Plan Submissions
    - ii. Written Submissions
  - c. Final Plan Submission
    - i. Plan Submissions
    - ii. Written Submissions
- 704. Performance Standards and Approval Criteria
  - a. *(This section will have to be filled in based on conversations around General Performance Standards, zoning standards and development review standards)*
- 705. Post-Approval Activities

## **Section 800 – Subdivision Review**

- 801. Applicability
- 802. Review Procedures
  - a. Pre-Application and Conference
  - b. Sketch Plan Review Process
  - c. Preliminary Plan Process
  - d. Final Plan Review Process
- 803. Submission Requirements
  - a. Sketch Plan Submission
    - i. Plan Submissions
    - ii. Written Submissions
  - b. Preliminary Plan Submission
    - i. Plan Submissions
    - ii. Written Submissions
  - c. Final Plan Submission



- i. Plan Submissions
  - ii. Written Submissions
- 804. Performance Standards and Approval Criteria
  - a. *(The list below is the list of performance standards that are not Use Based, which are in Section 500 – General Performance Standards, but are used by the Board when making judgements about proposed development. Some will apply to Site Plan as well, and will be part of a larger conversation around Performance Standards.)*
  - b. Monuments
  - c. Street Signage
  - d. Streets and Sidewalks/Pedestrian Ways
  - e. Water Supply
  - f. Sewers
  - g. Stormwater and Surface Drainage
    - i. Post-Construction Stormwater Management
    - ii. Prevention of erosion
  - h. Parking, Loading and Traffic
  - i. Cluster Residential and Cluster Mixed-Use Development
  - j. Utilities
  - k. Landscaping
  - l. Noise
  - m. Exterior Lighting
  - n. Soil suitability
  - o. Water Quality and Wastewater Pollution
  - p. Air Pollution
  - q. Buffer Areas
  - r. Floodplain Areas
  - s. Radiation
- 805. Post-Approval Activities
  - a. Acceptance of Streets and Ways


**Section 900 – Shoreland and Marine-Related Development**

- 901. Authority and Scope
- 902. Applicability
- 903. Review Procedures
- 904. Submission Requirements
  - i. Plan Submissions
  - ii. Written Submissions

MEMORANDUM

TO: Adam Causey, AICP, Director of Planning & Development

CC: Jaimie Steffen, Town Planner  
Open Space Advisory Committee (OSAC)

From: Ben Smith, AICP, North Star Planning 

RE: Title 16 Recodification, Public Participation Plan

Date: December 13, 2018 (rev. January 27, 2019)

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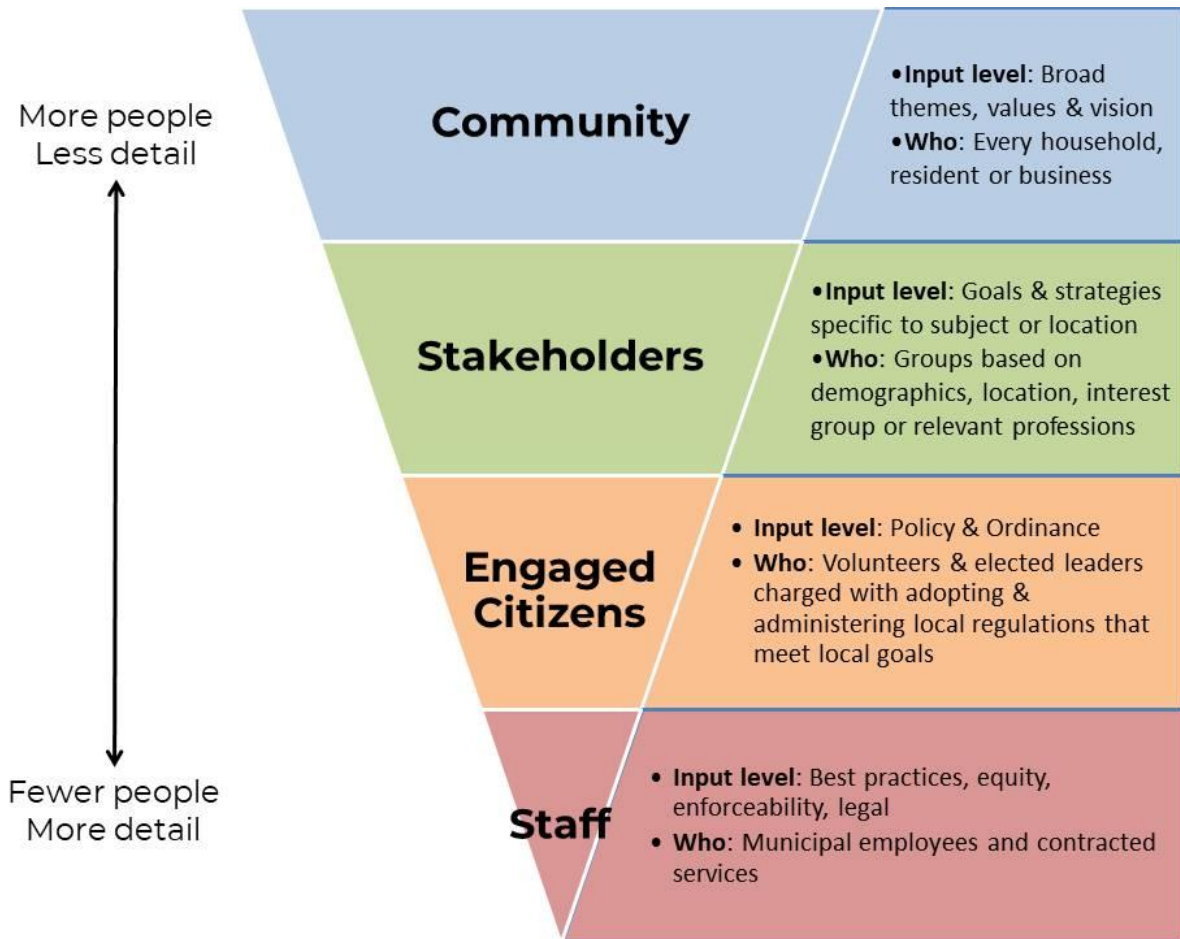
A public participation plan an outline for how a group chooses to engage and inform stakeholders and is an important early milestone in any public planning process.

