

TOWN OF HENNIKER  
NEW HAMPSHIRE



**CHAPTER 133**  
**ZONING REGULATIONS**

**March 12, 2024 Edition**



HISTORY: Adopted by the Town of Henniker June 9, 1987. Amended on the following dates: September 13, 1988; March 14, 1989; March 12, 1991; March 11, 1992; March 9, 1994; March 15, 1995; March 13, 1996; March 12, 1997; March 9, 1999; March 13, 2001; March 12, 2002; March 11, 2003; March 9, 2004; March 8, 2005; March 14, 2006; March 13, 2007; March 11, 2008; March 10, 2009; March 9,2010; March 8, 2011; March 13, 2012; March 12, 2013; March 10,2015; March 8, 2016; March 14, 2017; March 13, 2018; March 12, 2019; March 10, 2020; March 9, 2021; March 8, 2022; March 14, 2023; March 12, 2024.

**Table of Contents**

ARTICLE I PREAMBLE AND TITLE ..... 1  
    **133-1 Preamble** ..... 1  
    **133-2 Title** ..... 1  
ARTICLE II DEFINITIONS ..... 2  
    **133-3 Terms defined** ..... 2  
ARTICLE III ESTABLISHMENT OF DISTRICS ..... 6  
    **133-4 Zoning Districts** ..... 6  
    **133-5 Boundaries of districts** ..... 6  
ARTICLE IV GENERAL PROVISIONS ..... 7  
    **133-6 Continuation of existing use** ..... 7  
    **133-7 Injurious or obnoxious uses prohibited** ..... 7  
    **133-8 Minimum lot size** ..... 7  
    **133-9 Fire and other ruins** ..... 7  
    **133-10 Parking** ..... 7  
    **133-11 Proposals impacting town services; statements from town agencies** ..... 7  
    **133-12 Junkyards** ..... 7  
    **133-13 Selling of local homegrown products** ..... 7  
    **133-14 Excavation** ..... 8  
    **133-15 General use restrictions** ..... 8  
    **133-16 Certain uses not considered home business** ..... 8  
    **133-17 Deleted 3-12-24** ..... 8  
    **133-18 Yard and other outdoor sales [Added 3-13-1996]** ..... 8  
    **133-19 Use of capped foundations [Added 3-12-1997]** ..... 8  
    **133-20 Fences around swimming pools [Added 3-13-2001]** ..... 8  
    **133-20a Conditional Use Permits: Agritourism Uses** ..... 9  
    **133-20b Housing for Older Persons** ..... 9  
    **133-20c Solar Energy Systems** ..... 11  
ARTICLE V RV VILLAGE PROPER DISTRICT ..... 15  
    **133-21 Purpose** ..... 15  
    **133-22 Land uses** ..... 15  
ARTICLE VI RN RESIDENTIAL NEIGHBORHOOD DISTRICT ..... 16  
    **133-23 Purpose** ..... 16  
    **133-24 Land uses** ..... 16  
ARTICLE VII RR Rural Residential District ..... 17  
    **133-25 Purpose** ..... 17  
    **133-26 Land uses** ..... 17  
ARTICLE VIII COMERCIAL DISTRICT REGULATIONS ..... 18  
    **133-27 Regulations for commercial districts** ..... 18  
    **133-28 Regulations for all commercial districts** ..... 18  
    **133-29 Commercial uses in CH Heavy Commercial District** ..... 19  
    **133-30 Commercial uses in CM Medium Commercial District** ..... 20  
    **133-31 Commercial uses in CR Commercial Recreational District** ..... 20  
    **133-32 Commercial uses in CV Village Commerce District** ..... 21  
    **133-33 EOD Educational Overlay District. [Amended 3-12-2013]** ..... 21  
ARTICLE IX FD FEDERAL LAND DISTRICT ..... 23  
    **133-34 Location** ..... 23  
    **133-35 Purpose** ..... 23  
    **133-36 Permitted uses** ..... 23  
    **133-37 Areas of special flood hazard** ..... 23

ARTICLE X LOT SIZE REGULATIONS .....	24
133-38 Lot size and shape .....	24
133-39 Minimum lot sizes .....	24
133-40 Lot size table [Amended 3-13-2007, 3-8-2016, 3-13-2018, 3-14-2023] .....	25
Minimum Lot Size Area and Frontage* For Single-Family and Two-Family Dwellings.....	25
Minimum Lot Size Area and Frontage For Multifamily Dwellings (3 or more Units) .....	25
133-41 Deleted 3-14-23 .....	25
133-42 Multi-unit dwellings of three or more [Amended 3-12-1997, 3-14-23] .....	26
ARTICLE XI SIGNS .....	27
133-43 Purpose.....	27
133-44 Sign regulations.....	27
133-45 Sign types .....	28
133-46 Permitted sign sizes in districts .....	29
Maximum Size for Districts .....	29
133-47 Sign Permits.....	29
ARTICLE XII HOME BUSINESS.....	30
133-48 Home occupation or profession [Amended 3-13-1996] .....	30
133-49 General regulations.....	30
133-50 Home businesses involving sale of previously manufactured goods .....	30
ARTICLE XIII ADMINISTRATION.....	31
133-51 Enforcement by Board of Selectmen .....	31
133-52 Permit required; regulations implementing permit system .....	31
133-53 Issuance of permit .....	31
133-54 Injunction or other legal action to enforce chapter.....	31
133-54a During the construction of a single-family home, the proposed owner may temporally .....	31
ARTICLE XIV BOARD OF ADJUSTMENT .....	32
133-55 Creation and appointment .....	32
133-56 Jurisdiction .....	32
133-57 Appeal of a decision made by an administrative official .....	32
133-58 Granting a Variance .....	33
133-59 Additional conditions and safeguards for the granting of variances .....	33
133-60 Special Exception uses permitted under certain circumstances .....	33
133-61 Special Exception general conditions .....	33
133-62 Special Exception additional conditions and requirements.....	34
133-63 Special Exception Time Limits.....	34
133-64 Equitable Waivers of Dimensional Requirements.....	34
133-65 ZBA Procedure.....	35
133-66 Motion for Rehearing .....	36
133-67.1 Appeal from Decision on Motion for Rehearing.....	36
ARTICLE XV .....	37
ARTICLE XVI NON-CONFORMING USES, NON-COMPLYING STRUCTURES & NON-CONFORMING LOTS.....	38
133-67 Continuation of existing non-complying use.....	38
133-68 Change of non-conforming use to permitted use.....	38
133-69 Abandonment of non-conforming use .....	38
133-70 Damage by fire .....	38
133-71 Non-conforming Uses.....	38
133-72 Non-conforming Lots.....	39
133-73 Non-conforming Structure; continuance .....	39
133-74 A Existing Non-conforming Residential Uses in the CH Heavy Commercial District .....	39
ARTICLE XVII PENALTY .....	40
133-75 Violations and penalties .....	40
ARTICLE XVIII MISCELLANEOUS .....	41
133-76 Amendment of chapter .....	41
133-77 Greater restrictions to prevail.....	41
133-78 Repeal.....	41
ARTICLE XIX NATURAL PRESERVE AREAS.....	42
133-79 Purchase of space; designation as natural preserve areas .....	42
133-80 Regulation by covenant and deed restrictions .....	42
ARTICLE XX MANUFACTURED HOUSING PARKS .....	43

133-81	Purpose.....	43
133-82	Exemption for conforming units; storage .....	43
133-83	Permitted locations .....	43
133-84	General requirements .....	44
133-85	Park management .....	44
133-86	Responsibilities of park occupant .....	44
133-87	Emergency service buildings .....	44
133-88	Size of unit lots within park.....	44
133-89	Setbacks and clearances .....	45
133-90	Streets, rights-of-way and parking .....	45
133-91	Park lighting .....	45
133-92	Electrical systems .....	45
133-93	Water supply .....	45
133-94	Sewage and waste .....	46
133-95	Refuse disposal .....	46
133-96	Fire protection .....	46
133-97	Unregistered motor vehicles .....	46
133-98	Permit procedure .....	47
133-99	Public hearing.....	48
ARTICLE XXI FLOODPLAIN DEVELOPMENT .....		49
133-100	Purpose.....	49
133-101	Definition of terms .....	49
133-102	Permit required.....	51
133-103	Review of building permit applications by Building Inspector .....	51
133-104	Water and sewer systems.....	52
133-105	Maintenance of records of certification of flood-proofing and as-built elevations.....	52
133-106	Review for federal and state approvals .....	52
133-107	Alteration and relocation of watercourses .....	52
133-108	Determination of base flood elevation .....	53
133-109	Variances and appeals. [Added 3-11-1992].....	54
ARTICLE XXII WETLANDS CONSERVATION .....		55
133-110	Purpose and intent .....	55
133-111	Henniker wetlands defined.....	55
133-112	Conflict with other regulations .....	57
133-113	Wetlands permitted uses.....	57
133-114	Special exceptions [Amended 3-9-2004].....	58
133-115	Building permit and driveway permit process [Amended 3-9-2004].....	58
133-116	Special Provisions.....	58
ARTICLE XXIV SEXUALLY ORIENTED BUSINESSES .....		59
133-117	Purpose.....	59
133-118	Definitions .....	59
133-119	Special exception required .....	59
133-120	Additional requirements.....	59
ARTICLE XXV WIRELESS COMMUNICATION TOWERS .....		60
133-121	Purposes .....	60
133-122	Definitions .....	60
133-123	Overlay District.....	61
133-124	Applicability .....	61
133-125	Location, Construction, and Performance Requirements .....	61
133-126	Site plan review .....	63
133-127	Bonding and Security Insurance.....	65
133-128	Removal of Abandoned PWSFs .....	65
133-129	Waivers .....	65
ARTICLE XXVI BED AND BREAKFAST HOMES .....		67
133-130	Definitions .....	67
133-131	Special exception and site plan review required.....	67
133-132	Additional requirements.....	67
ARTICLE XXVII IMPACT FEES .....		68
133-133	Purpose.....	68

133-134	<b>Findings</b> .....	68
133-135	<b>Definitions</b> .....	69
133-136	<b>Authority to Assess Impact Fees</b> .....	69
133-137	<b>Assessment Methodology</b> .....	69
133-138	<b>Administration of Impact Fees</b> .....	69
133-139	<b>Applicability</b> .....	70
133-140	<b>Appeals</b> .....	70
ARTICLE XXVIII.....		71
ARTICLE XXIX HISTORIC DISTRICT.....		72
133-160	<b>Authority</b> .....	72
133-161	<b>Purpose and Intent</b> .....	72
133-162	<b>District areas</b> .....	72
133-163	<b>Uses</b> .....	72
133-164	<b>Certificate of approval</b> .....	72
133-165	<b>Activities Not Requiring Certificates of Approval</b> .....	73
133-166	<b>Guidelines for Review</b> .....	73
133-167	<b>Application Procedure</b> .....	74
133-168	<b>Public Hearings</b> .....	75
133-169	<b>Issuance of Certificate of Approval or Notice of Disapproval</b> .....	75
133-170	<b>Appeals</b> .....	75
133-171	<b>Enforcement/Penalties</b> .....	75
133-172	<b>Validity/Severability</b> .....	75
ARTICLE XXX BUILDING CODE.....		76
ARTICLE XXXI HOUSING STANDARDS ORDINANCE.....		83

## **ARTICLE I PREAMBLE AND TITLE**

### **133-1 Preamble**

Pursuant to the authority conferred by RSA 672 through 677, as amended, and for the purpose of promoting the health, safety and general welfare of the community, and to provide for the orderly development of the town, the following chapter is hereby adopted by the Town of Henniker, New Hampshire, in Town Meeting convened. All provisions become effective from the date of that Town Meeting and apply only to actions taken after that date.

### **133-2 Title**

This chapter shall be known and may be cited as the "Henniker Zoning Ordinance."

## ARTICLE II DEFINITIONS

### 133-3 Terms defined

For the purpose of this chapter, certain terms or words used shall be interpreted as follows:

**ABANDONMENT** – Surrender of the right to continue a nonconforming use evidenced by some overt act or failure to act which carries the implication that the owner neither claims nor retains any interest in the use, and that the owner intends to give up or relinquish this use. Such intent is presumed if the owner or person with the right to use the property discontinues such use for a period of two years.

**ABUTTER** – Abutter means any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the local land use board. Notification of condominiums will be through the officers of the association. Manufactured housing park notification shall be to the owner of the park and all tenants. For further information see New Hampshire Revised Statute Annotated Chapter 672:3 Abutter. [Added 3-8-2005]

**ACCESSORY BUILDING OR USE** – A building or use subordinate and customarily incidental to the main building or use on the same lot.

**AGRICULTURE** – See New Hampshire Revised Statute Annotated Chapter 21:34-a Farm, Agriculture, Farming. [Revised 3-8-2005].

**AGRITOURISM** – As defined by RSA 21:34-a, Farm Agriculture, Farming, as amended.

**AUTO SERVICE STATION** – Any area of land, including structures thereon, that is used or designed to be used for the supply of gasoline or oil or other fuel for the propulsion of motor vehicles and which may include facilities used or designed to be used for polishing, greasing, washing, spraying, dry cleaning, mechanical repairs or otherwise cleaning or servicing such motor vehicles. A service station is not a sales or major repair agency for autos, trucks or trailers.

**BUILDING** – A combination of any materials, whether portable or fixed, having a roof, built to form a structure for the shelter of persons, animals or property.

**BUSINESS TRANSIENT HOUSING:** Housing supporting a Henniker business operation intended to house employees, contractors, seasonal workers and others who perform work for a company. Occupants of a Business Transient Housing shall not seek nor will they be considered year round residences of the community, year-round residency shall be prohibited. The purpose of Business Transient Housing is to provide businesses with the opportunity to offer temporary housing for its Henniker worker(s) not to exceed nine (9) months in duration.

**DORMITORY** – Dwelling(s) and/or structures owned, operated, and/or sanctioned by an educational entity for use by student(s) as a residence. [Amended 3-19-2004, 3-10-2009]

**CAMPGROUND** – An area used for overnight seasonal occupation in temporary facilities (such as tents, campers and trailers).

**COMMERCIAL/LIGHT INDUSTRY** – The assembly, manufacture, processing, packaging or other industrial operations conducted in such a manner that all resulting cinders, dust, fumes, gas, odors, smoke and vapor are effectively confined to the premises or disposed of so as to avoid any air pollution and conducted in such a manner that the noise level at the property line

will not exceed 80 decibels and objectionable flashing and vibration will not occur.

**COMMERCIAL/MANUFACTURING** – A commercial activity that assembles, fabricates, modifies, stockpiles or otherwise produces items for sale or resale.

## ARTICLE II DEFINITIONS

**COMMERCIAL/PROFESSIONAL SERVICES** – Paid services provided by an individual or individuals in one of the learned professions, including attorneys, physicians, engineers, dentists, accountants and similar vocations.

**COMMERCIAL/RECREATIONAL** – Commercial uses that relate to recreational activities, including restaurants, skiing areas, clothing shops, motels, athletic activities, including sports equipment sales and rentals, and related activities. This use does not include manufacturing.

**COMMERCIAL/RETAIL** – Commercial use that relates to the ultimate sale of goods and services to the consumer. Such uses include stores, rentals, services, restaurants and food services.

**COMMERCIAL/SERVICES** – Labor, assistance or provision of amenities to consumers on a retail basis for profit.

**COMMERCIAL/SERVICES/TECHNICAL** – Trades and occupations relating to construction, installation, repair or replacement of structures, equipment, machinery or motorized vehicles, including recreational motorized vehicles, usually associated with some kind of repair shop, garage or machine shop. [Added 3-9-1994]

**COMMON LAND** – One or more parcels of usable quality land owned by more than one owner or by an association of owners for the private use and recreation of the owners and occupants and as a buffer to existing and future neighborhood land uses.

**CONDOMINIUM** – The form of ownership of real property, and any interests therein, in accordance with the provisions of RSA 356-B, in which individual owners own or lease separate units but together, or through an owner’s association, own the common areas appurtenant to the units. A duplex that meets the foregoing definition is sometimes known as a “condex” and is included in the definition of condominium. [Added 3-14-2006].

**DRIVE-THROUGH FACILITY** – A building opening (including windows and doors) and/or mechanical devices which occupants of a motor vehicle either drive up to or drive through to receive or request a product or service (other than mechanical services or vehicle refueling) while the driver remains in the vehicle. [Added 3-9-2004]

**DWELLING UNIT** – One or more habitable rooms arranged for the use of one or more individuals living as a single housekeeping unit, together with cooking, living, sanitary and sleeping facilities. In a dwelling or area rented to a group (non-related) a unit shall consist of 3.6 people, in conformity with Chapter 88, Sewers.

**EARTH** – Sand, gravel, rock, soil or construction aggregate produced by quarrying, crushing or any other mining activity or such other naturally occurring unconsolidated materials that normally mask the bedrock.

**ELDERLY HOUSING** – Housing that qualifies as “Housing for Older Persons” pursuant to NH RSA 354-A:15, as it may be amended. [Added 3-9-2004]

**EXCAVATION** – A land area, which is used, or has been used, for the commercial taking of earth, including all slopes.

**EXPAND** – To increase in size, volume or scope. [Added 3-8-1988]

**FAMILY** – Any number of persons related by blood or by marriage, or not more than four persons not related by blood or by marriage, living together as a single nonprofit housekeeping unit.

**FRATERNITY / SORORITY** – A fraternal organization, officially recognized by a State- chartered College/University, and organized to benefit the Henniker/College/University community through the efforts of its members, who are students currently enrolled at the College/University. [Added 3-10-2009]

## ARTICLE II DEFINITIONS

**FRATERNITY / SORORITY HOUSE** – A building used to provide lodging facilities for the exclusive use of the bona fide members of a fraternity or sorority. [Added 3-10-2009]

**FRONTAGE**, minimum: That continuous portion of a lot bordering on a public road(s) from which access can be taken, that meets the minimum requirements of the underlying zoning district.

**HAZARDOUS MATERIAL** – Substances or effects of processes that are deleterious to the public good and health as a result of their use, neglect or other circumstances.

**HOME BUSINESS** – A use, that is not the primary use, by a resident to provide offices for his or her own recognized professions, such as physicians, architects, attorneys, real estate or insurance agents, or such home occupations as hairdressers, dressmakers and sewing, manufacture of craft products, home baking and antique shops, that conforms to Article XII of this chapter.

**HOME BUSINESS/RETAIL** – A secondary use by a resident to provide home occupations that provide retail outlets for resale of previously manufactured goods that conform to Article XII of this chapter.

**HOME RENTAL** – The rental of an apartment as an accessory use within a building whose primary use is a single family owner-occupied dwelling, except as provided for in Article VI, VII and VIII. This use is clearly incidental and subordinate to the primary dwelling.

**HOUSE OF WORSHIP** – A church, synagogue, temple, mosque, or other facility that is used for prayer by persons of similar beliefs; a special-purpose building that is designed and particularly adapted for the primary use of conducting formal religious services on a regular basis. [Added 3-10-2009]

**HOUSING FOR OLDER PERSONS:** The occupancy of units within a development specifically designed for older persons and their families. The age of the occupants of the project will be regulated by private covenants in a manner that will insure that it complies with the federal and state laws relating to Housing for Older Persons as that term is defined in RSA 354-A:15 as well as any federal counterpart of that statute as they may be amended. All occupants of the housing unit shall be the age 55 or older. (3/8/16)

**JUNKYARD** – See New Hampshire Revised Statutes Annotated Chapter 236:112 (I). [Revised 3-10-2009]

**KENNEL** – A commercial establishment in which dogs or other domesticated animals are housed, bred, boarded, trained and/or sold, all for a fee or compensation. [Added 3-9-1994; amended 3-15-1995, revised 3-8-2005]

**LOT** – A portion or parcel of land occupied or intended to be occupied for a use, building or unit group of buildings and accessory buildings, together with such open spaces as may be required under this chapter and further meeting any other requirements of this chapter for a lot in the district in which the land is located.

**MANUFACTURED HOUSING** – Any structure, transportable in one or more sections, which, in the traveling mode, is 8 body feet or more in width and 40 body feet or more in length, or when erected on site, is 320 sq ft or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating, and electrical heating systems contained therein. Manufactured housing as defined here shall not include pre-site built housing as defined in RSA 674:31-a. [Amended 3-19-2004]

**MANUFACTURED HOUSING PARK** – See New Hampshire Revised Statutes Annotated Chapter 205-A:1(II) [Amended 3-10-2009]

**MULTIUNIT DWELLING** – A residential building designed for or occupied by three or more families, with the number of families in residence not exceeding the number of dwelling units provided.

## ARTICLE II DEFINITIONS

**NET TRACK AREA** – Remaining land area after deducting Wetland areas, designated Floodplain areas, and areas with slopes 25% or greater.

**NON-CONFORMING LOT** – A lot, which does not meet the requirements of this ordinance for the district in which the lot is located. [Added 3-8-2005]

**OPEN SPACE** – An open area from the ground upward and open to the sky on the same lot. Open space does not include a building, structure, constructed surfaces, parking areas, driveways and other surfaces prepared for vehicular use and/or storage. Wetland areas shall not make up more than 25% of Open Space areas.

**PARKING SPACE, OFF-STREET** – An area of 9 x 18 feet or more suitable for use of parking one motor vehicle, together with reasonable access. (Revised 3-8-2011).

**REMOVAL OF NATURAL MATERIAL** – The removal of loam, sand, gravel, stone or other fill material for sale in commercial quantities.

**SCHOOLS** – Any building, part thereof, or group of buildings, the use of which meets State requirements for elementary, secondary, vocational or higher education.

**SIGN** – A structure, building wall or other outdoor surface, or any device for visual communication which is used for the purpose of bringing the subject thereof to the attention of the public, or to display, identify and publicize the name and product or service of any person.

**SINGLE-FAMILY DWELLING** – A detached residential dwelling unit designed for and occupied by one family.

**SPECIAL EXCEPTION** – Permission for a use, or waiver of the requirements of an ordinance or ordinances upon approval of the Zoning Board of Adjustment, pursuant to RSA 674:33, following application and hearing before that Board in cases where these ordinances permit such application and exception by express provision.

**STORY** – That part of a building between a floor and the floor or ceiling next above not including the underside of the roof. A basement shall be classified as a story when its ceiling is six or more feet above the finished grade at any point.

**STRUCTURE** – Anything constructed or erected with a fixed location on the ground. Structures include, but are not limited to, buildings, swimming pools, manufactured housing, billboards and poster panels. It shall not include minor installations, such as fences, mail boxes, flagpoles and retaining walls. [Added 3-8-1988, Revised 3-8-2011, 3-1-20]

**TWO-FAMILY DWELLING** – A detached residential building containing two dwelling units, designed for occupancy by not more than two families.

**TRAVEL TRAILER** – A vehicular, portable, non-self-propelled structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational and vacation uses, permanently identified "travel trailer" by the manufacturer of the trailer and, when factory equipped for the road, having a body width not exceeding eight feet and a body length not exceeding 32 feet.

**VARIANCE** – Such departure from the terms of this chapter as the Board of Adjustment, upon appeal in specific cases, is empowered to authorize under the terms of Article XV and applicable statutes of the State of New Hampshire.

**WETLANDS** - See New Hampshire Revised Statute Annotated Chapter 482-A, and Chapter 674:55 [Revised 3-8-2005]

**YARD SALES** – An outdoor sale of secondhand articles held by the occupants or any other party. [Added 3-13-1996]

## ARTICLE III ESTABLISHMENT OF DISTRICS

### 133-4 Zoning Districts

- A. For the purpose of this chapter, the Town of Henniker is divided into districts that relate to land use, as shown on the map filed with the Town Clerk and is available at the Town Hall, which includes the following:

#### Residential Districts

- RV Village Proper
- RN Residential Neighborhood
- RR Rural Residential

#### Commercial Districts

- CH Heavy Commercial
- CM Medium Commercial
- CR Commercial Recreational
- CV Village Commerce

#### FD Federal Lands

#### EOD Educational Overlay District [Amended 3-12-2013]

- B. These districts are shown on the Town of Henniker Land Use Map of 1980, as amended for adoption in this chapter on June 9, 1987 (Appendix A). Land subject to special construction requirements due to flood hazards is shown on the Flood Insurance Rate Map (FIRM). The provisions in this chapter shall apply to each district and all uses within the Town of Henniker, except as otherwise listed.

### 133-5 Boundaries of districts

Where any uncertainty exists with respect to the boundary of any district as shown on the Zoning Map, the following rules apply:

- A. Where a boundary is indicated as a street, railroad, watercourse or other body of water, it shall be construed to be the center line or middle thereof, or where such boundary approximates a town boundary, then to the limits of the town boundary.
- B. Where a boundary is indicated as intersecting the center line of a street, railroad, watercourse or other water body, it shall be construed to intersect at right angles to said center line, or in the case of a curved center line, at right angles to the tangent to the curve at the point of intersection.
- C. Where a district boundary line divides a lot of record at the time such line is adopted, the regulations for the less restricted part of such lot shall extend not more than 100 feet into the more restricted part, provided that the lot has frontage on a street in the less restricted district.

## ARTICLE IV GENERAL PROVISIONS

### **133-6 Continuation of existing use**

Nothing in this chapter shall be construed to prevent the continuation of any existing use of land and buildings in any district unless and until such use has been abandoned.

### **133-7 Injurious or obnoxious uses prohibited**

Any use or other establishment that may be injurious or obnoxious because of the production or emission of smoke, fumes, dust, odor, glare, refuse material, gas, pests, noise, vibration, radiation or light condition, or that endangers the health, safety, peace or enjoyment of the community or tending to its disturbance or annoyance is prohibited.

### **133-8 Minimum lot size**

Lot sizes shall be appropriate for the location and type of use and shall conform to the requirements of Article X of this chapter, unless the requirements of a particular district prescribe a larger minimum size than provided in Article X, in which case the provision requiring the larger minimum lot size shall control.

### **133-9 Fire and other ruins**

Owners or occupants of land shall not permit fire or other ruins to be left but shall remove same to ground level and fill to grade within one year of the damage. Owners who will rebuild as specified in 133-72 shall secure the property so as not to constitute a hazard or visual blight.

### **133-10 Parking**

Parking for all land uses outlined in the Chapter, unless otherwise noted, shall adhere to the parking requirements specified in Chapter 202 Land Subdivision Regulations and/or Chapter 203 Site Plan Review Regulations.

### **133-11 Proposals impacting town services; statements from town agencies**

When any proposal, including applications for variances or special exceptions, may have a significant impact on town services, such as school enrollment, fire protection, maintenance and use of roads and sidewalks, police services, traffic safety, health, water or sewer, then statements from all agencies or departments of the town potentially affected may be required and considered as a condition of approval of said proposal or application.

### **133-12 Junkyards**

No junkyards are permitted in any of the districts other than the CH Heavy Commercial District.

- A. No junkyards are permitted in any of the districts other than the CH Heavy Commercial District;
- B. All junkyards must have a 6' high fence that screens the area from public view, per NH RSA 236:123;
- C. Junkyards must be located at least 1,000' from a Class I highway, 660' from a Class II, III, or III-a highway, and at least 300' from a Class IV, V, or VI highway per NH RSA 236:118; and
- D. Junkyards must meet the requirement for the operation or maintenance listed in NH RSA 236:114.

### **133-13 Selling of local homegrown products**

The selling of local homegrown produce and local homegrown farm products is permitted in all districts.

ARTICLE IV GENERAL PROVISIONS

**133-14 Excavation**

- A. General: This section is enacted pursuant to the authority granted to the Town of Henniker to regulate earth excavation activities within its boundaries under the provision of RSA 155- E inclusive, as amended. [Added 3-10-2009]
- B. Regulator: The Planning Board for the Town of Henniker was designated the Regulator at the 1981 Town Meeting (Article 32), as provided in RSA 155-E:1(III) as amended, and shall have all the powers and duties granted thereto by RSA 155-E: inclusive. [Added3-10-2009]
- C. Regulations: Pursuant to the responsibility as the regulator and in accordance with the provisions of RSA 155-E:11, as amended, the Planning Board has adopted a set of regulations (Chapter 201) and will from time to time amend said regulations governing earth excavation activities in the Town of Henniker. The intent of the regulations being to ensure that said activities are conducted in a safe manner in accordance with sound environmental practices and to further provide proper assurance that suitable reclamation of the affected areas is obtained. [Added 3-10-2009]
- D. If clay, sod, loam, sand or gravel is removed within 100 feet of any public highway, stream, roadway or waterway, the area shall be re-graded and redressed within 90 days of the removal of materials to assure that the premises will be left in a sightly condition and protected against erosion and washouts. [Revised 3-10-2009]

**133-15 General use restrictions**

No building, structure or land shall be used except for the purposes permitted in the districts as specified in this chapter. Any use not listed shall be construed to be prohibited.

**133-16 Certain uses not considered home business**

For the purpose of this chapter, retail sales outlets for items such as but not limited to snowmobiles, motorcycles, appliances, and automotive repair shall be considered commercial/services/technical use and not a home business.

**133-17 Deleted 3-12-24**

**133-18 Yard and other outdoor sales [Added 3-13-1996]**

Yard sales, including flea markets and any other similar types of outdoor sales, shall not be conducted for more than 10 days in a calendar year, per tax lot. After each sale event, all evidence of sale and merchandise shall be removed from sight.

**133-19 Use of capped foundations [Added 3-12-1997]**

A capped foundation may not be occupied as a permanent residence. Any occupancy of a capped foundation for temporary residential use for any length of time will be permitted only upon the issuance of a certificate of permitted use by the Code Enforcement Officer.

**133-20 Fences around swimming pools [Added 3-13-2001]**

Construction of an in-ground swimming pool shall include safety fencing of at least four feet in height. The gate shall have a locking mechanism to deter unauthorized or unsupervised use of the swimming pool area.

**133-20 A. Conditional Use Permits: Agritourism Uses**

Subject to the provisions of RSA 674:21, the Planning Board is hereby authorized to issue Conditional Use Permits for Agritourism uses on Agriculture lands subject to the process and criteria in this Section.

- A. Agriculture, as defined by State Statute, is a permitted use in every Zoning District. Agritourism uses use may be permitted based upon the following:
  - 1. Purpose and Intent  
As Agritourism uses may have the potential to generate increased impacts that did not previously exist, it is in the community’s interest to ensure that any Agritourism use permitted is appropriate for the sites on which they are located.
  - 2. Agritourism Uses
    - a. A Conditional Use Permit may be issued to allow an Agritourism use under the following provisions as well as those outlined in Chapter 203 Site Plan Review Regulations:
      - 1. That public safety is protected;
      - 2. That neighborhood character is considered;
      - 3. That substantial negative impacts to the neighbor are avoided; and
      - 4. That the quality of environmental resources are protected.
    - b. The Planning Board may impose such conditions of approval as it finds reasonably appropriate and necessary to meet the spirit and intent of this Ordinance.

**133-20 B. Housing for Older Persons<sup>1</sup>**

- A. PURPOSE: The regulations in this section have been established for the purpose of encouraging the construction of Housing for Older Persons. The intent is to provide for such housing by the provision of a waiver from the otherwise applicable density requirements while complying with all applicable state and federal laws with respect to such housing, and at the same time, ensuring compliance with local planning standards, land use policies, good building design, and the requirements for the health, safety, and general welfare of all the inhabitants of the Town.
- B. GENERAL STANDARDS: All housing for older persons shall conform to the following standards:
  - 1. Building types and styles, including exterior aesthetics and unit arrangements, shall be suitable and appropriate for their intended purpose, in light of the size and scale of the project, the relevant zoning district, the prominence and the visibility of the proposed project in the community, the surrounding neighborhood, and other similar factors, in accordance with the requirements of the site plan regulations.
  - 2. The design and site layout of the development shall emphasize the character of the Town, maximize the privacy of the dwelling units, preserve the natural character of land, provide for the separation of parking and living areas, and consider such factors as orientation, energy usage, views.
  - 3. The development shall be landscaped so as to enhance its compatibility with the Town with emphasis given to the use of existing, natural features where possible.
  - 4. The perimeter of the development shall be treated with a landscaped buffer strip to minimize its intrusion on neighboring land uses if determined necessary by the Planning Board.

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<sup>1</sup> Adopted March 8, 2016; amended March 18, 2018  
Henniker Zoning Regulation

ARTICLE IV GENERAL PROVISIONS

5. Housing for Older Persons should provide significant facilities and services specifically designed to meet the physical and social needs of older persons such as common rooms, clubhouse, walking paths, sidewalks (on and off site), activity center, common kitchen, etc.
6. Adequate covenants and restrictions shall be provided in ensure units remain Housing for Older Persons.
7. All developments of Housing for Older Persons should include facilities and services to meet the physical and social needs of residents. All housing units shall have the master bedroom located on the first floor.
8. All housing units shall be Adaptable. An adaptable dwelling unit means a dwelling unit designed and constructed to facilitate future modification to provide access for persons with disabilities, or otherwise meet the criteria as “Handicapped Accessible” as detailed in Federal Statute. Adaptability also means that some features necessary to be “Handicapped Accessible” may be omitted and/or concealed until needed, but that such features or accommodations can be added or installed without involving structural or material changes.

C. Within the RV and CV Zoning Districts:

1. Dwelling unit density shall not exceed 8 units per acre.
2. The minimum lot area shall be 1 acre and the lot shall have at least 75 feet of Frontage on a public road.
3. Adequate on-site off-street parking shall be provided of at least 1.5 spaces per unit.
4. Municipal water and sewer shall be provided.
5. No more than seventy (70%) percent of the tract may be covered by impermeable surfaces; 30% of the lot shall be open space not including wetlands or slopes over 25%.
6. Housing units may consist of single family, two-family or multi- family developments and contain no more than two bedrooms.

D. Within the RN, RR, CM, CR & CR1 & RV (with no water and sewer) Districts:

1. Dwelling Unit density shall not exceed 2 units per Net Tract Acre.
2. Minimum lot area shall be 15 acres with at least 50 feet of Frontage on a paved road.
3. Minimum open space in the RR zone shall be at least 40% and in the RN, CM, CR, & CR1 shall be at least 30%. Within the RR Rural Residential zone only one and two family homes may be constructed.

E. Definitions:

Net Tract Area: Shall be determined by subtracting from the gross tract area all Wetlands, surface waters, floodplains and slopes greater than 25%.

Open space: Permeable surface on a lot that is unoccupied by buildings, unobstructed to the sky, not devoted to service driveways or off-street parking that is available to all occupants of the premises.

- F. Planning Board Approval: The Planning Board shall review and approve or disapprove the location and site plans for all proposed Housing For Older Persons. The Planning Board may impose additional conditions not inconsistent with this or other sections of the Zoning Ordinance and all state and federal applicable laws.

G. If a Workforce Housing proposal is submitted, as permitted by RSA 674:17 Purposes of Zoning Ordinances, then said application shall submit appropriate covenants and restrictions limiting the occupancy of Workforce units to those who meet the Statutory definition of Workforce Housing and restrict said units as Workforce Housing units for at least 30 years. In addition, details on qualifying and monitoring occupants of Workforce Housing units shall be provided. Workforce Housing proposals shall adhere to all applicable provisions of RSA 674:58 – 674:61.

### 133-20 C. Solar Energy Systems

#### A. Authority & Purpose

This renewable energy systems ordinance is enacted under the provisions of RSA 674:21,II Innovative Land Use Controls and in accordance with RSA 674:17.(I)(j), and the purposes outlined in RSA 672:1-III-a as amended. The purpose of this ordinance is to accommodate Solar Energy Systems and Distributed Generation Resources in appropriate locations, while protecting the public's health, safety and welfare. Placing systems in locations that result in loss of prime agricultural lands is strongly discouraged. It is preferable to locate systems on disturbed land, nonproductive farmland and/or rooftops.

#### B. Goals

- I. Allow for the use of Solar Energy Systems in the community while maintaining Henniker's scenic vistas.
- II. Preserve the community's rural character, particularly as seen from public roads.
- III. Minimize potential adverse impacts of Solar Energy Systems in the community by ensuring that such facilities are properly screened and are properly sited within existing topographic features of the property.
- IV. Ensure consistent maintenance and safety procedures are in place to protect public health.

#### C. Definitions

- I. **Commercial Solar.** A use of land that consists of one or more free-standing, ground mounted, solar energy systems regardless of rated nameplate capacity and solar land coverage that is designed primarily to serve off-site uses. A Commercial solar energy system may be authorized by Conditional Use Permit (CUP) as a principal use.
- II. **Commercial Solar, Accessory.** A solar energy system for on-site commercial use, and consisting of one or more free-standing, ground or roof/building-mounted, solar arrays or modules, or solar related equipment, intended to reduce on-site consumption of utility power.
- III. **Community Solar.** A shared solar energy system that serves residences and or commercial/industrial structures situated on two or more contiguous lots. The system is considered accessory to the uses on each of the lots that it serves.
- IV. **Ground Mount, Free-Standing.** A solar energy system and associated mounting hardware that is affixed to or placed upon (such as ballasted systems) the ground including, but not limited to, fixed, passive, or active tracking racking systems. Ground mounted solar arrays or modules may be authorized by Conditional Use Permit only (CUP).
- V. **Pole Mount, Free Standing.** Solar Energy System, Pole-Mounted. A solar energy system that is directly installed on specialized solar racking systems, which are attached to a pole that is anchored and firmly affixed to a foundation in the ground, and wired underground to an attachment point at the building's meter. Pole-mounted systems can be designed to track the sun

ARTICLE IV GENERAL PROVISIONS

(with single-axis or dual-axis tracking motors) and maximize solar output throughout the year. Pole mounted solar arrays or modules may be authorized by Conditional Use Permit only (CUP).

- VI. **Residential Solar, Accessory:** A solar energy system for on-site residential use, and consisting of one or more free-standing, ground or roof mounted, solar arrays or modules, or solar related equipment, intended to reduce on-site consumption of utility power.
- VII. **Roof/Building Mount.** A solar energy system that is structurally mounted to a roof or attached to a building. The system shall be no taller than 5 feet above the ridge line of the roof and not extend beyond the building footprint more than 5 feet. The system may include limited accessory equipment that is ground-mounted. For purposes of calculating array sizes or solar land coverage under the solar definitions in this section, roof or building mounted portions shall not be included if the system is made up of both roof or building and ground mounted systems. The building inspector may require information demonstrating that the roof or building can support the solar energy system, with additional supports if necessary.
- VIII. **Solar Energy System:** A device and/or structure the purpose of which is to collect, convert and/or store, and/or distribute solar energy for power, heating and/or cooling, and/or water heating.
- IX. **Solar Energy System, Roof-Mounted:** An Active Solar Energy System that is structurally mounted to the roof of a building or structure.
- X. **Solar Energy System, Ground-Mounted:** An Active Solar Energy System that is structurally mounted to the ground and is not roof-mounted. Ground mounted solar arrays or modules may be authorized by Conditional Use Permit only (CUP).

**D. Applicability**

- I. General. Any person seeking to construct any ground mounted or pole mounted solar energy system shall apply to the Planning Board for a conditional use permit.
- II. Any person seeking to construct or to carry out ground mounted commercial or community solar energy system shall apply to the Planning Board for Site Plan Review in accordance with the requirements set forth in the Town’s Site Plan Review Regulations.
- III. Building Permit. No solar energy system shall be erected, constructed, or installed without first receiving a building permit from the Building Inspector. Furthermore, a building permit shall be required for any physical modifications to an existing solar energy system.
- IV. Any upgrade, modification or structural change that materially alters the size, placement or output of an existing solar energy system shall comply with this ordinance.
- V. All solar energy systems shall be designed, erected and installed in accordance with all applicable local, state and federal codes, regulations and standards.

**E. Solar Energy Systems Shall Conform to the Following:**

- I. Use - Installations shall be permitted according to the following table:

	RV	RN	RR	CH	CM	CR	CV
<b>Roof Mounted</b>	Y	Y	Y	Y	Y	Y	Y
<b>Ground Mounted/Pole Mounted Residential</b>	CUP						
<b>Ground Mounted/Pole Mounted Commercial</b>	CUP						
<b>Ground Mounted/Pole Mounted Community</b>	CUP						

Y = Allowed; N = Prohibited; CUP = Conditional Use Permit (All CUP applications require site plan review approval from the Planning Board);

ARTICLE IV GENERAL PROVISIONS

- II. **Setbacks** - Installations shall, at a minimum, conform to the applicable Zoning District setbacks. However, setbacks may be increased during the conditional use permit and site plan review processes as determined by the Planning Board to address site specific challenges.
- III. All solar or photovoltaic systems shall have a disconnect next to the public utility meter and shall meet all applicable codes.

**F. SOLAR ENERGY SYSTEM - CONDITIONAL USE PERMITS**

- 1. **Permit Required:** No Solar Energy Systems, except Roof Mounted Systems, shall be erected, constructed, installed or modified without first receiving a Conditional Use Permit (CUP) from the Planning Board.
- 2. **Application and Review Procedure:** An Application for a Conditional Use shall be initiated by filing with the Planning Board an application for a Conditional Use Permit. The following procedures shall apply to the processing of such application:
  - a. **Site Plan Approval Required:** A site plan application shall be submitted with any application for a Solar Energy System Conditional Use Permit. The application and review procedure for a CUP shall be made concurrently and in accordance with the Site Plan Regulations as applicable to the particular development.
- 3. **Standards of Review:** Following a fully noticed public hearing on the proposed use, the Planning Board may issue a Conditional Use Permit, if it finds, based on the information and testimony submitted with respect to the application, that:
  - I. The use is specifically authorized as a conditional use;
  - II. The development in its proposed location will comply with all requirements of the Henniker Site Plan Regulations, as well as specific conditions established by the Planning Board.
  - III. The use will not materially endanger the public health or safety;
  - IV. The use may provide adequate screening to ensure adjacent property values are not adversely impacted. Screening may be provided by maintaining existing vegetation or through the installation of site specific evergreen landscaping, suitable fencing, or a combination thereof. Such screening shall be maintained during the operative lifetime of the Solar Energy System Conditional Use Permit.
  - V. In granting a conditional use permit pursuant to this section, the Planning Board may impose any reasonable conditions or restrictions deemed necessary to carry out the intended purpose of this ordinance and to minimize any adverse effect of the proposed solar energy system on adjoining properties.