Developing this outline will involve a thoughtful process about how the OSAC defines the boundaries of this project. Expectations for the level and types of work carried out will be shaped by answers to these questions:

- J What is the appropriate level of engagement for the general public?
- J Who are the people and groups that have something at stake related to this project? How should they be involved?
- J When and how does the group ask for input and feedback, and from whom?
- J When and how does staff or the OSAC provide informational updates?

In developing a proposal for this project, North Star Planning made some general assumptions and recommendations for public process. Two key assumptions are:

1. This ordinance update is a direct continuation of the Comprehensive Planning effort, which itself was based on a thorough public participation process.
2. Due to the technical nature of ordinance writing, most community-level interactions are likely to be more informational and most of the input and feedback will be solicited and received from stakeholders and Kittery's more engaged citizens.



The figure above represents a general framework for thinking about levels of public participation. All levels need to be considered in a public planning process, but depending on the scope and nature of the planning effort, the focus and role of participation at each level is different.

Comprehensive Planning places much of focus on the Community and Stakeholder levels, as the input is mostly related to a community's vision and values and the goals and strategies to work toward that vision. Drilling down into ordinance level work will shift the focus of participation down the funnel, with higher levels of interaction with fewer people.

With this framework in mind, an outline of a public participation plan follows below. Between now and the next OSAC meeting on January 7, please think about who the stakeholders are and how fill in some of the other information in the outline.

## **Public Participation Plan Recodification of Title 16 – Land Use and Development Code**

This outline for public participation fits within the broader scope of work for the planning team, staff and OSAC as detailed in the Scope of Work developed in August 2018 (attached) and a revised schedule for that work, which is an integral part of the Public Participation Plan, to be approved by OSAC in January 2019.

### **Task 1 - Groundwork**

#### Task 1.5 – Elected and Appointed Officials Meeting #1

End of February or early March 2019

Kittery has many volunteers serving on municipal boards and committees. These elected and appointed volunteers are important because they are among the most civically engaged members of the community. They also likely have the deepest understanding of the opportunities and challenges with the current code, as well as the priorities for improvements from the Comprehensive Planning Process.

The purpose of meeting with the Elected and Appointed Officials early in the process will be to introduce the project, review the OSAC's recommended ordinance framework, which takes the form of a revised Table of Contents, and decide on the best way to use time with individual boards and committees at the next step.

Boards/Committees to include:

- J Town Council
- J Planning Board
- J Board of Appeals
- J Conservation Commission
- J Economic Development Committee
- J Port Authority
- J Comprehensive Plan Implementation Committee

### **Task 2 – Analysis & Organization**

#### Task 2.3 - Review Reorganized Ordinance Draft with Individual Boards/Committees

May-June 2019

After the existing Ordinance elements are reorganized around the approved framework, we'll be ready for more targeted discussions with individual committees for more detailed review of the new ordinance framework,

feedback on board specific experience with ordinance issues, and to hear about high priorities for updates.