The Planning Board reserves the right to waive any provision of this Ordinance if the Applicant proves to the Planning Board that the requested waiver will not be detrimental to public safety, adjacent property values or the rural character.

**G. Abandonment or Decommissioning (Ground Mounted)**

- I. Abandonment shall be considered failure to operate for a 12-month period. At such time that a Solar Energy System is scheduled to be abandoned or discontinued, the applicant will notify the Planning Board by certified U.S. mail of the proposed date of abandonment or discontinuation of operations.
- II. Upon abandonment, decommissioning or discontinuation of use, the owner shall physically remove the Solar Energy System within 90 days from the date of abandonment, decommissioning or discontinuation of use. This period may be extended at the request of the

## ARTICLE IV GENERAL PROVISIONS

owner and at the discretion of the Planning Board. "Physically remove" shall include, but not be limited to:

- i. Removal of the Solar Energy System and related above-grade structures.
  - ii. Restoration of the location of the Solar Energy System to its natural condition, except that any landscaping, grading or below-grade foundation may remain in its same condition at initiation of abandonment.
- III. In the event that an applicant fails to give such notice, the system shall be considered abandoned or discontinued if the system is out of service for a continuous 12-month period. After the 12 months of inoperability, the Planning Board may issue a Notice of Abandonment to the owner of the Solar Energy System. The owner shall have the right to respond to the Notice of Abandonment within 30 days from the date of receipt. After review of the information provided by the owner, the Planning Board shall determine whether the Solar Energy System has been abandoned. If it is determined that the Solar Energy System has not been abandoned, the Planning Board shall withdraw the Notice of Abandonment and notify the owner of the withdrawal.
- IV. If the owner fails to respond to the Notice of Abandonment or if, after review by the Planning Board, it is determined that the Solar Energy System has been abandoned or discontinued, the owner of the Solar Energy System shall remove the system at the owner's sole expense within 90 days of receipt of the Notice of Abandonment.
- V. If the owner fails to physically remove the Solar Energy System after the Notice of Abandonment procedure, the Planning Board may pursue legal action to have the system removed at the owner's expense.

### **H. Violation**

It is unlawful for any person to construct, install, or operate a Solar Energy System that is not in compliance with this ordinance. Solar Energy Systems installed prior to the adoption of this ordinance are exempt from this ordinance except when changes to the layout and expansion of the foot print are proposed to the Solar Energy System.

### **I. Penalties**

- I. Any person who fails to comply with any provision of this ordinance or a building permit issued pursuant to this ordinance shall be subject to enforcement and penalties as allowed by NH Revised Statutes.
- II. All solar energy systems shall be designed, erected and installed in accordance with all applicable local, state and federal codes, regulations and standards.

## ARTICLE V RV VILLAGE PROPER DISTRICT

### 133-21 Purpose

The RV Village Proper District provides a residential area in the built-up center of town, typical of many New England villages, that is close to business and community services. With added safeguards, certain other uses are permitted by special exception that can complement the Village Commerce District and serve the residents as well.

### 133-22 Land uses

#### RV - Permitted

- Home rental of up to 2 apartments
- Single-family dwellings
- Two-family dwellings
- Home business
- Agricultural
- Open space residential development
- House of Worship
- Multi-unit dwelling
- Schools
- Use accessory to permitted use
- Housing for Older Persons
- Roof mounted solar systems
- Ground mounted solar systems – Condition Use Permit (CUP)

#### RV - Allowed by Special Exception

- Home rental of 3 or more apts.
- Home business/retail
- Commercial/professional
- Use accessory to special exception
- Bed & Breakfast Homes

- A. Permitted uses and uses allowed by special exception shall be as follows: [Amended 3/8/2005, 3/10/2009, 3/9/2010, 3/8/2016,3/13/18, 3-10-20,3-14-23]
- B. Only one home business shall be permitted per lot at any one time; provided, further, that off-street parking is provided on the premises as required in 133-22G1.
- C. Multi-unit dwellings of three or more, up to 40 units, shall be allowed by special exception only, provided that the ratio of area of unimproved land to the total combined area of living area, including all habitable floor area, driveways and roadway stated in Article X, is maintained. Multiunit dwellings greater than 40 units are not permitted. [Amended 9-13- 1988; 3-12-1997]
- D. No building/structure shall be constructed more than three stories above grade level.
- E. No building/structure shall be constructed within 30 feet of a public right-of-way, except that a building may be constructed in line with existing adjacent buildings that are within the same lot.
- F. No building/structure shall be constructed within 15 feet of side or back lot boundaries.
- G. Parking.
1. One parking space for each 500 square feet of floor space used for home business or home business/retail.
  2. No parking space or access driveway shall be located within 10 feet of any side or back lot boundaries, and no parking space shall be located within 10 feet of a public right-of-way. Driveways may cross side or back lot boundaries and/or lie within 10 feet of a side or back boundary line with Planning Board Approval<sup>2</sup>.

## ARTICLE VI RN RESIDENTIAL NEIGHBORHOOD DISTRICT

### 133-23 Purpose

The RN Residential Neighborhood District provides a mixture of single- and two-family homes in neighborhoods removed from the center village. With additional safeguards, certain other uses are permitted by special exception that can complement these homes.

### 133-24 Land uses

A. Permitted uses and uses allowed by special exception shall be as follows:

<p><u><i>RN - Permitted</i></u></p> <ul style="list-style-type: none"> <li>- Home rental of up to 1 apartment<sup>3</sup></li> <li>- Single-family dwellings</li> <li>- Two-family dwellings</li> <li>- Home business</li> <li>- Agricultural</li> <li>- Manufactured Housing</li> <li>- Open Space Residential Development</li> <li>- Use accessory to permitted use</li> <li>- Housing for Older Persons</li> <li>- Roof mounted solar systems</li> <li>- Ground mounted solar systems – Conditional Use Permit (CUP)</li> <li>- Multi-unit dwelling</li> </ul>
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<p><u><i>RN - Allowed by Special Exception</i></u></p> <ul style="list-style-type: none"> <li>- Home rental of 2 or more apts.</li> <li>- Home business/retail</li> <li>- Use accessory to special exception</li> <li>- Bed &amp; Breakfast Homes</li> <li>- Houses of Worship</li> <li>- Schools</li> </ul>
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[Revised 3/8/2005, 3/20/2009, 3/9/2010, 3-13-18, 3-10-20, 3-14-23]

- B. Only one home business shall be permitted per lot at any one time; provided, further, that adequate off-street parking is provided on the premises, as 133-24H.<sup>3</sup>
- C. Two home businesses shall be allowed per lot at any one time by special exception only.
- D. Multi-unit dwellings of three or more, up to 40 units, shall be allowed by special exception only, provided that the ratio of area of unimproved land to the total combined area of living area, including all habitable floor area, driveways and roadway stated in Article X, is maintained. Multi-unit dwellings greater than 40 units are not permitted. [Amended 9-13- 1988; 3-12-1997].
- E. No building/structure shall be constructed more than three stories above grade level.
- F. No building/structure shall be constructed within 30 feet of a public right-of-way, except that a building may be constructed in line with existing adjacent buildings within the same lot.
- G. No building/structure shall be constructed within 15 feet of side or back lot boundaries.
- H. One parking space for each 500 square feet of floor space used for home business or home business/retail. No parking space or access driveway shall be located within 10 feet of any side or back lot boundaries, and no parking space shall be located within 10 feet of a public right-of-way. Driveways may cross side or back lot boundaries and/or lie within 10 feet of a side or back boundary line with Planning Board Approval. Driveways may cross side or back lot boundaries and/or lie within 10 feet of a side or back boundary line with Planning Board Approval.

<sup>3</sup> A detached apartment (one) may be constructed provided the structure does not exceed 1,250 square feet of living area and minimum lot area requirements are met.

## ARTICLE VII RR Rural Residential District

### 133-25 Purpose

The RR Rural Residential District provides for a mixture of agriculture and low-density rural living outside of the built-up districts of the community where public water and sewer services are not generally available. The low-density open areas complement and encourage agricultural uses that are characteristic of the town. With additional safeguards, certain uses appropriate to a rural setting are allowed by special exception.

### 133-26 Land uses

A. Permitted uses and uses allowed by special exception shall be as follows:

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| <p><u>RR - Permitted</u></p> <ul style="list-style-type: none"> <li>- Home rental of up to 1 apartment<sup>4</sup></li> <li>- Single-family dwellings</li> <li>- Two-family dwellings</li> <li>- Home business</li> <li>- Agricultural</li> <li>- Open Space Residential Development</li> <li>- Use accessory to permitted use</li> <li>- Manufactured Housing</li> <li>- Housing for Older Persons</li> <li>- Roof mounted solar systems</li> <li>- Ground mounted solar systems – Conditional Use Permit (CUP)</li> </ul> | <p><u>RR - Allowed by Special Exception</u></p> <ul style="list-style-type: none"> <li>- Home rental of 2 or more apts.</li> <li>- Home business/retail</li> <li>- Manufactured Housing Park</li> <li>- Use accessory to special exception</li> <li>- Excavation on land accessible to a state highway by traveling a distance no greater than 1,000 feet on secondary roads</li> <li>- Bed &amp; Breakfast Homes</li> <li>- House of Worship</li> </ul> |
|---|--|



Amended 3/14/1989, 3/8/2005, 3/20/2009, 3/9/2010, 3.13-18, 3-10-20

- B. No more than two home businesses shall be permitted per lot at any one time; provided, further, that adequate off-street parking is provided on the premises.<sup>4</sup>
- C. No building/structure shall be constructed more than three stories above grade level.
- D. No building/structure shall be constructed within 30 feet of a public right-of-way, except that a building may be constructed in line with existing adjacent buildings within the same lot.
- E. No buildings/structures shall be constructed within 15 feet of side or back lot boundaries. No parking space or access driveway shall be located within 10 feet of any side or back lot boundaries, and no parking space shall be located within 10 feet of a public right-of-way. Driveways may cross side or back lot boundaries and/or lie within 10 feet of a side or back boundary line with Planning Board Approval.

<sup>4</sup> A detached apartment (one) may be constructed provided the structure does not exceed 1,250 square feet of living area and minimum lot area requirements are met.

## ARTICLE VIII COMERCIAL DISTRICT REGULATIONS

### 133-27 Regulations for commercial districts

- A. All uses permitted in the particular Commercial District are specified in 133-29 through 133-32 of this Article. However, should any change of use occur within 1,000 feet of a town owned well used by the Cogswell Spring Waterworks then the proposed use shall obtain a Conditional Use Permit (CUP) from the Planning Board. A CUP may be issued provided the following provisions are met:
  1. The Town's water resources are protected consistent with NHRSA 485-C the New Hampshire Groundwater Protection Act.
  2. The proposed use engages in Best Management Practices of Potential Contamination Sources to ensure proper handling of Regulated Substances as defined by NHDES.
  3. The Planning Board obtains comment from the Cogswell Spring Waterworks Water Commissioners.
  4. A Site Plan application and plan is submitted to the Planning Board.
- B. The uses of land permitted in the following commercial areas, as designated on the land use map that are stated in 133-29 through 133-32 of this article.

### 133-28 Regulations for all commercial districts

- A. No building/structures shall be constructed more than three stories above grade level.
- B. No building/structures shall be constructed within 30 feet of a public right-of-way, except that a building may be constructed in line with existing adjacent buildings within the same lot.
- C. No buildings/structures shall be constructed within 15 feet of side or back lot boundaries.
- D. One parking space for each 500 square feet of floor space of commercial, home business or home business/retail. No parking space or access driveway shall be located within 10 feet of any side or back lot boundaries, and no parking space shall be located within 10 feet of a public right-of-way. Driveways may cross side or back lot boundaries and/or lie within 10 feet of a side or back boundary line with Planning Board Approval.
- E. Drive-through facilities may be permitted as accessory uses but only by special exception. In addition to the requirements of 133-62, no drive-through facility shall be permitted within 100 feet of a residential lot. [Added 3-12-1997]
- F. Commercial retail buildings, defined as any building for commercial retail use, with a building footprint greater than 35,000 square feet shall be prohibited from all zoning districts except for the CH Heavy Commercial District. [Amended 3-10-2015]

**133-29 Commercial uses in CH Heavy Commercial District**

The CH Heavy Commercial District provides a business and manufacturing area outside of the village with good highway access for non-retail types of commerce operations. It is located so that it will not be a detriment to the residential areas and will not cause undue traffic through the village proper.

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|---|--|
| <p><u>CH - Permitted</u></p> <ul style="list-style-type: none"><li>- Commercial/manufacturing</li><li>- Commercial/recreational</li><li>- Commercial/retail</li><li>- Commercial/services</li><li>- Commercial/professional</li><li>- Junkyard</li><li>- Commercial/services technical</li><li>- Agriculture</li><li>- Commercial/light industry</li><li>- Automotive service station</li><li>- Home business</li><li>- Home business/retail</li><li>- Excavation</li><li>- Use accessory to permitted use</li><li>- House of Worship</li><li>- Schools</li><li>- Business Transient Housing</li><li>- Existing Manufactured Housing Parks</li><li>- Roof mounted solar systems</li><li>- Ground mounted solar systems – Conditional Use Permit (CUP)</li></ul> | <p><u>CH - Allowed by Special Exception</u></p> <ul style="list-style-type: none"><li>- Kennel</li><li>- Sexually Oriented Business</li><li>- Use Accessory to Special Exception</li></ul> |
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[Amended 3/14/1989, 3/15/1995, 3/10/2009, 3/9/2010, 3/13/2012, 3-10-20]

**133-30 Commercial uses in CM Medium Commercial District**

The CM Medium Commercial District provides a business area outside of the village with good highway access for light manufacturing types of commerce operations. It is located so that it will not be a detriment to the residential and manufacturing areas and be able to provide services to the surrounding community.<sup>5</sup>

- CM – Permitted
- Commercial/light industry
  - Commercial/recreational
  - Commercial/retail
  - Commercial/services
  - Commercial/professional
  - Agriculture Commercial/services technical
  - Automotive service station
  - Single-family dwelling
  - Two-family dwelling
  - Home business
  - Home rental of up to 2 apartment<sup>5</sup>
  - Manufactured housing Excavation
  - Use accessory to permitted use House of Worship
  - Schools
  - Housing for Older Persons Roof mounted solar systems
  - Ground mounted solar systems - Conditional Use Permit (CUP)

- CM - Allowed by Special Exception
- Home rental of 3 or more apts.
  - Manufactured Housing Park
  - Multi-Unit Dwelling
  - Home business/retail
  - Use Accessory to Special Exception
  - Bed & Breakfast Homes

[Amended 3-14-1989, 3/8/2005, 3/10/2009, 3/9/2010, 3/13/18, 3/12/19, 3-10-20]

**133-31 Commercial uses in CR Commercial Recreational District**

CR Commercial Recreational District provides for commercial sales and services that complement the recreational nature of the area, such as lodgings, restaurants and retail sales and services related to recreational uses.

- CR - Permitted
- Home Business Commercial/recreational
  - Commercial/retail Commercial/services
  - Commercial/professional Agriculture
  - Single-family dwelling Two-family dwelling
  - Home rental of up to 2 apartments<sup>5</sup>
  - Commercial/Light Industry
  - Commercial/Services/Technical
  - Manufactured housing Excavation
  - Use accessory to permitted use
  - House of Worship
  - Schools
  - Housing for Older Persons Roof mounted solar systems
  - Ground mounted solar systems – Conditional Use Permit (CUP)
  - Multi-Unit Dwellings
  - Excavations

- CR - Allowed by Special Exception
- Home rental of 3 or more apartments
  - Use Accessory to Special Exception
  - Home business/retail
  - Bed & Breakfast Homes

[Amended 3/14/1989, 3/8/2005, 3/20/2009, 3/9/2010, 3-10-20. 3-9-21]

<sup>5</sup> A detached apartment (one) may be constructed provided the structure does not exceed 1,250 square feet of living area and minimum lot area requirements are met.

**133-32 Commercial uses in CV Village Commerce District**

The CV Village Commerce District provides business sales and services to the center area of town that are typical to many New England villages. These businesses serve the village district as well as the community at large.

- |   |  |
|---|--|
| <p><u>CV Permitted</u></p> <ul style="list-style-type: none"> <li>- Home Business</li> <li>- Commercial/recreational</li> <li>- Commercial/retail</li> <li>- Commercial/services</li> <li>- Commercial/professional</li> <li>- Agriculture</li> <li>- Single-family dwelling</li> <li>- Two-family dwelling</li> <li>- Home rental of up to 2 apartments</li> <li>- Multi-Unit Dwelling</li> <li>- Home business/retail</li> <li>- Use accessory to permitted use</li> <li>- House of Worship</li> <li>- Schools</li> <li>- Housing for Older Persons</li> <li>- Roof mounted solar systems</li> <li>- Ground mounted solar systems – Conditional Use Permit (CUP)</li> </ul> | <p><u>CV Allowed by Special Exception</u></p> <ul style="list-style-type: none"> <li>- Home rental of 3 or more apts.</li> <li>- Use Accessory to Special Exception</li> <li>- Commercial/services/technical</li> <li>- Bed &amp; Breakfast Homes</li> </ul> |
|---|--|



[Amended 3/8/2005, 3/10/2009, 3/9/2010, 3/8/2016, 3-14-23]

**133-33 EOD Educational Overlay District. [Amended 3-12-2013]**

A. The EOD Educational Overlay District provides a zone in which educational organizations may be allowed to build or expand facilities. The EOD District shall overlay other Zoning Districts as noted on the Zoning Map. In addition to those uses allowed for in the EOD District, all principal and accessory uses permitted by right or Special Exception within the underlying Districts shall also be permitted.

- |   |   |
|---|---|
| <p><u>ED Permitted</u></p> <ul style="list-style-type: none"> <li>- Home Business</li> <li>- Classrooms</li> <li>- Dining Halls</li> <li>- Offices</li> <li>- Libraries</li> <li>- Health Care Facilities</li> <li>- Single-family dwelling</li> <li>- Maintenance and Storage Buildings</li> <li>- Agriculture</li> <li>- Use accessory to permitted use</li> <li>- House of Worship</li> <li>- Schools</li> </ul> | <p><u>ED Allowed by Special Exception</u></p> <ul style="list-style-type: none"> <li>- Auditoriums</li> <li>- Assembly Halls</li> <li>- Dormitories</li> <li>- Theaters</li> <li>- Sport Arenas and Buildings</li> <li>- Use Accessory to Special Exception</li> <li>- Bed &amp; Breakfast Homes</li> <li>- Fraternity House</li> <li>- Sorority House</li> </ul> |
|---|---|



[Amended 3-8-2005, 3-10-2009]

B. The minimum lot area and frontage requirements shall be those of the underlying base zoning district as required in Article X, lot size requirements. (Amended 3-12-2013)

ARTICLE VIII COMERCIAL DISTRICT REGULATIONS

C. Parking regulations are as follows:

Classrooms and dining halls:	1 parking space for every 5 seats
Offices and libraries:	1 parking space for every 300 square feet of gross floor area
Health care facilities and sport arena and buildings:	1 parking space for every 300 square feet of gross floor area
Auditoriums, theaters, houses of worship, assembly halls:	1 parking space for every 4 seats of gross assembly area
Fraternities, sororities, and dormitories:	1 parking space for every bedroom in the structure
Maintenance and storage buildings:	1 parking space for every 500 square feet of gross floor area
Single-Family Dwellings:	2 parking spaces for each dwelling and 1 parking space for each 500 sq. ft. of floor space used for a home business

[Revised 3-10-2009]

- D. The parking regulations above may be modified at the discretion of the Planning Board if the applicant establishes that there is adequate parking for the proposed structure and/or use on applicant-owned land.
- E. No parking space or access driveways shall be located within 10 feet of any side or backlot boundaries, and no parking spaces shall be located within 10 feet of a public right-of-way. Driveways may cross side or back lot boundaries and/or lie within 10 feet of a side or back boundary line with Planning Board Approval.
- F. No building shall be constructed more than three stories above grade.
- G. No building shall be constructed within 30 feet of a public right-of-way, except that a building may be constructed in line with existing adjacent buildings that are within the same lot.
- H. No building shall be constructed within 15 feet of side or back lot boundaries.

## ARTICLE IX FD FEDERAL LAND DISTRICT

### 133-34 Location

The FD Federal Land District begins east of the Route 114 bridge across the Contoocook River and covers an extensive area of lowland in the eastern and southeastern part of the town.

### 133-35 Purpose

This land is owned by the United States Army Corps of Engineers (USACE) for storage of upstream floodwaters in connection with the operation of the Hopkinton flood control dam. When the water level must be raised in the Elm Brook reservoir and at the dam to prevent downstream flooding, high water levels in the FD areas often require the closing of town roads which traverse this land.

### 133-36 Permitted uses

- A. Certain agricultural uses in parts of these areas are allowed by the United States Army Corps of Engineers by lease agreements with individual farmers. The remainder is available for conservation and recreation purposes as permitted by the owner.
- B. All uses and proposed structures must be specifically authorized by the USACE, and further must conform to all requirements of the RR Rural Residential Districts in this chapter.

### 133-37 Areas of special flood hazard

Specific construction limitations and use requirements affect certain lands in the Contoocook River Valley which have been designated "areas of special flood hazard" and which are identified on the Flood Insurance Rate Map (FIRM) issued by the Federal Insurance Administration, together with an engineering report dated 1977. Both are available in the Town Hall. The lands most affected lie near the river between Route 114 and the Hillsboro town line.

## ARTICLE X LOT SIZE REGULATIONS

### 133-38 Lot size and shape

Lot size, width, depth, shape and orientation shall be appropriate for the location of the proposed use.

### 133-39 Minimum lot sizes

- A. Minimum lot sizes shall be determined by the minimum lot size required by the individual zoning districts.
- B. Land on Class VI streets, and land on primitive public ways not maintained by the town, shall not be subdivided.
- C. Waterfront lots in all zones shall have a minimum shore frontage of 125 feet and a minimum area of two acres, or as required by the New Hampshire Water Supply and Pollution Control Commission, or required by the individual zoning district, or by state law, whichever is greater. Waterfront lots shall have legal access to at least a Class B gravel road. Such lots shall have no construction of dwellings, major buildings or septic systems within 75 feet of the shoreline. Lots bordering on ponds whose surface is at least 10 acres and lots bordering on the Contoocook River shall also be so regulated.
- D. Each lot, including those dedicated to open space or to other common use, shall have frontage on a public right-of-way. Frontage access for each area of open space or common land shall be at least 25 feet wide.
- E. Parking space required for any residences for students, for fraternal housing or for any institutional personnel may be provided off the premises of the building served.
- F. All driveways are to be located at least 75 feet from a street line intersection for all uses except for one- and two-family dwellings.

ARTICLE X LOT SIZE REGULATIONS

**133-40 Lot size table [Amended 3-13-2007, 3-8-2016, 3-13-2018, 3-14-2023]**

The lot size requirements described in 133-40 are specified as follows:

***Minimum Lot Size Area and Frontage\*  
For Single-Family and Two-Family Dwellings***

Zoning District	Town Water and Sewer	No Town Water and Sewer	Minimum Frontage
RV	10,000 sq. ft.	1 acre <sup>6</sup>	80 feet
CV	10,000 sq. ft.	1 acre	80 feet
CM	2 acres	2 acres	125 feet
CR	1.5 acres	1.5 acres	125 feet
CH	2 acres	2 acres	125 feet
RN (a)	2 acres	2 acres	200 feet
RR (a)	5 acres	5 acres	200 feet

Zone	Road Type	Minimum Lot Size	Minimum Frontage
RN	Paved	10 Acres	50 Feet
RN	Gravel	15 Acres	50 Feet
RR	Paved	10 Acres	50 Feet
RR	Gravel	15 Acres	50 Feet

\*All lots on gravel roads must meet the acreage requirement of 133-39C.

***Minimum Lot Size Area and Frontage  
For Multifamily Dwellings (3 or more Units)***

Zoning District	Multi-unit density Net Tract Area***	Minimum Frontage	Minimum Open Space
RV*	15,000 sq. ft. + 2,000	100 feet	40%
CV*	15,000 sq. ft. + 2,000	100 feet	10%
CM	Six Units/Acre	125 feet	20%
CR	Six Units/Acre	125 feet	20%
RN**	Six Units/Acre	125 feet	50%

\* The additional amount of land area is required for each additional unit over two in a multi-unit dwelling. Example shown for a four-unit dwelling in the RV and CV Districts: 15,000 square feet minimum for 2 units + 2,000 square feet for 3<sup>rd</sup> unit + 2,000 square feet for 4<sup>th</sup> unit = 19,000 square feet minimum lot size required.

\*\* Attached buildings shall be no greater than six attached units.

\*\*\* Lot density shall be calculated by first determining the lots Net Tract Area.

**Amended 3-14-23**

**133-41 Deleted 3-14-23**

<sup>6</sup> Connection to utilities shall not be required, however septic provisions provided for under NHDES Rules or Henniker’s Sewer Ordinance Chapter 88 shall be adhered to.

**133-42 Multi-unit dwellings of three or more [Amended 3-12-1997, 3-14-23]**

In addition to meeting the lot size and Open Space requirements of this chapter, development plans for multi-unit dwellings of three or more units shall demonstrate to the Henniker Planning Board that the following requirements, in addition to any other applicable requirements, are met:

- A. The development of multi-unit dwellings of three or more units shall require that an impact study, if deemed by the Planning Board to be necessary, adequate and commensurate with the size and scope of the project, be conducted.
- B. A landscaped buffer shall be provided to assure that the development of the project conforms at its boundaries with the character of the adjoining land and its uses. These buffer areas shall be of sufficient width to provide privacy and noise protection, but in no case shall the width of such buffer be less than the setbacks otherwise required in that zoning district.
- C. Storage areas, waste collection areas and service areas shall be fenced or screened from on-site and adjoining parking areas and from neighboring properties.
- D. There shall be adequate traffic access to and from town streets to ensure the safety of vehicles, pedestrians and bicycles.
- E. To minimize the likelihood that public safety will be endangered by extensive use of interior roads and parking areas for recreation, there shall be adequate provision for on-site recreational needs of the residents of the proposed development.
- F. There shall be adequate access to each structure for fire, police and medical emergency vehicles and personnel.

**ARTICLE XI SIGNS**

[Amended 3-13-2012]

**133-43 Purpose**

It is the purpose of this article to provide standards for the size and treatment of signs within the various zoning districts. Signage can have a significant impact on the visual character of a community. Signs should not detract from the overall character of the town, nor negatively impact the safety or welfare of the public. They should complement the historical and aesthetic look of Henniker and should provide reasonable and adequate business identification and advertising.

**133-44 Sign regulations**

- A. Unless specifically excepted in Article XI, all signs, flags or advertising devices that are placed on any premises or visible from the outside of any structure in the Town of Henniker shall meet the specifications of this article.
- B. If signs are located in an area in which signs are subject to regulation either by the federal government, because they are appurtenant to interstate and federal-aid primary highways, or by the State of New Hampshire, because they are appurtenant to primary or secondary highways and roads of the state, then all applicable federal, state and local sign regulations must be complied with.
- C. **Flashing signs**: No sign shall be intermittently illuminated or flashing, nor be of a traveling or changing light type, except such portions of a sign that consist solely of internally lighted indicators of time or temperature.
- D. **Illumination**: No internally lighted signs or neon or similar tubular glass signs shall be permitted in any district. In all districts, signs may be externally illuminated such that the light source or filament is not directly visible when looking at the sign, and only between the hours of 7:00 a.m. and 11:00 p.m., or during the hours the premises are open to the public, except that residential nameplates, street directional and government signs may be illuminated at any time. Illumination fixtures shall be arranged to direct the light away from streets and away from adjoining structures.
- E. **Sign movement**: No sign shall contain moving parts or be designed to move in its entirety so as to attract attention.
- F. **Maintenance**: All surfaces and supporting or mounting structures, whether placed prior to the effective date of this chapter or not, shall be kept in a manner that maintains the integrity and safety of the sign. Failure to correct a condition within 30 days after notification shall constitute a violation of this chapter.
- G. **Government sponsored signs**: Signs, markers, and plaques sponsored by any governmental entity (federal, state, or local) shall be exempt from these regulations.
- H. **Location**: A privately owned sign may project over a public way or sidewalk only in situations where the building to which such sign is attached is closer than 5 feet from the public way or sidewalk. In such situations, the sign will be at an adequate height so as to not interfere with pedestrians, vehicular traffic, or snow removal activity. No privately owned sign shall project above the parapet or eaves of a building or be located in such a position as to endanger highway, street or alley traffic by obscuring a clear view or by confusing the official traffic control signs and signals.

*No sign shall project across or over a private property line. There is no setback for a sign except that a setback for a sign may be required when, in the opinion of the Board of Selectmen or their designee, the sign will interfere with the sight distance from driveways, intersections, along streets or roads, or otherwise present a safety hazard.*

## ARTICLE XI SIGNS

- I. **Sign height**: The height of signs shall not exceed 30 vertical feet from ground level of the sign support to the top of the sign and any of its appendages.
- J. **Nonconforming**: Any sign placed prior to the adoption of this chapter may be continued and maintained. Such signs may be changed as long as such changes do not expand a current nonconformity, or create a new reason for nonconformity that was not already present.
- K. **Sign Framework**: The supporting framework and bracing is not included as part of the sign measurement as long as it is incidental to the sign. The supporting framework and bracing shall not be designed to attract attention and shall not contain lettering or advertising.
- L. **Exemptions**: Sign types that are exempt from the provisions of this Ordinance include, but are not limited to political signs, yard sale signs, holiday signs and decorations, barber poles, temporary fundraising event signs, safety, hazard or warning signs, traffic flow or parking control signs, “posting” signs, or signs placed on residential property for location/owner identification purposes.
- M. The term “business” as used in Article XI is meant to mean any entity or organization that is a corporation, non-corporation, LLC, PLLC, sole proprietor, or otherwise, that operates either for profit, or not-for-profit, including but not limited to traditional commercial or professional enterprises, educational institutions, service organization, religious groups, and home businesses.

### 133-45 Sign types

- A. **Attached (facade) business sign**: A sign for a business may be attached to the building where the business is located. It may be attached directly to the surface of the building, which is attached to the building. One attached business sign is allowed per business location and requires a permit.
- B. **Freestanding business signs**: One freestanding business sign shall be permitted per business location. In addition, a single multiple business directory sign shall be permitted as a freestanding sign for businesses that are located within a common structure or within the same area. For businesses that do not have a permanent specific business location, like service organizations or farmers markets, the Board of Selectmen or their designee shall determine the number and location of freestanding business signs which are adequate to reasonably serve the intended advertising purpose. These signs require permits.
- C. **Projecting sign**: In addition to the signs allowed in this Section, businesses shall be allowed to have one Projecting Sign. A Projecting Sign is a sign which is affixed to any building, wall or structure and extends beyond the building wall, structure, building line or property line more than 12 inches. The sign shall be at an adequate height so as to not interfere with pedestrians, vehicle traffic, or snow removal activities. These signs require permits.
- D. **Directional signs**: Signs that are not located on the property of the principal place of a local business, organization or group of residences that are solely used for way-finding shall be considered directional signs. The number of directional signs utilized to provide direction to the public shall be limited to such a number deemed by the Board of Selectmen, or their designee, to be adequate and to reasonably serve the intended purpose and shall only be located on private property.
- E. **Portable/seasonal/temporary signs**: One flag or banner, serving as an advertisement for the business at which it is located, shall be allowed per business location. This includes, but is not limited to, promotional product and event banners and flags, “open” flags, and business name flags and banners. Governmental or decorative flags, such as “Happy Spring” are not regulated under this Ordinance. In addition to a flag or banner, one sign that is not permanently affixed shall be allowed for up to 120 days in any combination per business location, per calendar year. Signs described in this section 133-45E do not require permits.

- F. **Temporary signs placed behind windows that are visible by the public:** These signs are not limited in number or duration, but are limited in illumination and movement per sections 133-44C, 133-44D, 133-44E, and limited in size as other temporary signs listed in section 133-46, but do not require a permit.
- G. **For Sale/For Rent signs:** These signs, not exceeding 32 square feet in area, advertising the sale/rental of property/buildings or construction, are allowed until such time as construction or the sale/rental is completed and shall not require a permit.

**133-46 Permitted sign sizes in districts**

- A. The maximum size allowed in each district for each sign type shall be as follows:

***Maximum Size for Districts***  
(square feet)

Sign Type	RV	RN	RR	CV	CH	CM	CR	ED
Attached business	8	8	8	40	40	40	40	20
Projecting Sign	8	8	8	12	12	12	12	12
Freestanding business	8	8	8	40	40	40	40	20
Directional	3	3	3	3	3	3	3	3
Portable/seasonal/temporary	8	8	8	20	20	20	20	10

**How to measure signs**

- 1) A double-faced sign, such as a projecting or freestanding sign, shall be measured as a single-faced sign for purposes of calculating maximum sign area.
- 2) The size of the sign shall be calculated by measuring the total surface area excluding supporting framework and bracing
- 3) Where the sign consists of letters, symbols and devices directly affixed to the surface of a building, the area measured shall be the smallest quadrangle, which encloses the limits of all the letters, symbols and devices.

**133-47 Sign Permits**

- A. Except for portable/seasonal/temporary signs, replacement signs, or signs excepted elsewhere in Article XI, the placement of any new sign, described in 133-46 of this article, requires the issuance of a permit by the Board of Selectmen or their designee. These signs include Attached business, Freestanding business, Multiple business directory, Directional and projecting signs.
- B. Applications for a sign permit shall include location, sign size and method of illumination. An application fee set by the Board of Selectmen shall be required.
- C. Portable/seasonal/temporary signs, including typical “open” flags commonly in use, must abide by the regulations in Article XI, but shall not require a permit.
- D. Existing signs, whether previously permitted or non-conforming but grandfathered, may be replaced without the need for a new permit as long as the location and illumination of the sign is unchanged.
- E. **Signs not requiring permits include:** Portable / Seasonal / Temporary signs, Governmental, Decorative, Flags and Banners, For sale or For rent, Political, Yard sale, Holiday, Temporary fund raising, Safety, Hazard, Warning, Traffic flow, Parking control, Posting, Residential location/owner identification, Replacement signs that are replacing an existing permitted or grandfathered sign pursuant to 133-47D, and other signs not included in section 133-47A.

## ARTICLE XII HOME BUSINESS

### **133-48 Home occupation or profession [Amended 3-13-1996]**

A home occupation or profession shall consist of any use customarily conducted entirely within a dwelling, or accessory building, by the principal occupant only, which use is clearly incidental and subordinate to the dwelling use. Home occupation or profession shall include dressmaker, artist, barber shop, beauty parlor, craftsman, writer, teacher, musician, lawyer, doctor, dentist, architect, engineer or practitioner of any other profession or service which may be unobtrusively pursued. Such uses as clinic, mortician, animal hospital, kennel and other of similar nature shall not be considered a home occupation.

### **133-49 General regulations**

- A. There shall be no display of goods or wares visible from the street. However, home food and home garden produce may be exposed for sale.
- B. The dwelling and lot occupied shall not be rendered objectionable to the neighborhood because of exterior appearance, emission of odors, gas, glare, smoke, dust, noise, electrical disturbance, hours of operation or in any other way.
- C. In a multifamily dwelling, the use shall in no way become objectionable or detrimental to any residential use within the multifamily structure. It shall include no features of design not customary in buildings for residential use.
- D. No outside storage of equipment will be permitted in connection with the home occupation.
- E. The number of persons employed shall be no more than two in addition to the resident.

### **133-50 Home businesses involving sale of previously manufactured goods**

Any home business that involves the resale of previously manufactured goods is permitted only in districts so specified in this chapter; provided, further, that all conditions and regulations for home business as stated in 133-49 of this chapter are met. (Also see Section 133-16)

## ARTICLE XIII ADMINISTRATION

### **133-51 Enforcement by Board of Selectmen**

It shall be the duty of the Board of Selectmen, and the Board is hereby authorized, to enforce the provisions of this chapter.

### **133-52 Permit required; regulations implementing permit system**

After passage of this chapter, it shall be unlawful to erect or expand any structure or building, to change any use of a structure or building or to relocate any structure or building in any zoned district without first obtaining an appropriate permit from the Board of Selectmen. This permit is to ensure that the proposed construction conforms to the permitted uses in the zone that it will occupy and also that it is located a proper distance from the boundaries of the lot on which it is to be built, and in all other respects conforms to this chapter. The Selectmen shall adopt regulations implementing the permit system.

### **133-53 Issuance of permit**

The Board of Selectmen shall issue the permit requested when such permit is in accordance with the provisions of the chapter or when a special exception has been granted by the Board of Adjustment.

### **133-54 Injunction or other legal action to enforce chapter**

Upon any well-founded information that this chapter is being violated, it is the duty of the Board of Selectmen to take immediate steps to enforce the provisions of this chapter by seeking an injunction in Superior Court, or by any other legal action as set forth in RSA 676:17, 676:17-a and 676:17b.

133-54a During the construction of a single-family home, the proposed owner may temporarily reside within a camping trailer for a period up to two years upon issuance of a building permit. Such units may be parked and occupied as temporary housing on the same lot where a dwelling is being constructed provided: (1) The unit will only be occupied a maximum of twenty-four (24) months from issuance of a building permit unless extended by the Board of Selectmen, regardless of (2)(a) below. (2) Sanitary (domestic) sewage will be disposed of by using one of the following methods: (a) The unit will be connected to the Town sewer system. (b) The unit will be connected to a State-approved septic system. (c) The unit will be served by a State-approved portable toilet facility. (d) The unit will have its own self-contained sanitary system and formal provisions will be made to have the sewage disposed at the Henniker Treatment Plant or a like facility.

## ARTICLE XIV BOARD OF ADJUSTMENT

### 133-55 Creation and appointment

- A. Within 30 days after the adoption of this chapter, and thereafter as terms expire or vacancies occur, the Board of Selectmen shall make appointments to the Board of Adjustment of five members, and not more than five alternate members, whose duties shall conform to the provisions of RSA 673:33. Thereafter as terms expire or vacancies occur, the appointing authority shall be responsible for filling vacancies and maintaining full membership on the Board of Adjustment.
- B. The Board of Adjustment here provided shall conform in membership and term of office to the provisions of said RSA 673:3 and 673:5.

### 133-56 Jurisdiction

The Board of Adjustment shall have the following powers:

- A. Appeal of Administrative Decision: To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or interpretation by any administrative official, including, but not limited to the Planning Board, see RSA 676:5, in the interpretation, application, or enforcement of this chapter;
- B. Variance: To authorize, upon appeal in specific cases, such variance from the terms of this chapter as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the chapter will result in unnecessary hardship and so that the spirit of this chapter shall be observed and substantial justice done (See RSA 674:33 I);
- C. Special Exceptions: All special exceptions are to be made subject to the general purpose and intent of the zoning ordinance and shall be made in accordance with the general or specific rules contained in the ordinance (See RSA 674:33 IV);
- D. Equitable Waiver of Dimensional Requirements: To hear and decide on situations where a good faith error was made in the siting of a building or other dimensional layout issue, in accordance with the requirements of RSA 674:33-a;
- E. To act and hear appeals, as per RSA 673:1(V), as amended, as the Building Code Board of Appeals;
- F. To issue a certificate of approval which must accompany an application for a local junkyard license, as per RSA 236:115.

[Revised 3-10-2009]

### 133-57 Appeal of a decision made by an administrative official

- A. On appeal from an order or decision made by an administrative official, the Board shall have the power to decide the following questions:
  - 1. Determination of the meaning of any provision of the text of this chapter;
  - 2. Determination of the exact location of any district boundary as shown on the official zoning map; and
  - 3. Determination of the appropriateness of the reasons for withholding a permit.
- B. The Board shall hear and decide appeals de novo and review on appeal any order, requirement, decision, or determination made by an administrative official in the enforcement or application of this chapter. Upon such appeal, the Board may, in accordance with the provisions of this chapter, reverse or affirm, wholly or partly, or may modify any such order, requirement, or decision, as ought to be made and, to that end, shall have all the powers of the administrative official from whom the appeal is taken.

**133-58 Granting a Variance**

The Board of Adjustment may, on an appeal, grant a variance from the provisions of this Chapter, under the powers specified in RSA 674:33 I (b).

[Amended 3/9/2010]

**133-59 Additional conditions and safeguards for the granting of variances**

In authorizing a variance, the Board of Adjustment may attach such conditions and safeguards as it deems necessary to protect the neighborhood and the community, including but not limited to a time limit when the variance will expire if not utilized.

**133-60 Special Exception uses permitted under certain circumstances**

Special exception is a use that would not be appropriate generally or without restriction throughout the zoning division or district but which, if controlled as to number, area, location or relation to the neighborhood, would promote the public health, safety, order, comfort, convenience, appearance, prosperity or general welfare. Such a use may be permitted in a zoning district as a special exception, when specific provisions for such special exceptions are explicitly included in this chapter.