Boards/Committees to include:

- J Town Council
- J Planning Board
- J Board of Appeals
- J Conservation Commission
- J Economic Development Committee
- J Port Authority
- J Comprehensive Plan Implementation Committee

#### Task 2.4 - 1<sup>st</sup> Round of Stakeholder Focus Groups

May-June 2019

Concurrent with individual board and committee meetings, targeted stakeholder outreach will be made to groups of residents and businesses that interact with Title 16 or will be impacted by the changes more than average Kittery residents. Focus groups of 6-10 people each for these stakeholder groups should be held prior to new ordinance drafting.

Suggested stakeholder groups:

- J Marine/Shoreland/Harbor related interests
- J Business community/mall owners/property managers
- J Developers/Civil Engineers/Soil Scientists/Architects
- J Conservation/Open Space/Agricultural
- J Housing Interests
- J Foreside Community

### **Task 3 Ordinance Drafting**

#### Task 3.2 - Status update workshop with Planning Board/Town Council

October 2019

These meetings are envisioned as a progress update for the Board and Council. Dialog around schedule, feedback on work to date, and guidance on remaining progress will be requested.

Outside of these specific meetings, the Town Council and Planning Board will be updated regularly by staff. It is anticipated that these will come in the form of the Town Managers report for the Council.

#### Task 3.4 - 2<sup>nd</sup> Round of Stakeholder Focus Groups

November 2019

These discussions will be focused on discussion of new ordinance language specific to their interests, with the goal of fine tuning recommendations based on review.

Suggested stakeholder groups:

- ) Marine/Shoreland/Harbor related interests
- ) Business community/mall owners/property managers
- ) Developers/Civil Engineers/Soil Scientists/Architects
- ) Conservation/Open Space/Agricultural
- ) Housing Interests
- ) Foreside Community

#### Task 3.5 - 2<sup>nd</sup> Official Family Meeting

December 2019

The draft ordinance revisions will be presented to the Official Family for review and recommendations. After input on the draft is received from this group, the draft will be finalized. At this point, the work of the OSAC will be over at this meeting will be an excellent chance for some recognition of the group's effort.

Boards/Committees to include:

- ) Town Council
- ) Planning Board
- ) Board of Appeals
- ) Conservation Commission

- J Economic Development Committee
- J Port Authority
- J Comprehensive Plan Implementation Committee

#### **Task 4 – Adoption Process and Ongoing Support**

##### Task 4.1 - Planning Board Discussions & Public Hearing

February-March 2020

Two to three meetings are anticipated as part of the formal review and adoption process, with a Public Hearing at the final Board meeting.

##### Task 4.2 - Town Council Discussions & Public Hearing

April-May 2020

Two to three meetings are anticipated as part of the formal review and adoption process, with a Public Hearing at the final Council meeting.

#### **Ongoing Informational Efforts**

In addition to the specific efforts listed above, the following work and resources are anticipated to support public and official awareness and informational needs.

##### Page on the Kittery website

Information posted should include:

- J Scope of work
- J Public Participation Plan
- J Meeting schedule, agendas and notes
- J Draft ordinance elements

##### Monthly/quarterly updates to the Town Council and Planning Board by town staff

These updates could take the form of discussions during regular workshops/other business items or as written updates included in packets.

##### Community newsletters or other local media updates

Stories, interviews or letters to the editor.

Posters and signage at locations within Town buildings related to the effort and key milestones.

Coordinate with the library to use the email listserv that they administer.

Title 16 Recodification Schedule (Revision 1 – 12-2018)

		2018		2019												2020				
		NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY
<b>Task 1 -Groundwork and Kickoff Activities</b>																				
Task 1.1	Kickoff Meeting, establish Advisory Committee																			
Task 1.2	Review of Comprehensive Plans																			
Task 1.3	Preliminary Code Diagnosis																			
Task 1.4	1st Meeting Advisory Committee/Public Outreach																			
Task 1.5	Official Family Meeting #1																			
<b>Task 2 - Analysis and Organization</b>																				
Task 2.1	Outline Framework																			
Task 2.2	Add Existing Code to Outline Framework																			
Task 2.3	Review Ordinance Draft #1 with individual Boards - up to 7																			
Task 2.4	1st Round Focus/Stakeholder Groups - up to 5																			
<b>Task 3 - Ordinance Drafting</b>																				
Task 3.1	Add new ordinance language to Draft #1																			
Task 3.2	Workshops with Planning Board and Town Council																			
Task 3.3	Review other Code Title Sections																			
Task 3.4	2nd Round Focus/Stakeholder Groups - up to 5																			
Task 3.5	Official Family Meeting #2																			
<b>Task 4 -Adoption Process and Ongoing Support</b>																				
Task 4.1	Planning Board Discussion and Public Hearing																			
Task 4.2	Town Council Discussion and Public Hearing																			
Task 4.3	Ongoing Support Beyond Adoption																			