**133-61 Special Exception general conditions**

The Board of Adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, grant a permit for a special exception. All uses requiring a special exception are judged by the Board of Adjustment on a case-by-case basis.

- A. In granting a special exception, the Board of Adjustment shall require that the lot on which a use is proposed must be adequate and appropriate.
- B. Before granting a permit, the Board shall determine that all the provisions set forth in this article and all other conditions enumerated in the chapter are met and shall hold an abutters' hearing to hear any valid objections based on demonstrable fact.
- C. The Board, in acting on an application for a special exception, shall take into consideration the following conditions. In addition, the Board shall not be limited by these conditions and may at its discretion deny a proposed use.
  - 1. The specific site is an appropriate location for the use or structure.
  - 2. The use requested is allowed by special exception.
  - 3. The use will be compatible with neighboring land uses.
  - 4. The requested use will not create undue traffic congestion or unduly impair pedestrian safety.
  - 5. That granting the permit would be in the public interest.
  - 6. That the proposed use would not create hazards to the health, safety or general welfare of the public, nor be detrimental to the use of or out of character with the adjacent neighborhood.
  - 7. That the proposed use would not constitute a nuisance because of offensive noise, vibration, smoke, dust, odor, heat, glare or unsightliness.

**133-62 Special Exception additional conditions and requirements**

In approving an application for a special exception, the Board of Adjustment may further impose relevant conditions as specified in the individual district's requirements, and the Board also may impose such additional conditions as it finds reasonably appropriate to safeguard the neighborhood or otherwise serve the purposes of the chapter, including but not being limited to the following:

- A. Screening of part or all of the premises of the proposed use by walls, fencing, plantings or suitable on-site landscaping.
- B. Modification of the design of any building involved in the proposed use, and limiting the lot coverage or height of buildings because of obstruction to view and reduction of sunlight and air to adjacent properties.
- C. Parking facilities greater than those otherwise required under this chapter.
- D. Limitation of the number of occupants or employees upon the premises, and restrictions of the method and/or time of operation and use, and of the size or extent of facilities.
- E. Increasing the required lot size or yard dimensions in order to protect the adjacent properties.
- F. Controlling the location and number of vehicular access points to the property.

**133-63 Special Exception Time Limits<sup>7</sup>**

- A. If the use or construction so authorized by the granting of a Special Exception has not commenced within a two year period from the date of the decision, then the Special Exception shall be deemed to have expired and the ZBA's decision rendered null and void. During the hearing process, the ZBA may extend the two year commencement time period for good cause. In addition, an applicant, within the two year period after approval, may apply to the ZBA to extend the two year commencement period as it deems appropriate.
- B. If after commencement, a Special Exception is abandoned or discontinued for a period of two years, then the Special Exception shall be deemed to have expired and cannot be re-established without a new application process and the affirmative decision of the ZBA.

**133-64 Equitable Waivers of Dimensional Requirements**

- A. Equitable waivers may be granted only from physical layout, mathematical or dimensional requirements and may not be granted from use restrictions.
- B. The ZBA may grant a waiver only if each of the four findings, as outlined in RSA 674:33-a (I) are made.
- C. If it can be demonstrated that the violation has existed for ten years or more and that no enforcement action was commenced against the violation during that time by the municipality or by any person directly affected, only the findings in RSA 674:33-a (I) (c and d) need to be met.
- D. Once a waiver is granted, the property is not considered to be a nonconforming use and the waiver does not exempt future use, construction, reconstruction, or additions on the property from full compliance with the ordinance.
- E. The application and hearing procedures are governed by RSA 676:5-7; rehearings and appeals are governed by RSA 677:2-14.

[Revised 3-10-2009]

**133-65 ZBA Procedure**

- A. The Zoning Board of Adjustment shall adopt rules to govern its proceedings in accordance with the provisions on this chapter and the provisions of RSA 676:1, as amended.
- B. Whenever an application is made to the Board of Adjustment, a public hearing shall be held pursuant to the requirements of RSA 676:7, as amended.
- C. When an appeal is filed with the Board of Adjustment, it must also be filed with the officer with whom the appeal is taken. The officer from whom the appeal is taken shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.
- D. The Board of Adjustment shall notify all abutters of any proposed land use application by certified mail not less than five days before the date of any public hearing regarding said site. The names and addresses of the abutters shall be supplied by the applicant on the plat plan to be submitted to the Board of Adjustment. The applicant shall pay the total cost of posting and mailing prior to the hearing.
- E. Following the public hearing of an appeal, the Board shall, in accordance with RSA 676:3, as amended, notify the applicant in writing of the decision and have the decision available for public inspection within 144 hours of such vote.
- F. A special exception, equitable waiver of dimensional requirements, or variance will require an application and may additionally require a site plan duly made to the Board of Adjustment.
- G. A site plan for the proposed development of a site seeking a special exception or variance shall provide the following information where applicable:
  - 1. The lot dimensions and any bounding streets and their right-of-way and pavement widths.
  - 2. Location and dimensions of existing or required service areas, buffer zones, landscaped areas, recreational areas, signs, rights-of-way, streams and drainage and easements.
  - 3. All existing buildings or other structures with their dimensions.
  - 4. All proposed buildings, structures or additions with their dimensions indicated on the proposed plan.
  - 5. Indicate all setback (front, rear, side) dimensions and building heights.
  - 6. Computed lot and building areas and percentage of lot occupancy.
  - 7. Elevations or contours, if required or if relevant.
  - 8. Location and number of parking spaces and lanes with their dimensions.
  - 9. Any required loading and unloading and trash storage areas.
  - 10. Dimensions and directions of traffic lanes and exits and entrances.

[Revised 3-10-2009]

**133-66 Motion for Rehearing**

A. Any party to the action or proceedings may appeal any order or decision of the Zoning Board of Adjustment, or any person directly affected thereby, by applying for a rehearing. The request for a rehearing may be in respect to any matter determined in the action or proceeding, or covered or included in the order; and the Board of Adjustment may grant such rehearing if, in its opinion, good reason therefore is stated in the motion. For purposes of this section the appeal period for a rehearing shall be as specified by RSA 677:2, as amended.

B. A motion for rehearing made under Part A of this Section shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable. No appeal from any order or decision of the Board of Adjustment shall be taken unless the appellant shall have made application for rehearing as provided for in Part A of this Section; and, when such application shall have been made, no ground not set forth in the application shall be urged, relied on, or given any consideration by a Court unless the Court, for good cause shown, shall allow the appellant to specify additional grounds.

C. Upon the filing of a motion for rehearing, the Board of Adjustment shall either grant or deny the application, or suspend the order or decision complained of pending further consideration. If the Board takes no action on the motion within the appeal period as specified by RSA 677:3, as amended, or does not request an extension of time from the appellant, the appellant can assume the motion has been denied. Any order of suspension may be upon such terms and conditions as the Board of Adjustment may prescribe.

D. Pursuant to RSA 676:6, as amended, the appeal shall stay any order or other enforcement action until such time as the appeal has been acted on.

[Revised 3-10-2009]

**133-67.1 Appeal from Decision on Motion for Rehearing**

Any person aggrieved by any order or decision of the Board of Adjustment may apply to the Superior Court, within the appeal period as specified by RSA 677:4, as amended, by sworn petition, setting forth that such decision or order is illegal or unreasonable, in whole or in part, and specifying the grounds upon which the same is claimed to be illegal or unreasonable. [Added 3-10-2009]

**ARTICLE XV**

(space saver)  
[Revised 3-10-2009]

## ARTICLE XVI NON-CONFORMING USES, NON-COMPLYING STRUCTURES & NON-CONFORMING LOTS

(Amended 3-12-2013)

**INTENT:** The intent of this section is to allow for the lawful continuance of nonconforming uses, structures and lots, and to allow a certain reasonable level of alteration, expansion or change to occur by special exception when it can be demonstrated that the proposed alteration, expansion or change will not change the nature of the use, unduly impact the neighborhood or provide inadequate subsurface disposal of waste.

### **133-67 Continuation of existing non-complying use**

Any lawful building or use of a building or premises or parts thereof in existence at the time of the adoption of this chapter, or of any amendment hereto, may be continued although such building or use does not comply to the provisions hereof.

### **133-68 Change of non-conforming use to permitted use**

A non-conforming use, if changed to a use permitted in a district in which it is located for a period of four months or more, shall not be changed back to a non-conforming use.

### **133-69 Abandonment of non-conforming use**

A non-conforming use shall be considered to be abandoned if the use has been discontinued for a period of two years. No abandoned non-conforming use may be resumed.

### **133-70 Damage by fire**

If a non-complying structure or a non-complying structure housing a non-complying use is damaged by fire, explosion or other catastrophe, the Board of Selectmen may issue a permit for the rebuilding and restoration of such building which may not be greater in volume or floor space than the original structure unless any addition conforms to the provisions of this chapter. Application for a building permit and initiation of construction to restore the non-complying structure must occur within two years of the date of the damage.

### **133-71 Non-conforming Uses**

Alterations: Alteration, expansion or change of a nonconforming use or structure shall only be permitted by Special Exception by the Zoning Board of Adjustment if it finds that:

- A. The proposed alteration, expansion or change will not change the nature and purpose of the original use, and
- B. The proposed alteration, expansion or change would involve no substantially different effect on the neighborhood, and
- C. Any increase in heated living space, as proposed by the plans submitted which, in the judgment of the Zoning Board of Adjustment, is reasonably capable of increasing the number of bedrooms for a nonconforming dwelling or lot, may require the septic system to be approved by the NHDES in accordance with the provisions of New Hampshire RSA 485- A:38.

**133-72 Non-conforming Lots**

- A. A nonconforming lot which has been developed with a structure may be continued for the same use but any alteration, expansion, new construction or change shall only be permitted according to the provisions set forth in Non-conforming Alterations a, b, c, as described above. Provided, however, that any alteration, expansion, new construction or change that can be accomplished in a manner that will comply with the applicable setbacks for that district, shall be permitted.
- B. An existing lot which does not conform to the provisions of this Ordinance, which is recorded and taxed as a lot of record at the time of passage of this Ordinance may be used for any conforming use of this district, so long as the lot has adequate frontage and the use of the lot will comply with NHDES regulations relative to septic systems, as provided forin RSA 485-A:38.
- C. Any changes to existing septic system requirements on nonconforming lots must meet NHDES Subsurface Disposal Regulations.

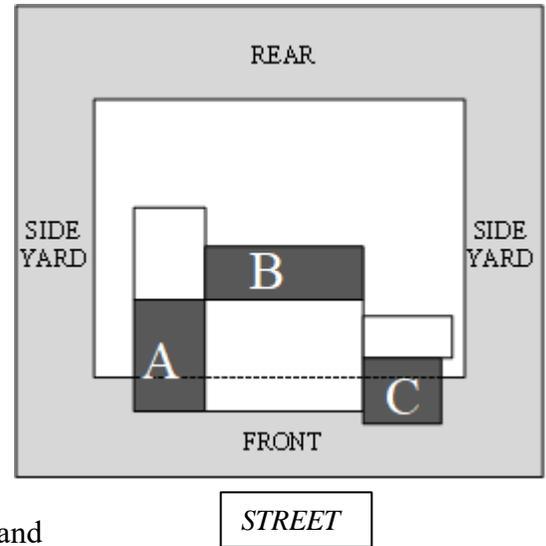
**133-73 Non-conforming Structure; continuance**

Any lawful nonconforming structure existing at the time of adoption of this Ordinance, may be occupied, operated, and maintained in a state of good repair, but any alteration, expansion, new construction or change of such structure that does not further aggravate a front, side, or rear yard setback nonconformity shall only be permitted according to the provisions set forth in Non- conforming uses - Alterations paragraphs a and b, as described above for A. NONCONFORMING USES, and according to the diagram below.

**Expansion of Structures with Nonconforming Setbacks**

(Not drawn to scale.

Assume that the lot is conforming.)



**Explanation:**

- Proposal “A” requires special exception;
- Proposal “B” requires no action by the Board of Adjustment; and
- Proposal “C” requires a grant of variance by the Board of Adjustment.
- Proposal “C” does not include landing or stairs.

**133-74 A Existing Non-conforming Residential Uses in the CH Heavy Commercial District**

Existing principal and accessory residential structures may be expanded as a matter of right and shall not require a Special Exception from the Zoning Board of Adjustment.

## ARTICLE XVII PENALTY

### **133-75 Violations and penalties**

Upon conviction thereof, every person, firm or corporation violating any of the provisions of this chapter shall pay a civil fine of not more than \$275 for each day that such violation is found by a court to continue after the conviction date or after the date on which the violator received written notice from the town that he or she is in violation of the chapter, whichever date is earlier. In any legal action brought by the town to enforce, by way of injunctive relief as provided by RSA 676:15 or otherwise, any provision of this chapter, or to enforce any Planning Board, Zoning Board of Adjustment or Building Code Board of Appeals decision, or to seek the payment of any fine levied under this section, the town may recover its cost and reasonable attorneys' fees actually expended in pursuing the legal action if it is found to be the prevailing party in the action.

**ARTICLE XVIII MISCELLANEOUS**

**133-76 Amendment of chapter**

This chapter may be amended as provided by RSA 675:3, as amended.

**133-77 Greater restrictions to prevail**

Whenever the provisions of this chapter or rulings made under the authority hereof differ from those of other ordinances or regulations of the town, that provision or ruling which imposes greater restriction or higher standard shall govern.

**133-78 Repeal**

Upon the valid adoption of this chapter pursuant to RSA Title 64, the existing Zoning Ordinance and all amendments thereto are hereby repealed. In the event that the "Amendment to the Zoning Ordinance for the Town of Henniker" is not adopted, then the existing Zoning Ordinance and all amendments thereto shall continue to be in full force and effect.

## **ARTICLE XIX NATURAL PRESERVE AREAS**

### **133-79 Purchase of space; designation as natural preserve areas**

- A. As the needs of the town require, the town may purchase such space for the purpose of maintaining natural preserve areas. The natural preserve areas will maintain wild, undeveloped areas of Henniker for managed forest resources, recreational values, wildlife habitats and unspoiled natural beauty. Expected uses may include conservation, pedestrian trails, camping, swimming and educational uses.
- B. Those lots owned by the Town of Henniker or otherwise determined to be areas set aside for conservation by organizations, private or public, are designated natural preserve areas.

### **133-80 Regulation by covenant and deed restrictions**

The use of these lots, when superimposed over any other zoning district, shall be regulated by any covenants or deed restrictions related to these lots, provided that they conform to the regulations of the zoning districts in which they are located. The names and location of these lots may be obtained from the Selectmen's office.

## ARTICLE XX MANUFACTURED HOUSING PARKS

[Added 9-13-1988]

### 133-81 Purpose

It is the purpose of this article to provide reasonable uniformity in the size and treatment of manufactured housing in manufactured housing parks within the various zoning districts in order to promote the general health and welfare of the residents of Henniker. For the purposes of this article, "park" shall mean a manufactured housing park. For the purposes of this article, "unit" shall mean a manufactured housing unit.

### 133-82 Exemption for conforming units; storage

- A. Any manufactured housing unit lawfully situated in the Town of Henniker at the effective date of this article which conforms to all health and other regulations of the State of New Hampshire and the Town of Henniker shall be exempt from the provisions of this article for so long as said unit is not moved from the lot on which it is located at the effective date of this article.
- B. Nothing in this chapter shall be construed to prohibit the storage of any unit if it is not used for living or sleeping purposes.
- C. Where these regulations are in conflict with other ordinances or regulations, the more stringent will apply.

### 133-83 Permitted locations

- A. Manufactured housing units shall be permitted on individual lots, in manufactured housing parks and in manufactured housing subdivisions. Manufactured housing parks are allowed by special exception in the RR Rural Residential, CM Medium Commercial.
- B. Office or construction trailers are permitted in all zoning districts on a temporary basis by specific permission of the Board of Selectmen.
- C. Manufactured housing parks shall be located on a well-drained site properly graded to ensure proper rapid drainage and freedom from stagnant pools of water. The site shall not be exposed to objectionable smoke, noise, odors or other adverse influences, and no portion subject to unpredictable sudden flooding, subsidence or erosion which would expose persons or property to hazards.
- D. Units not located in manufactured housing parks shall comply with requirements of lot size, frontage, space limitation and other reasonable controls that a single-family dwelling in the same zoning district must meet. This will include but not be limited to:
  - 1. Those regulations as set forth in this chapter.
  - 2. Town of Henniker Subdivision regulations (Chapter 202 of the Code of the Town of Henniker), as amended.
  - 3. Approval of septic system design and construction by the New Hampshire Water Supply and Pollution Control Commission.
  - 4. Driveway permit from the Town of Henniker Board of Selectmen.
  - 5. All applicable local and state fire and safety regulations.

**133-84 General requirements**

- A. The establishment, operation or expansion of a manufactured housing park shall require a permit from the Town of Henniker Board of Selectmen in accordance with the procedures set forth in 133-97 of this article.
- B. All electrical, sewer, gas, water and communication lines shall be installed underground.
- C. All parks shall provide not less than 33% of the total land area for public open space to be used by the occupants of the park for recreational purposes.
- D. All parks shall provide and maintain, in good condition, a buffer strip at least 10 feet in width adjoining the boundaries of the park, planted with trees or shrubs, for the purpose of providing a permanent screen.

**133-85 Park management**

- A. There shall be a caretaker/attendant, whose legal residence shall be within the park. The park owner or licensee may be the caretaker/attendant.
- B. The caretaker/attendant shall be in charge of the park at all times and shall be responsible, with the licensee, for compliance with the provisions of this chapter.
- C. The person to whom a license for a manufactured housing park is issued shall operate the park in compliance with this article and shall provide adequate supervision to maintain the park, its facilities and equipment in good repair and in a clean and satisfactory condition.
- D. The park management shall notify park occupants of all applicable provisions of this article.
- E. The park management shall be responsible for the connection and disconnection of each unit and all utilities to that unit, including the placement of each unit on its stand and ensuring the unit is securely installed.
- F. The park management shall maintain a register of all park occupants and shall make that register available to any civil authority inspecting that park.
- G. The license shall be conspicuously posted in the park office or on the park premises at all times.

**133-86 Responsibilities of park occupant**

The park occupant shall comply with all applicable requirements of this article and shall maintain his/her unit, its facilities and equipment in good repair and in a clean and sanitary condition.

**133-87 Emergency service buildings**

- A. Emergency service buildings shall be provided in the ratio of one emergency service building per 100 units or fraction thereof. Each emergency service building shall contain one flush toilet, one shower and one lavatory for each sex, as well as one laundry facility.
- B. Toilets shall be located in separate compartments equipped with self-closing doors. Single-person shower stalls shall be installed so as to prevent direct view of the interior when the exterior doors are open.
- C. Hot and cold water shall be furnished to each emergency fixture as appropriate.

**133-88 Size of unit lots within park**

One unit lot size of a manufactured housing park shall be a minimum of 10,000 square feet, unless more land is required for a septic system by the New Hampshire Water Supply and Pollution Control Commission.

**133-89 Setbacks and clearances**

No manufactured housing unit shall be located closer than 25 feet to the right-of-way within the manufactured housing park or 20 feet to a park service building. A minimum of 20 feet shall be maintained between a manufactured housing unit and its side and rear boundaries. Any enclosed structure attached to a manufactured housing unit shall be considered part of the unit for the purposes of measuring setbacks and clearances.

**133-90 Streets, rights-of-way and parking**

- A. All park streets shall be well drained, paved and maintained in good condition.
- B. No street names shall be used which will duplicate or be confused with the names of existing streets within the park and the Town of Henniker.
- C. Each manufactured housing unit shall abut or face a right-of-way at least 30 feet wide which contains a paved roadway of at least 24 feet in width. All dead-end roads shall have paved turnarounds.
- D. Parking. Space shall be provided on each manufactured housing lot for off-street parking of two cars, located so as to provide convenient access to the unit.

**133-91 Park lighting**

The park shall be kept properly and adequately lighted at all reasonable times to keep the grounds safe for occupants and visitors.

**133-92 Electrical systems**

- A. All electrical installations shall be constructed of new materials, in accordance with state and town regulations.
- B. All direct burial conductors or cables shall be installed at least 18 inches below the ground surface and shall be insulated and specifically designed for that purpose. Such conductors shall be located not less than one foot radial distance from water, sewer, gas, and communication lines.
- C. Each unit shall be provided with an approved disconnecting device and over-current protective equipment.
- D. All exposed non-current carrying metal parts of each unit shall be grounded by means of an approved grounding conductor with branch circuit conductors or other approved method of grounding metallic wiring. The neutral conductor shall not be used as an equipment ground for the unit or other equipment.

**133-93 Water supply**

- A. An accessible, adequate, safe and potable supply of water shall be provided each unit. Where a public supply of water of satisfactory quantity, quality and pressure is available, its supply will be used exclusively, if recommended by the Water Commissioners.
- B. The water system of the park shall be connected by pipes to all units, buildings, structures and other facilities requiring water.
- C. All water piping, fixtures and other equipment shall be constructed and maintained in accordance with state and town regulations and in locations approved by the Code Enforcement Officer.

**133-94 Sewage and waste**

- A. An adequate sewage disposal system, consisting of a common sewage system for all the lots, or, where permitting, connection to the town sewage system, shall be provided and conform to the requirements of the New Hampshire State Water Supply and Pollution Control Board and Chapter 88, Sewers, as amended.
- B. Where appropriate, use of public sewer systems is required under Article II of Chapter 88, Sewers, as amended. If any property lot line of the park falls within the area requirements for sewer hookup, the entire park shall use the public sewer system.
- C. All sewer lines shall be located in trenches of sufficient depth to be free of breakage from traffic or other movement and shall be separated from the park water supply at a safe distance. All sewer lines shall be constructed of materials approved by the Code Enforcement Officer, shall be adequately vented and shall have watertight joints.
- D. All unit toilet and waste facilities shall be connected to the public or common sewage system and shall be in good working order.
- E. Effluent from park sewage facilities shall not be discharged into any surface waters.

**133-95 Refuse disposal**

- A. Collection and removal of garbage shall be provided for at least once every seven days. The park shall be kept in a clean and sanitary condition.
- B. The storage and collection of refuse/garbage in the park shall be conducted so as to create no health or fire hazards, air pollution, rodent harborage/hazard, insect breeding hazards or accident hazards.
- C. Where the Town of Henniker or other agency provides for the collection of refuse/garbage at least once every seven days, dumpster refuse containers of six cubic yards may be provided in the ratio of one dumpster for every 20 units.
- D. Where disposal service is not available, containers which are fly-tight, watertight and rodent-proof shall be provided and located not more than 150 feet from any unit lot. Refuse collection stands shall be provided for all refuse containers. Such container stands shall be designed to prevent the containers from being tipped.

**133-96 Fire protection**

- A. Portable fire extinguishers of the type approved by the Fire Department shall be kept in service buildings and at all other locations designated by the Fire Chief and shall be maintained in good working condition. Locations of fire extinguishers and fire safety rules and regulations shall be posted in conspicuous places and in accordance with procedures outlined by the National Fire Protection Association Standard No. 501A, Fire Protection in Trailer Courts.
- B. Fire hydrants shall be installed when the park is within 500 feet of the town water system, if recommended by the Fire Chief. Fire hydrants shall be located within 600 feet of any unit, service building or other structure in the park.

**133-97 Unregistered motor vehicles**

Unregistered motor vehicles are not allowed in manufactured housing parks.

**133-98 Permit procedure**

- A. To apply for permission to establish or expand a manufactured housing park, application shall be made to the Planning Board; legal notice shall be posted in three public places and mailed to the abutters.
- B. Application shall be made in writing to the Planning Board on such forms as the office may supply and shall contain:
  - 1. Name of the applicant, mailing address, telephone number and date of application.
  - 2. Name and address of the landowner, if different from the applicant.
  - 3. Proposed location within the town, with relevant tax lot numbers.
  - 4. A site plan drawn to scale showing size and proposed location of units, distances to lot boundaries, distance to street, locations of driveways, water supply, septic system, sizes and locations of all existing buildings.
  - 5. Type and dimensions of unit.
  - 6. Names, tax lot numbers and mailing addresses of all abutters.
  - 7. Signature of the applicant.
  - 8. Letter of authorization of the landowner if the applicant is not the landowner.
- C. Payment of the application fee and actual costs of outside consultants will be set by the Planning Board.
- D. For manufactured housing parks, the site plan shall be prepared by a licensed surveyor. It shall show the information required in 133-97B of this article for each separate unit lot, and in addition:
  - 1. Total number of units proposed.
  - 2. Location of all unit lot sites, driveways, streets and off-street parking.
  - 3. Plans for water supply and sewerage, including leach field or connection to the town sewer.
  - 4. Present contours and proposed finished contours at two-foot intervals, showing the plan for storm drainage.
  - 5. Locations of service buildings.
  - 6. Open space and recreation areas.
  - 7. Plans for all electrical systems and park lighting.
  - 8. Plan for water supply.
  - 9. Plan for refuse disposal showing locations of all areas for the disposal of refuse/garbage.

**133-99 Public hearing**

- A. The Board of Selectmen and the Planning Board shall hold a joint public hearing within 30 days of the date of receipt of application material in the office of the Board of Selectmen.
- B. Notice of the hearing shall be sent by certified mail, at least 10 days before the hearing, to each abutter of the lot or lots on which the unit or units are to be located and at the same time shall be posted in three public places. Publication of this notice in a newspaper of local circulation shall be at the discretion of the Board of Selectmen. Postal costs and publication charges shall be payable by the applicant at or before the hearing.
- C. Action shall be taken on the proposal by vote of the Board of Selectmen within 90 days of the receipt of the application. Upon approval by the Board, an additional ninety-day extension may be added to the review period. Other extensions will be allowed where both the Board and the applicant agree. In the case of a manufactured housing park, approval shall require a positive vote by both the Board of Selectmen and the Planning Board. [Revised 3-10-2009]

## ARTICLE XXI FLOODPLAIN DEVELOPMENT

[Amended 3-12-24]

### 133-100 Purpose

The following regulations shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its Flood Insurance Study for the County of Merrimack, NH dated April 19, 2010 or as amended, together with the associated Flood Insurance Rate Maps dated April 19, 2010 or as amended, which are declared to be part of this ordinance and are hereby incorporated by reference.

### 133-101 Definition of terms

As used in this article, the following terms shall have the meanings indicated:

**AREA OF SPECIAL FLOOD HAZARD** — The land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year. The area is designated as Zone A and AE on the Flood Insurance Rate Map.

**BASE FLOOD** — The flood having a one-percent chance of being equaled or exceeded in any given year.

**Base Flood Elevation**” (BFE) means the elevation of surface water resulting from the “base flood.

**BASEMENT** — Any area of the building having its floor subgrade (below grade level) on all sides.

**BUILDING** — See "structure."

**DEVELOPMENT** — Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

**FLOOD or FLOODING** — A general and temporary condition of partial or complete inundation of normally dry land areas from:

A. The overflow of inland or tidal waters.

B. The unusual and rapid accumulation or runoff of surface waters from any source.

**FLOOD INSURANCE STUDY** — An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

**FLOOD INSURANCE RATE MAP (FIRM)** — An official map of a community on which the Federal Emergency Management Agency has delineated both the special hazard areas and the risk premium zones applicable to the community.

**Flood Opening** - An opening in a foundation or enclosure wall that allows automatic entry and exit of floodwaters. See FEMA “Technical Bulletin 1, Openings in Foundation Walls and Walls of Enclosures.”

**FLOODPLAIN or FLOOD-PRONE AREA** — Any land susceptible to being inundated by water from any source. (See definition of "flooding.")

**FLOODPROOFING** — Any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

**FLOODWAY** — See "regulatory floodway."

ARTICLE XXI FLOODPLAIN DEVELOPMENT

**HIGHEST ADJACENT GRADE** — The highest natural elevation of the ground surface prior to construction next to the proposed walls of the structure.

**HISTORIC STRUCTURE** — Any structure that is: [Added 3-11-1982]

- A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register
- B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic place;
- C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - 1. By the approved state program as determined by the Secretary of the Interior, or
  - 2. Directly by the Secretary of the Interior in states without approved programs.

**LOWEST FLOOR** — The lowest floor of the enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking vehicles, building access or storage in an area other than basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter.

**MANUFACTURED HOME** — A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. For floodplain management purposes, the term "manufactured home" also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than 180 consecutive days. This includes manufactured homes located in a manufactured home park or subdivision.

**MANUFACTURED HOME PARK OR SUBDIVISION** — A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**MEAN SEA LEVEL**— For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

**NEW CONSTRUCTION** — For the purposes of determining insurance rates, structures for which the start of construction commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structure for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

**RECREATIONAL VEHICLE** — A vehicle that is built on a single chassis, is 400 square feet or less when measured at the largest horizontal projection, is designed to be self-propelled or permanently towable by a light duty truck and is designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel or seasonal use. [Added 3-9-1994]

**REGULATORY FLOODWAY** — The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

**RIVERINE** — Relating to, formed by or resembling a river (including tributaries), stream, brook, etc.

**START OF CONSTRUCTION** — Includes substantial improvement, and means the date the building permit was issued, provided that the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

**STRUCTURE** — For floodplain management purposes, a walled and roofed structure, including a gas or liquid storage tank, that is principally aboveground, as well as a manufactured home.

**SUBSTANTIAL DAMAGE** — Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred. [Added 3-11-1992]

**SUBSTANTIAL IMPROVEMENT**— means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage,” regardless of the actual repair work performed. The term does not, however, include either:

- a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- b. Any alteration of a “historic structure,” provided that the alteration will not preclude the structure's continued designation as a “historic structure.”

**VIOLATION** — The failure of a structure or other development to be fully compliant with the community’s flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance in Chapters 133- 104, 133-107(B2), 133-106(C) or 133-106(D) is presumed to be in violation until such time as that documentation is provided.

**WATER SURFACE ELEVATION** — The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

### **133-102 Permit required**

All proposed development in any special flood hazard areas shall require a permit.

### **133-103 Review of building permit applications by Building Inspector**

The Building Inspector shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a flood-prone area, all new construction and substantial improvements shall be:

- A. Designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrostatic loads, including the effects of buoyancy.
- B. Constructed with materials resistant to flood damage.

- C. Constructed by methods and practices that minimize flood damages.
- D. Constructed with electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

**133-104 Water and sewer systems**

Where new and replacement water and sewer systems (including on-site systems) are proposed in flood-prone areas, the applicant shall provide the Building Inspector with assurance that new and replacement sanitary sewage systems will be designed to minimize or eliminate infiltration of floodwaters into the system and discharges from the system into floodwaters, and on-site waste disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding.

**133-105 Maintenance of records of certification of flood-proofing and as-built elevations**

The Building Inspector shall maintain for public inspection, and furnish upon request, any certification of flood-proofing and the as-built elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures and include whether or not structures contain a basement. If the structure has been flood-proofed, the as-built elevation (in relation to mean sea level) to which the structure was flood-proofed. This information must be furnished by the applicant.

**133-106 Review for federal and state approvals**

The Building Inspector shall review proposed developments to assure that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C 1334. It shall be the responsibility of the applicant to certify these assurances to the Building Inspector.

**133-107 Alteration and relocation of watercourses**

- A. In riverine situations, prior to the alteration or relocation of a watercourse, the applicant for such authorization shall notify the Wetlands Bureau of the New Hampshire Department of Environmental Services and submit copies of such notification to the Building Inspector, in addition to the copies required by RSA 482-A:3. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Building Inspector, including notice of all scheduled hearings before the Wetlands Bureau.
- B. The applicant shall submit to the Building Inspector, certification provided by a registered professional engineer, assuring that the flood-carrying capacity of an altered or relocated watercourse can and will be maintained.
- C. Along watercourses with a designated regulatory floodway, no encroachment, including fill, new construction, substantial improvements and other development, are allowed within the floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the proposed encroachment would not result in any increase in flood levels within the community during the base flood discharge.
- D. Until a Regulatory Floodway is designated along watercourses, no new construction, substantial improvements or other development (including fill) shall be permitted within Zone-AE on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

- E. Recreational vehicles placed on sites within Zones A-and AE shall either be on the site for fewer than 180 consecutive days, be fully licensed, on wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions meet all standards of this ordinance and the elevation and anchoring requirements for manufactured homes in this ordinance.
- F. The Building Inspector shall obtain, review, and reasonably utilize any floodway data available from Federal, State, or other sources as criteria for requiring all development located in Zone A meet the following floodway requirement that no encroachments, including fill, new construction, substantial improvements, and other development are allowed within the floodway that would result in any increase in flood level within the community during the base flood discharge.

**133-108 Determination of base flood elevation**

- A. In special flood hazard areas, the Building Inspector shall determine the base flood elevation in the following order of precedence according to the data available:
  - 1. In Zone AE refer to the elevation provided in the community's Flood Insurance Study and accompanying FIRM.
  - 2. In Zone A, the Building Inspector shall obtain, review and reasonably utilize any base flood elevation data available from federal, state, development proposals submitted to the community (for example, subdivisions, site approvals, etc.) or other source. Where a base flood elevation is not available or not known for Zone A, the base flood elevation shall be determined to be at least 2 feet above the highest adjacent grade.
- B. The Building Inspector's base flood elevation determination will be used as criteria for requiring in Zones AE and A that:
  - 1. All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated to or above the base flood elevation.
  - 2. That all new construction and substantial improvements of nonresidential structures have the lowest floor (including basement) elevated to or above the base flood elevation or, together with attendant utility and sanitary facilities, shall:
    - a. Be flood proofed so that below the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water;
    - b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
    - c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section.
- C. No new manufactured homes shall be placed within special flood hazard areas. All existing manufactured homes to be substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood level and be securely anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include but are not limited to use of over-the- top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

- D. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted, provided that the enclosed areas meet the following requirements: the enclosed area is unfinished or flood resistant, usable solely for parking of vehicles, building access or storage; the area is not a basement; shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: A minimum of two flood openings having a total net area of not less than one square inch for every foot of enclosed area subject to flooding shall be provided. The bottom of all openings may be equipped with screens, louvers or other covering or devices, provided that they permit the automatic entry and exit of floodwater.

**133-109 Variances and appeals. [Added 3-11-1992]**

- A. Any order, requirement, decision or determination of the Building Inspector made under this chapter may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.
- B. If the applicant, upon appeal, requests a variance as authorized by RSA 674:33, I, the applicant shall have the burden of showing, in addition to the usual variance standards under state law:
  - 1. That the variance will not result in increased flood heights, additional threats to public safety or extraordinary public expense.
  - 2. That if the requested variance is for activity within a designated regulatory floodway, no increase in flood levels during the base flood discharge will occur.
  - 3. That the variance is the minimum necessary, considering the flood hazard, to afford relief.
- C. The Zoning Board of Adjustment shall notify the applicant in writing that:
  - 1. The issuance of a variance to construct below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and
  - 2. Such construction below the base flood level increases risks to life and property
- D. The community shall:
  - 1. Maintain a record of all variance actions, including the justification for their issuance; and
  - 2. Report such variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator.

**ARTICLE XXII WETLANDS CONSERVATION**

[Added 3-14-1989]

**133-110 Purpose and intent**

The purpose of this chapter is to protect the public health, safety and general welfare by controlling and guiding the use of land areas which have been identified as wetlands in accord with RSA 674:16 II. It is intended that this chapter shall:

- A. Control and/or prevent the development of structures and land uses on wetlands which will contribute to pollution of surface and ground water by sewage, toxic and hazardous substances or siltation.
- B. Prevent the destruction of or significant changes to wetlands which provide flood protection.
- C. Protect unique and unusual natural areas.
- D. Protect wildlife habitats and maintain ecological balances.
- E. Protect potential water supplies and existing aquifers (water-bearing strata) and aquifer recharge areas.
- F. Prevent expenditures of municipal funds for the purposes of providing and/or maintaining essential services and utilities which might be required as a result of unwise development or other misuse or abuse of wetlands reconstructing or extending additional town sewer and/or treatment facilities.
- G. Encourage those uses that can be harmoniously, appropriately and safely located in wetlands.

**133-111 Henniker wetlands defined**

Wetlands are areas where a significant part of the vegetation, soil and land types include one or all of the following:

- A. Swamps, scrub, shrub and/or forested wetlands are areas where the water table is at or near the ground surface for a significant part of the year. The vegetational community consists of mostly trees and woody shrubs, including but not limited to:

- |                      |                           |
|----------------------|---------------------------|
| (1) Alders           |                           |
| (2) Black ash        | (11) Poison sumac         |
| (3) Buttonbush       | (12) Sphagnum moss        |
| (4) Marsh rose       | (13) Tamarack (larch)     |
| (5) Rhodora          | (14) Atlantic white cedar |
| (6) Sweet pepperbush | (15) Black spruce         |
| (7) Winterberry      | (16) High-bush blueberry  |
| (8) Arrowwood        | (17) Red maple            |
| (9) Black gum        | (18) Spicebush            |
| (10) Common elder    | (19) Willow               |

ARTICLE XXII WETLANDS CONSERVATION

B. Marshes are treeless wetlands dominated by soft-stemmed herbaceous plants. The surface of the marsh is covered with water most of the year though seasonal fluctuations in water depth are expected. Marshes range from the wet meadows variety to deep marshes which can be covered with several feet of water. The vegetational community is made up of some or all of the following but is not limited to:

- |  |                          |
|--|--------------------------|
| (1) Arums  | (9) Duckweeds            |
| (2) Cattails   | (10) Horsetails          |
| (3) Frog's-bits  | (11) Pickerel weeds      |
| (4) Leatherleaf  | (12) Sweet gale          |
| (5) Smartweeds   | (13) Bur-reeds           |
| (6) Water milfoil  | (14) Eelgrass            |
| (7) Sedges (incl. bulrushes, cotton<br>grasses and wool grasses) | (15) Hydrophylus grasses |
| (8) Bladder worts  | (16) Rushes              |
|  | (17) Water lilies        |

C. Bogs consist of peat or muck deposits of significant depths and are characterized by a distinct group of trees and plants which are adapted to the bogs highly acidic conditions. The water in a bog is practically devoid of oxygen and nutrients. Bogs usually develop in un- drained glacial depressions. Typical plants include but are not limited to:

- |                          |                     |
|--------------------------|---------------------|
| (1) Atlantic white cedar | (10) Pitcher plants |
| (2) Bog or buchbean      | (11) Sheep laurel   |
| (3) Cotton grass         | (12) Sweet gale     |
| (4) Pale laurel          | (13) Bladderworts   |
| (5) Sedges               | (14) Bog rosemary   |
| (6) Sundews              | (15) Leatherleaf    |
| (7) Black spruce         | (16) Rhodora        |
| (8) Bog laurel           | (17) Sphagnum moss  |
| (9) High-bush blueberry  |                     |

D. Soil series and land types commonly associated with wetlands as described by the Soil Survey of Merrimack County, New Hampshire, dated June 1965, include the following very poorly drained and poorly drained soils:

- |  |                                   |
|--|-----------------------------------|
| (1) Very poorly drained soils include; | (2) Poorly drained soils include: |
| a. Marsh (Mh)                          | a. Augres series (Ag) (Au)        |
| b. Mixed alluvial sand (Mn)            | b. Limrick silt loam (Lm)         |
| c. Muck and peat (Mp)                  | c. Ridgebury series (Rb) (Rd)     |
| d. Saco silt loam (Sa)                 | d. Rumney fine sandy loam (Ru)    |
| e. Scarboro fine sandy loam (Sc)       |                                   |

## ARTICLE XXII WETLANDS CONSERVATION

- E. Wetlands in the Town of Henniker shall also include but not be limited to:
1. Areas of retention of freshwater and their associated perennial and seasonal drainage ways (brooks, rivers, streams, ponds or lakes).
  2. Areas where a site-specific soil survey performed by a qualified professional soil scientist locates poorly or very poorly drained soils not identified on the SCS published soil survey.
  3. Areas identified on the Town of Henniker Wetlands Map.
  4. Wetlands incorrectly delineated.
- F. Where it is allowed that an area has been incorrectly delineated as a wetland in Henniker or that an area not so designated meets the criteria for wetlands designation, the Planning Board and Conservation Commission shall jointly determine whether the regulations contained herein shall have application.
- G. The Planning Board shall make its judgment under this section only upon the determination by a qualified soil scientist and/or biologist or botanist on the basis of additional on-site investigation or other suitable research that the information contained on the Wetlands Map is incorrect. This evidence shall be acceptable only when presented in writing by the scientist to the Planning Board and Conservation Commission. Any necessary testing and/or expenses incurred to clearly delineate questionable wetlands shall be at the sole expense of the landowner or developer disputing the designation.

### **133-112 Conflict with other regulations**

Where the provisions of this article conflict with the provisions of this chapter, the more restrictive regulation shall apply.

### **133-113 Wetlands permitted uses**

Permitted uses are those which will not require the erection, construction or addition of any structures or buildings; will not alter the natural surface configuration by the addition of fill, dredging or drainage; and are uses that otherwise are permitted by this chapter in wetlands. Such uses may include:

- A. Forestry. Tree farming using best management practices as outlined in the Water Supply and Pollution Control Division Guidelines for Timber Harvesting in order to protect streams from damage and to property.
- B. Cultivation and harvesting of crops according to recognized soil conservation practice, including the protection of wetlands and pollution caused by fertilizers, pesticides and herbicides used in such cultivation and from sedimentation caused by erosion.
- C. Wildlife refuges.
- D. Parks and recreation uses consistent with the purpose and intent of this chapter.
- E. Conservation areas and nature trails.
- F. Open spaces, permitted as required by Chapter 202, Land Subdivision, or this chapter.
- G. State and federally approved water impoundments.
- H. Construction of wells for water supply.
- I. Dry hydrants and fire ponds.

**133-114 Special exceptions [Amended 3-9-2004]**

All wetlands impacts, except those that qualify for Permit By Notification and/or the Expedited Minimum Impact Wetlands Permit by the New Hampshire Department of Environmental Services, require a Special Exception.

- A. A Special Exception may be granted by the Zoning Board of Adjustment after proper public notice and public hearing for the following wetlands impacts when the application has been referred to the Conservation Commission for review and comment at least 30 days prior to the hearing. Wetlands impacts essential to the productive use of land not so zoned and if so located and constructed as to minimize any detrimental impact of such uses upon the wetlands.
- B. The undertaking of a use not otherwise permitted in the wetlands area if it can be shown that such proposed use is not in conflict with any and all of the purposes and intentions listed in 133-110 of this chapter.

**133-115 Building permit and driveway permit process [Amended 3-9-2004]**

Any person who desires to obtain a building permit or driveway permit on land impacting a wetlands area shall first submit to the Building Inspector a completed copy of the DES Wetlands permit. This is in addition to the existing requirements for building permits and driveway permits. The Conservation Commission shall be notified of the request for said permit and must submit a written report to the Building Inspector for consideration within 15 business days of receiving the request. No driveway or building permits may be issued until the Conservation Commission has commented and/or the 15 business days have passed.

**133-116 Special Provisions**

- A. All septic systems shall be constructed to meet New Hampshire Department of Environmental Services (NHDES) design criteria for subsurface disposal systems. [Amended 3-15-1995]
- B. Wetland areas excluding surface waters may be used to satisfy minimum lot area requirements provided that seventy five (75) percent of the minimum lot area is contiguous non-wetland.
- C. All land designated as wetlands shall be appraised for tax purposes at its full and true value as undeveloped land required to remain in open space.

## ARTICLE XXIV SEXUALLY ORIENTED BUSINESSES

[Added 3-15-1995]

### 133-117 Purpose

This article is adopted for the purpose of regulating the secondary effects of sexually oriented businesses in the following areas:

- A. Protection of children.
- B. Protection of property values.
- C. Crime control.
- D. Public health.
- E. Prevention of urban blight.

### 133-118 Definitions

As used in this article, the following terms shall have the meanings indicated:

**SEXUALLY ORIENTED BUSINESS** – Includes, but is not limited to, an adult arcade bookstore or adult video store, adult cabaret, adult theater, adult motel, nude model studio or sexual encounter center, or any other business which meets the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1 et seq.

### 133-119 Special exception required

For a use to be established under this article, the applicant must demonstrate that the proposed site satisfies all the site requirements of site plan review from the Planning Board and must secure a special exception from the Zoning Board of Adjustment subject to the requirements and procedures of Article XVI.

### 133-120 Additional requirements

A sexually oriented business use, in addition to all other requirements of this article, shall, prior to a request for a special exception, demonstrate compliance with the following requirements:

- A. No sexually oriented business shall be permitted within 750 feet of any residence, apartment or manufactured housing, church, place of worship, parish house, convent, public, parochial or private school, kindergarten, day-care center or public sports/recreation parks; and no sexually oriented business shall be permitted within 750 feet of the town boundaries.
- B. The hours of operation shall only be between 10:00 a.m. and 11:00 p.m., Monday through Saturday, and 12:00 noon to 9:00 p.m. on Sundays.
- C. The site shall be maintained daily in a condition that is free and clear of any sexual paraphernalia or packaging.
- D. Signs shall not visually depict any person in a state of nudity, semi-nude or which is not in compliance with RSA 571-B:1.
- E. The distance between any two sexually oriented businesses shall be a minimum of 1,000 feet and shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall or temporary or permanent physical divider between each business.
- F. Sexually oriented businesses, as defined, shall be regulated by special exception only, provided that all other regulations, requirements and restrictions for the zone in which the sexually oriented business is to be located are met.

## ARTICLE XXV WIRELESS COMMUNICATION TOWERS

[Added 3-12-1997; Amended 3-12-2002, 3-11-2003, 3-13-2007, 3/2010,3/2011]

### 133-121 Purposes

These regulations have been enacted in order to establish general guidelines for the siting of personal wireless service facilities (APWSFs), including towers and antennas and to enhance and fulfill the following goals:

- A. Preserve the authority of the Town of Henniker to regulate and to provide for reasonable opportunity for the siting of personal wireless service facilities, by enhancing the ability of providers of personal wireless services to provide such services to the community quickly, effectively, and efficiently.
- B. Reduce the adverse impacts that such personal wireless service facilities may create, including, but not limited to: impacts on aesthetics, environmentally sensitive areas, conservation lands, historically significant locations, ridgelines, scenic areas and vistas, airplane flight corridors, migratory bird flight corridors, health and safety by accidents to person and property, and prosperity through protection of property values.
- C. Provide for co-location and minimal impact siting options through an assessment of technology, current location options, future available locations, innovative siting techniques, and siting possibilities beyond the political jurisdiction of the town.
- D. Permit the construction of new personal wireless service facilities only where all other reasonable opportunities have been exhausted, and to encourage the construction of new PWSFs in a way that minimizes the adverse visual impact of such facilities.
- E. Require cooperation and co-location, to the highest extent possible, between competitors in order to reduce cumulative negative impacts upon the Town of Henniker.
- F. Provide constant maintenance and safety inspections for all personal wireless service facilities.
- G. Provide for the removal of abandoned personal wireless service facilities.
- H. Provide for the removal of personal wireless service facilities that are technologically outdated.

### 133-122 Definitions

As used in this article, the following words have the following meanings:

**ANTENNA** – Means any exterior apparatus designed for telephonic, radio, television, personal communications service (PCS), pager network, or any other communications through the sending and/or receiving of electromagnetic waves of any bandwidth.

**CAMOUFLAGED** – Means to be disguised, hidden, part of an existing or proposed building or structure, or placed within an existing or proposed building or structure, or designed to look like a structure which may commonly be found in the area surrounding the proposed facility, such as, but not limited to, flagpoles, traffic lights, farm silos, ranger or forest fire watch towers, or trees.

**PERSONAL WIRELESS SERVICE FACILITY(IES) OR PSF(S) OR FACILITY(IES)** –Means any facility for the provision of commercial mobile services, unlicensed wireless services, or common carrier wireless exchange access services, as such terms are defined in the federal Telecommunications Act of 1996, 47 U.S.C. Section 332. For purposes of this ordinance such terms will also include, as the context may require, all towers and antennas used in connection therewith.

**PRE-EXISTING FACILITIES** – Means any PWSF, tower or antenna lawfully constructed or permitted prior to the adoption of this article, as well as the replacement of any such PWSF, tower or antenna.

**TOWER** – Means any structure that is constructed primarily for the purpose of supporting one or more antennas. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, and the like.

**133-123 Overlay District**

- A. General. Personal wireless service facilities shall be permitted as a principal or accessory (secondary) use in all zoning districts within the Town of Henniker, other than the residential village (RV) and commercial village (CV) districts, subject to compliance with the requirements of this article and site plan approval by the planning board.
- B. Existing Uses or Structures. The existence of a permitted use on a site shall not preclude the addition of a PWSF as a secondary use, provided that all other provisions of this article are satisfied. A different existing use or an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot. For purposes of determining whether the installation of a PWSF, tower or antenna complies with district development regulations, including but not limited to set-back requirements, lot-coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the PWSF, tower or antenna may be located on an easement or leased parcel within the lot. PWSFs, towers, and antennas that are constructed or installed in accordance with the provisions of this article shall not be deemed to constitute the expansion of a nonconforming use or structure.

**133-124 Applicability**

- A. General. The terms of this Article shall apply to all new personal wireless service facilities proposed to be located within the Town of Henniker whether on property owned by the Town of Henniker, on privately owned property or on property owned by another governmental entity. Applicants wishing to add to existing facilities are required to engage in a conceptual consultation with the Planning Board regarding the requirements of this article. [Amended 3-13-2007]
- B. Exceptions.
  - 1. Amateur Radio / Receive-Only Antennas. This article shall not govern any tower or antenna that is under 70 feet in height from the ground to the top of the tower or antenna and is owned and operated by a federally licensed amateur radio station operator or is used exclusively for receive-only antennas. This Ordinance adopts the provisions and limitations as referenced in RSA 674:16, IV.
  - 2. Essential Services & Public Utilities. Personal wireless service facilities shall not be considered infrastructure, essential services, or public utilities, as defined or used elsewhere in the town's ordinances and regulations.

**133-125 Location, Construction, and Performance Requirements**

- A. Setbacks. All personal wireless service facilities, including equipment compounds, utility buildings, structures, towers and antennas, must meet the minimum setback requirements of the zoning ordinance. Further, facilities must be set back from all lot lines and public rights-of-way a minimum distance equal to 125% of the tower's height; provided, however, that this requirement shall not apply to PWSFs and appurtenant facilities that are (1) enclosed within existing buildings or structures, or are less than thirty-five (35) feet in height, and (2) camouflaged as otherwise required by this Ordinance.
- B. Height Limitations.
  - 1. General. Subject to any stricter standards as set forth below, a personal wireless service facility shall not exceed one hundred fifty (150) feet in height, measured as the vertical distance from the average finished grade surrounding the facility to its highest point, including all attachments.

ARTICLE XXV WIRELESS COMMUNICATION TOWERS

2. PWSFs in Wooded Areas. A personal wireless service facility located in a wooded area shall not project higher than twenty (20) feet above the average height of the five tallest trees within a 180-foot radius of the proposed tower. Further, a PWSF located in a wooded area must be camouflaged to blend in with the natural character of such area. Appropriate camouflaging for wooded areas includes: ranger or forest fire watch towers of a size typically found in the State of New Hampshire, artificial trees, or other structures acceptable to the Planning Board.  
[Amended 03-09-2010]
  3. PWSFs in Fields or Agricultural Areas. A personal wireless service facility located in a field or other open area without a tree canopy shall be adequately camouflaged. Appropriate camouflaging for fields or open areas includes agricultural silos, windmills, or other structures acceptable to the Planning Board and of a size typically found in the State of New Hampshire.
  4. PWSFs in or on Existing Structures. A PWSF may be located on or within an existing building or structure provided that such facilities are adequately camouflaged and shall be architecturally compatible with the host building or structure.
  5. New PWSF Structures. A PWSF may be located in a new building or structure provided that such building or structure (a) shall not exceed the maximum building height in the district where a PWSF is proposed, and (b) shall be architecturally compatible with the buildings in the immediately surrounding area.
- C. Location Prioritization. Any new personal wireless service facility shall be located in accordance with the following priorities:
1. Concealed or camouflaged on or within an existing building or structure, including but not limited to a historic building, an agricultural building or structure, a water tank, a utility transmission pole, an outdoor lighting structure, or a church steeple.
  2. On or within a new building or structure having a height not greater than the maximum building height in the zoning district where the PWSF is proposed;
  3. On an existing PWSF (co-location);
  4. On a new facility which is adequately camouflaged and subject to the height limitations set forth above.
- D. Easements or Leased Areas. If a PWSF is to be located on an easement or leased area, the PWSF shall be set back from the edge of the easement or leased area a distance of at least 125% of the tower's height plus additional area for accessory structures and access, if required.
- E. Tower Construction. Traditional lattice or guyed towers are prohibited. All new PWSFs must be appropriately camouflaged and visually compatible and in scale with the rural character of the town. Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the planning board may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views. Towers shall not contain any permanent or temporary signs, writing, symbols, or any graphic representation of any kind, except as required by law for such facilities.
- F. Viewshed Analysis. As part of the review process the applicant shall conduct a viewshed analysis to include, at a minimum,
1. A mapped viewshed delineation; and

## ARTICLE XXV WIRELESS COMMUNICATION TOWERS

2. A test balloon or crane extension moored at the site to indicate the visibility of proposed towers and/or antennas. Photographs or video footage of the balloon or crane test shall be provided to the Planning Board and shall provide views of the tower from the PWSF site and other vantage points as determined by the Planning Board.
- G. Landscaping. The following landscaping requirements shall apply to personal wireless service facilities constructed under this ordinance.
1. Towers and all accessory buildings and fencing shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compounded from adjacent residential property. The standard buffer shall consist of a landscaped strip at least twenty (20) feet wide outside the perimeter of the compound. Natural vegetation is preferred.
  2. Locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived entirely.
  3. Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible. There should be no significant adverse effect on the tree canopy, and the facility must not contribute sufficiently to erosion. In some cases, where PWSFs sited on large wooded lots, natural growth around the property may be deemed a sufficient buffer.
- H. Federal Requirements. All PWSFs must meet or exceed current standards and regulations of the FAA, FCC, and any other agency of the federal government with the authority to regulate such facilities.
- I. Building Codes; Safety Standards. To ensure the structural integrity of towers and antennas, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the Town concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have 30 days to bring such tower into compliance with such standards. If the owner fails to bring such tower into compliance within 30 days, such action shall constitute an abandonment and grounds for the removal of the tower in accordance with section 133-32 at the owner's expense through execution of the posted security.

### **133-126 Site plan review**

- A. General. Any person seeking to construct a personal wireless service facility shall apply to the Planning Board for site plan review in accordance with the requirements set forth in the town's site plan review regulations. In addition to the requirements contained therein, the applicant shall submit the information required by this section 133-30.
- B. Procedure on Applications. The Planning Board shall act upon an application in accordance with the procedural requirements of the Site Plan Review Regulations and RSA 676:4. In addition, applicants shall submit a list of all communities within a twenty-mile radius of the proposed facility, with mailing addresses for each, as required by RSA 12-K. Applicants shall also pay all fees required to notify each such community.
- C. Other Factors. In addition to the factors stated in the site plan review regulations, other factors to be considered by the Board in reviewing applications shall include:
  1. The height of the proposed tower or other structure shall not exceed that which is essential for its intended use and public safety.
  2. The proximity of a PWSF to residential developments or zones.

ARTICLE XXV WIRELESS COMMUNICATION TOWERS

3. Nature of uses on adjacent and nearby properties.
4. Surrounding topography.
5. Surrounding tree coverage and foliage.
6. Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness.
7. Proposed ingress and egress to the site.
8. Availability of suitable existing towers and other structures as discussed in section 133-29.C.
9. Visual impacts on view-sheds, ridgelines, public parks, natural scenic vistas, historic buildings, major view corridors and other impacts by means of tower location, tree and foliage clearing and placement of incidental structures.

D. Plan Requirements. Each applicant requesting site plan review shall submit a scaled plan in accordance with the site plan review regulations and further information including:

1. A scaled elevation view;
2. Topography;
3. Propagation Maps;
4. Radio frequency coverage;
5. Setbacks;
6. Adjacent uses (up to 400' away);
7. The location of all buildings and structures within 500 feet of proposed tower;
8. Diagram of the average tree canopy height determined for the proposed PWSF site;
9. Driveways and parking;
10. Fencing; and
11. Landscaping.

E. New PWSF.

1. If an applicant proposes to build a new PWSF, the applicant shall submit written evidence demonstrating that no existing structure can accommodate the applicant's proposed antenna. The evidence shall consist of one or more of the following:
  - a. Substantial evidence that no existing PWSFs, towers or structures located within the geographic area meet the applicant's engineering requirements, provided that a description of the geographic area required is also submitted.
  - b. Substantial evidence that existing towers in the Town are not of sufficient height to meet the applicant's engineering requirements, with supporting reasons.
  - c. Substantial evidence that the existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
  - d. Substantial evidence that the fees, costs, or contractual provisions required by the owner in order to share the existing tower or structure are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.
  - e. Substantial evidence that the applicant can demonstrate other limiting factors that render existing towers and structures unsuitable.

2. The applicant shall also provide all of the following:
  - a. Substantial evidence that the applicant's proposed antenna or structures would not cause electromagnetic interference with other antennae on the existing towers, and vice versa.
  - b. Information on the number of sites for PWSFs each provider will require.
  - c. Information on sites outside of the Town of Henniker that are being considered.
  - d. Information on how future technology may reduce or eliminate the need for towers.
  - e. Information on the impact, if any, of the PWSF on a competitor's facility on the same property.
  - f. Information on whether it is feasible for carriers to locate base station equipment underground.
3. The applicant proposing to build a new PWSF shall submit an agreement with the Town that allows for the maximum allowance of co-location upon the new facility. Such statement shall become a condition to any approval. This statement shall, at a minimum, require the applicant to supply available co-location for reasonable fees and costs to other person wireless service providers. Failure to provide such an agreement is a sufficient ground for a denial.
  - a. The applicant shall submit the engineering information detailing the size and coverage required for the facility location. The Board may retain the services of a consultant qualified in personal wireless services to review the application and all associated information submitted by the applicant. The Board may further require, pursuant to RSA 676:4, I (g), that the applicant reimburse the Town for reasonable costs of this review. No application shall be approved until such fees, if applicable, are paid in full.

### **133-127 Bonding and Security Insurance**

In recognition of the extremely hazardous situation presented by abandoned and unmonitored PWSFs, towers and antennas, the Planning Board shall set the form and amount of security that represents the estimated cost for removal and disposal of such abandoned facilities in the event that such facility is abandoned and the owner thereof fails to remove the facility in accordance with section 133-32. The planning board may retain an independent licensed civil engineer to determine the estimated cost of removal and disposal, with the cost of such engineer to be paid by the applicant. The Planning Board shall also require the applicant to submit proof of appropriate liability insurance with respect to the proposed PWSF, tower or antenna prior to the construction of such facilities.

### **133-128 Removal of Abandoned PWSFs**

Any PWSF, tower or antenna that is not operated for a continuous period of twelve (12) months shall be considered abandoned and hazardous to the public health and safety, unless the owner of said facility provides proof of quarterly inspections. The owner shall remove the abandoned structure within ninety (90) days of receipt of a declaration of abandonment from the Town notifying the owner of such abandonment. A declaration of abandonment shall only be issued following a public hearing, noticed per Town regulations, with notice to abutters and the last known owner/operator of the tower. If the abandoned PWSF, tower or antenna is not removed within ninety (90) days of the determination of abandonment, the Town may execute on the security posted in accordance with section 133-31 and have the facility removed. If there are two or more users of a single facility, this provision shall not become effective until all users cease using the facility.

### **133-129 Waivers**

Where the Planning Board finds that a particular Section of this Article would serve no valid public purpose, given the specific characteristics of the site and neighborhood in which a Personal Wireless Service Facility (PWSF) is proposed and would not be in conflict with the goals outlined in Section 133-

ARTICLE XXV WIRELESS COMMUNICATION TOWERS

126 Purpose, the Board may approve a waiver to any specific Section of this Article. [Added 3-9-2010]

## ARTICLE XXVI BED AND BREAKFAST HOMES

[Added 3-13-2001]

### 133-130 Definitions

As used in this article, the following terms shall have the meanings indicated:

**BED-AND-BREAKFAST HOME** – Any residential dwelling located on one lot of record, containing lodging units offered to the public for compensation for transient accommodations, provided that such dwelling unit is operated by an individual person or persons, who shall occupy the dwelling unit.

### 133-131 Special exception and site plan review required

For a use to be established under this article, the applicant must secure a special exception by the Zoning Board of Adjustment subject to the requirements and procedures of Article XV. The applicant must also demonstrate to the Planning Board that the proposed site satisfies all the requirements of site plan review.

### 133-132 Additional requirements

A bed-and-breakfast home, in addition to all other requirements of this article, shall demonstrate compliance with the following requirement:

- A. The number of proposed lodging units shall be compatible with the surrounding area, and shall be reasonable, taking into consideration the floor size and configuration of the dwelling unit, and the size of the lot on which such dwelling unit is located.
- B. The dwelling units for the owner(s) of the bed-and-breakfast home shall be adequate for the number of operators and his, her or their family(ies).
- C. Breakfast shall be the only meal served to guests of a bed-and-breakfast home, and such meal may only be served to overnight guests of the bed-and-breakfast home.
- D. The applicant shall provide evidence that there are adequate sanitary facilities to accommodate the proposed number of lodging units and that the septic system complies with all applicable state statutes and regulations for the total number of proposed lodging units and the dwelling unit for the owner(s).
- E. The dwelling unit proposed for a bed-and-breakfast home shall be subject to all National Fire Protection Association (NFPA) Life Safety Codes.
- F. The applicant shall comply with all state statutes and regulations, with particular attention to the items listed below:
  1. Site plan review approval shall be contingent upon receipt of any operators' licenses, such as the meals and rentals operator's license and food service license, and copies of said licenses shall be provided to the Planning Board.
  2. Adequate guest records shall be maintained in accordance with the requirement of state regulations.
- G. Only one business sign having an area of not more than eight square feet shall be located on the premises, and shall be compatible with the neighborhood. All other requirements for signage shall be in keeping with Article XI.

## ARTICLE XXVII IMPACT FEES

[Added 3-19-2004]

### 133-133 Purpose

This ordinance is enacted under the authority of RSA 674:21, V as an innovative land use control is intended to:

- A. Implement and be consistent with the Town of Henniker's Master Plan and Capital Improvements Program,
- B. Allocate a fair and equitable share of the cost of public facilities to new development,
- C. Require new development to contribute its proportionate share of funds necessary to accommodate its impact on public facilities having a rational nexus to the proposed development, and for which the need is attributable to the proposed development.

### 133-134 Findings

- A. The Town of Henniker is responsible for and committed to the provision of public facilities and services at standards determined by the Town to be necessary to support development in a manner which protects and promotes the public health, safety, and welfare;
- B. Capital facilities have been and will be provided by the Town utilizing funds allocated through the Capital Improvements Program, which has been adopted by the Board of Selectmen;
- C. An impact fee ordinance for capital facilities is consistent with the goals and objectives of the Master Plan and the Capital Improvements Program of the Town of Henniker;
- D. New development in Henniker will create the need for the construction, equipping, or expansion of public capital facilities in order to provide adequate facilities and services for its residents;
- E. Impact fees may be used to assess an equitable share of the growth-related cost of public facility capacity to new development in proportion to the facility demands created by that development;
- F. In the absence of impact fees, anticipated residential and non-residential growth and associated capital improvement costs could necessitate an excessive expenditure of public funds in order to maintain adequate facility standards and to promote and protect the public health, safety, and welfare;
- G. Impact fees assessed pursuant to this Article will not exceed the costs of:
  - 1. Providing additional public capital facilities necessitated by new development in Henniker; and/or
  - 2. Compensating the town of Henniker, the Henniker School District, or the John Stark Regional School District for facility capacity that it provided in anticipation of new development in Henniker.

**133-135 Definitions**

Impact Fee – Impact Fee shall mean a fee or assessment imposed upon development, including subdivision, building construction/expansion, or other land use change, in order to help meet the needs occasioned by the development for the construction or improvement of capital facilities owned and operated by the municipality.

These capital facilities include and are limited to water treatment and distribution facilities; wastewater treatment and disposal facilities; sanitary sewers; storm water, drainage, and flood control facilities; public road systems and right-of-way; municipal office facilities; public school facilities; the municipalities proportional share of capital facilities of a cooperative or regional school district of which the municipality is a member; public safety facilities; solid waste collection, transfer, recycling, processing, and disposal facilities; public libraries; and public recreational facilities, not including public open space.

New Development – An activity which results in:

- A. The creation of a new dwelling unit or units; or
- B. The conversion of a lawfully existing use which would result in a net increase in the number of dwelling units; or
- C. A non-residential development or conversion of property that results in a net increase in the gross floor area of non-residential use or intensity of land use.

**133-136 Authority to Assess Impact Fees**

The Planning Board is hereby authorized to assess impact fees, as herein defined, and in accordance with the standards herein set forth. The Planning Board shall have the authority to adopt regulations to implement the provisions of this ordinance.

**133-137 Assessment Methodology**

The amount of any impact fee shall be a proportional share of municipal capital improvement costs, which is reasonably related to the capital needs created by the development, and to the benefits accruing to the development from the capital improvements financed by the fee.

Upgrading of existing facilities and infrastructures, the need for which is not created by new development, shall not be paid for by impact fees.

**133-138 Administration of Impact Fees**

- A. Each impact fee shall be accounted for separately, shall be segregated from the Town’s general fund, may be spent upon order of the municipal governing body, and shall be used solely for the capital improvements for which it was collected, or to recoup the cost of capital improvements made in anticipation of the needs for which fees are collected.
- B. All impact fees shall be assessed prior to, or as a condition for, the issuance of a building permit or other appropriate permission to proceed with development, such as Site Plan or Subdivision approval. Between the date of assessment and collection, the Planning Board may require developers to post security, in the form of a cash bond, letter of credit, or performance bond so as to guaranty future payment of assessed impact fees.
- C. Impact fees shall be collected as a condition for the issuance of a Certificate of Occupancy, Building Permit, or other appropriate permission to proceed with development; provided however, in projects where off-site improvements are to be constructed simultaneously with a project’s development, and where the Town has appropriated the necessary funds to cover such portions of the work for which it will be responsible, the Town may advance the time of collection of the impact fee to the issuance of a Building Permit, Certificate of Occupancy, or other appropriate permission.

ARTICLE XXVII IMPACT FEES

- D. The Planning Board and the assessed party may establish an alternate, mutually acceptable schedule of payment of impact fees.
- E. If the full impact fee assessed under this ordinance is not encumbered or otherwise legally bound to be spent for the purposes for which it was collected within six years, the fee shall be returned to the assessed party, with any accrued interest.
- F. Whenever the calculation of the impact fee has been predicated upon some portion of capital improvement costs being borne by the town, a refund shall be made upon the failure of the Town Meeting to appropriate the Town's share of the capital improvement costs within six years for the date of payment thereof.

**133-139 Applicability**

This ordinance shall not be deemed to affect the existing authority of the Planning Board over subdivision and site plans, including, but not limited to the authority to declare a development to be premature or scattered in accordance with the regulations of the Board and in accordance with RSA 674:36,II(a).

**133-140 Appeals**

All appeals shall be handled in accordance with the provision of Article XIV of the Zoning Ordinance.

**ARTICLE XXVIII**

(space saver)

[Revised 3-9-2010]

**ARTICLE XXIX HISTORIC DISTRICT**

[Added 3-8-2005]

**133-160 Authority**

This ordinance is established under the authority granted in RSA 674:46 and 674:46-a.

**133-161 Purpose and Intent**

- A. To safeguard the heritage of the Town of Henniker as it is represented in structures of historical and architectural value.
- B. To preserve a district in the Town of Henniker that reflect elements of its cultural, social, and political history.
- C. To guide the development so as to be consistent with the character of a particular section of town.

**133-162 District areas**

- A. This Historic District reaffirms the Town Meeting votes of 1975 and 1976 when the existing Historic District was initially established.
- B. Historic District(s) shall be shown on the Historic District Overlay (HDO) Map adopted March 7, 2005, or as it may be amended, and is on file with the Town Clerk. [Amended 3- 13-2012]
- C. An Historic District or Districts shall be superimposed upon other established Zoning Districts as an Overlay District.

**133-163 Uses**

Uses permitted in the underlying Zoning District are permitted in the Historic District(s).

**133-164 Certificate of approval**

- A. The activities set forth in subparagraph D below shall not be authorized until and unless a Certificate of Approval is issued by the Historic District Commission.
- B. A Certificate of Approval is required for all work within the purview of the Commission regardless of whether such work required a building permit or any other permits issued by the Town of other authorities.
- C. Any person wishing to construct, alter, move or demolish any building or structure, which lies within a Historic District, must first obtain a Certificate of Approval from the Historic District Commission in the manner prescribed in Article 133-165.
- D. For the purposes of this article, the following activities shall be subject to a Certificate of Approval by the Historic District Commission:
  - 1. Erection, alteration, relocation, or demolition of a structure in the Historic District,
  - 2. Alteration, construction, or removal of stone walls, fencing, curbing, lighting, or signage within the Historic District,
  - 3. Any repairs, alterations, or improvements to the interior of all structures within the Historic District,
  - 4. Landscaping all property within the Historic District,
  - 5. Elements which are appurtenant to a building, including antennas, satellite dishes, flagpoles, mailboxes, window air conditioning units, and similar elements.

**133-165 Activities Not Requiring Certificates of Approval**

The following activities or elements are exempt from review by the Historic District Commission and a Certificate of Approval shall not be required.

- A. Work that had been done prior to the adoption of the Ordinance. Property owners are not required to bring any existing conditions into conformity with this Ordinance, except in cases where improving certain existing conditions may be integrally related to a proposal presented by the applicant.
- B. Construction, alteration, or demolition of any structures or element of a structure which is certified by the Town as being required for immediate public safety.

**133-166 Guidelines for Review**

The purpose of these guidelines is to preserve the distinctive character and integrity of the Historic District when rehabilitation and new construction are proposed.

A. Changes to Existing Structures

- 1. Routine maintenance of existing structures within the District shall be deemed of no interest to the Commission,
- 2. When determining the appropriateness of all other alternatives, restorations, or remodeling of existing structures within the District the following criteria shall be used:
  - a. When an exterior or interior change is proposed, significant existing materials and elements shall be retained,
  - b. Where glass, plastic, wood, masonry elements are an integral part of a structure's historical architectural character, consideration shall be given to preservation of these elements so as to retain their original appearance,
- 3. Any new design elements introduced shall respect the character, age and history of the structure,
- 4. Existing historical doors, door frames, windows, and window frames shall be retained and rehabilitated whenever possible. When replacement is essential, new doors, door frames, windows, and window frames shall be in character with the structure,
- 5. Features which give a roof historical character shall be preserved or restored to the extent that such features are visible from the ground,
  - a. Essential outdoor mechanical equipment shall be installed in locations which create the least disturbance to the historical appearance of the structure and which involve minimum alteration and impact to its structure.

B. Construction of New Structures

- 1. Construction shall be complementary to the configuration of existing structures in the District,
- 2. Structures shall utilize exterior materials in keeping with the exteriors of structures in the District,
- 3. Structures shall respect and reflect the traditional scale and proportions of other existing historical structures, taking into consideration the height, width, setback, roof shapes or pitches and facade patterns of existing structures within the District.

ARTICLE XXIX HISTORIC DISTRICT

C. Demolition

1. No demolition permit may be issued by the Town until the Commission has either filed with the Town a signed letter of approval or has failed to file a Notice of Disapproval within the specified time period of forty five (45) days.
2. Where public safety needs require the immediate removal of a structure within the District, as determined and certified by the Town, the Historic District Commission shall allow removal if notice was provided to the Commission within 24 hours by certified mail of such determination.

D. Relocations

1. Structures within the Historic District shall be retained on their present sites whenever possible. Relocation shall be considered as an alternative to demolition.

E. Signs/Plaques

1. All new signs/plaques and all changes to existing signs/plaques within the Historic District shall require review and approval by the Historic District Commission;
2. New signs/plaques shall be constructed of wood, metal or stone, exhibiting historic sign design and color, and have no internal illumination;
3. Size shall be determined given the context of the site and building(s);
4. Portable/seasonal/temporary signs/plaques may be permitted for up to 30 days per year;
5. If there is a conflict between the requirements of the Historic District Ordinance and the Town of Henniker Sign Ordinance, this section of the Historic District Ordinance shall supersede the Sign Ordinance.

F. Streetscape

1. Off street parking shall be placed to the rear of the structures where possible and appropriated screened;
2. Historical and traditional marking for property boundaries and grounds, such as stone walls, fences, and tree borders shall be preserved. Replications or extensions may be introduced where appropriate.

**133-167 Application Procedure**

The following procedures and any Rules of Procedure duly adopted by the Historic District Commission shall be followed in processing applications for Certificates of Approval.

- A. Applications must be submitted to the Historic District Commission for a Certificate of Approval prior to any work to be performed,
- B. Applications shall be submitted to the Commission, through the Henniker Town Hall offices, in a timely manner and format prescribed by the Historic District Commission,
- C. The application to the Commission may be filed simultaneously with any other application or request for Town land use approvals or permits.

**133-168 Public Hearings**

- A. The Historic District Commission shall conduct a public hearing on all applications for Certificates of Approval. The applicant and all abutters shall receive a notice of the public hearing by certified mail, and a public notice of the hearing shall be posted in at least 2 public places and shall be published in a newspaper of general circulation in the Town of Henniker. Said notice shall be given not less than 10 days before the date of the hearing.
- B. At its meeting, the Commission shall review the application for completeness, as specified in the A Historic District Application. If the application is determined to be complete, then the Commission shall vote to accept the application and commence with the public hearing. If the application is not complete, then consideration of the application shall be suspended until the next scheduled meeting.
- C. The Commission shall review the application using the criteria set forth in Section VII and then shall act to approve, approve with conditions, or disapprove the application.

**133-169 Issuance of Certificate of Approval or Notice of Disapproval**

- A. At the conclusion of its review, the Commission shall issue in writing a Certificate of Approval or Notice of Disapproval within forty five (45) days of the filing of the application, unless the applicant agrees, in writing, to a longer review period.
- B. Failure to render a decision within the specified time period shall be deemed to constitute approval by the Commission,
- C. A Certificate of Approval will be issued if, in the opinion of a majority of the Commission members present and voting, that the applicant’s proposal meets the criteria of Section VII.
- D. The Certificate of Approval, together with any changes, conditions or stipulations deemed necessary by the Commission for the applicant to comply with the provisions of this Ordinance, shall be signed by the Chairperson of the Commission.
- E. A Notice of Disapproval shall be issued if, in the opinion of a majority of the Commission members present and voting, that the applicant’s proposal does not meet the criteria of Section VII.
- F. The Notice of Disapproval, together with the written reasons for such disapproval, shall be signed by the Chairperson, or a designee,
- G. If a Notice of Disapproval is issued, the applicant may make modifications to the proposed plan and submit a new application for review by the Commission,
- H. Decisions of the Commission shall be made available for public inspection within seventy two (72) hours and placed on file at the Town Hall.

**133-170 Appeals**

As per RSA 677:17, any person or persons jointly or severally aggrieved by a decision of the Commission shall have the right to appeal that decision to the Zoning Board of Adjustment in accordance with the provisions of RSA 676:5 and RSA 677:1-14.

**133-171 Enforcement/Penalties**

Violation of this Ordinance shall be subject to the remedies provided in RSA 676:15 and 676:17.

**133-172 Validity/Severability**

If any section, clause, provision or phrase of this Ordinance shall be held to be invalid or unconstitutional by any court of competent authority, such holding shall not affect, impair or invalidate any other section, clause, provision, portion or phrase of the Ordinance.

## ARTICLE XXX BUILDING CODE

[Updated 12/2022]

### I. STATEMENT OF PURPOSE:

The purpose of this code is to establish uniform rules and regulations for the construction of buildings within the corporate limits of the Town of Henniker. This code is not intended, nor shall it be construed, to create a duty on the part of Henniker or its officials, employees or agents, to promote the health, safety or economic interests of any person or entity, and no person or entity shall have the right to rely on this Code, or any action taken or not taken hereunder, as a basis to assert the claim for any loss, damage or expense against the Town, its officials, employees or agents.

### II. ENFORCEMENT:

The town is establishing a process for the enforcement of the State Building Code in accordance with NH RSA 674:51.

### III. BUILDING INSPECTOR:

- A. The position of Building Inspector is hereby established
- B. The Building Inspector is authorized to issue building permits as provided by RSA 676:11-13 and certificates of occupancy for any building or structure that is erected or remodeled or that undergoes a change, or expansion, of use.
- C. The Building Inspector is authorized to perform inspections as necessary to assure compliance with the Town Building Code regulations.
- D. The Building Inspector is authorized to enforce the State Building Code and all local ordinances. They may also perform inspections to assure compliance with the State Building Code and all local ordinances.

### IV. ADOPTION OF CODES BY REFERENCE:

The Board of Selectmen of the Town of Henniker hereby adopts the following building codes and amendments thereto. These codes shall be known as the Henniker Building Code and are adopted to establish rules and regulations for the construction of buildings within the corporate limits of the Town of Henniker. Where any provisions of the Building Code Ordinance conflicts with State law, State law will supersede, unless provided for within this Ordinance or the provisions of the Adopted Codes. Additional codes adopted by reference herein, pursuant to NH RSA 674:51 and 674:51-a:

- A. NFPA 101 – Life Safety Code – 2018 Edition (or per the latest edition and Amendments as adopted by the State of New Hampshire)
- B. NFPA 1 – Fire Code – 2018 Edition (or per the latest edition and Amendments as adopted by the State of New Hampshire)
- C. NFPA 54 – National Fuel Gas Code – 2018 Edition (or per the latest edition and Amendments as adopted by the State of New Hampshire)
- D. NFPA 70 – National Electric Code – 2020 Edition (or per the latest edition and Amendments as adopted by the State of New Hampshire)

ARTICLE XXX BUILDING CODE

- E.** NFPA 211 – Standards for Chimneys, Fireplaces, Vents, and Solid Fuel-Burning Appliances – 2016 Edition (or per the latest edition and Amendments as adopted by the State of New Hampshire)
- F.** IBC – ICC International Building Code – 2018 Edition (or per the latest edition and Amendments as adopted by the State of New Hampshire)
- G.** IRC – ICC International Residential Code – 2018 Edition (or per the latest edition and Amendments as adopted by the State of New Hampshire)
- H.** IPC – ICC International Plumbing Code – 2018 Edition (or per the latest edition and Amendments as adopted by the State of New Hampshire)
- I.** IMC – ICC International Mechanical Code – 2018 Edition (or per the latest edition and Amendments as adopted by the State of New Hampshire)
- J.** IEC – ICC International Energy Code – 2018 Edition (or per the latest edition and Amendments as adopted by the State of New Hampshire)
- K.** IEBC – ICC International Existing Building Codes – 2018 Edition (or per the latest edition and Amendments as adopted by the State of New Hampshire)
- L.** ISPSC – ICC International Swimming Pool and Spa Code – 2018 Edition (or per the latest edition and Amendments as adopted by the State of New Hampshire)
- M.** NH RSA 319 – Governing Electricians and homeowners’ exemptions
- N.** NH RSA 153:36 VIII - Mechanical Licensing and homeowners’ exemption

The Town of Henniker’s amendments to these Codes are attached. A copy of each of the Codes with the amendments is on file with the Town Clerk’s Office and the Building, Planning & Zoning Department. The State of New Hampshire amendments to these codes may be found at:

<https://www.nh.gov/safety/divisions/firesafety/building/documents/NH-Adopted-Building-and-Fire-Codes-September-2019.pdf>

**V. APPLICABILITY OF BUILDING CODE:**

“Name of jurisdiction” shall mean “Town of Henniker”. All buildings, building components, and structures constructed in the Town of Henniker shall comply with the Building Code, State Building Codes, and State Fire Codes. The construction, design, structure, maintenance, and use of all buildings or structures to be erected, and the alteration, renovation, rehabilitation, repair, removal, or demolition of all buildings and structures previously erected shall be governed by the provisions of the State building code.

**VI. LEGAL STATUS:**

The adoption of this ordinance shall not affect any suit or proceedings now pending in any court, nor shall it affect any legal decision reached prior to its adoption.

**VII. SEPARABILITY:**

If any portion of this ordinance is legally judged to be invalid or unconstitutional, it will have no effect on the remainder of the ordinance.

### **VIII. BUILDING PERMIT REQUIRED:**

Before beginning any work, except as exempted elsewhere in this ordinance, on any building project, the owner or his authorized agent shall secure a building permit from the Building, Planning, and Zoning Department in accordance with the applicable building code. Upon approval by the Building, Planning, and Zoning Department a permit card will be issued to the owner. This card shall be posted in a conspicuous location, visible from the street, for the duration of construction. A building permit shall be valid for two (2) years. If the project is not completed within the two-year permit window, written request for one-time extension of the time of completion shall be submitted to the Building Inspector/Code Enforcement Officer for approval

### **IX. AMENDMENTS TO BUILDING PERMITS:**

Any amendment to a Building Permit shall be submitted in writing to the Building, Planning & Zoning Department, with appropriate adjustments to the permit fee. An amendment is required for any changes in building location, footprint, exiting, exit ways, life safety provisions, or significant changes in plumbing, electrical, mechanical, etc. Approval shall be granted before work is commenced. For other than one and two family dwellings, it shall be determination of the Planning and Zoning Staff whether the proposed changes merit an amendment to existing approved permit or require a new application submission.

### **X. PERMIT NOT REQUIRED**

Work consistent with Section 102.6 of the adopted International Building Code or Section R105.2 of the adopted International Residential Code including small accessory structures of less than 200 square feet, interior finish work, ordinary repairs with like materials, may be performed without a Building Permit. Further, reroofing and residing may be performed without a permit in Henniker. Other examples not requiring permits according to the code include, but are not limited to:

#### **Building:**

1. One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided the floor area is not greater than 200 square feet (18.58 m<sup>2</sup>).
2. Fences, other than swimming pool barriers, not over 7 feet (2134 mm) high.
3. Oil derricks.
4. Retaining walls that are not higher than 4 feet (1220 mm) measured from finished grade at the bottom of the wall to finished grade at the top of the wall, unless supporting a surcharge or impounding Class I, II or III-A liquids.
5. Water tanks supported directly upon grade if the capacity does not exceed 5,000 gallons (18 927 L) and the ratio of height to diameter or width does not exceed 2 to 1.
6. Sidewalks, driveways and on-grade concrete or masonry patios not more than 30 inches (762 mm) above adjacent grade and not over any basement or story below and which are not part of an accessible route.
7. Painting, papering, tiling, carpeting, cabinets, countertops and similar finish work not involving structural changes or alterations.
8. Temporary motion picture, television and theater stage sets and scenery.
9. Prefabricated swimming pools accessory to a Use Group R-3 occupancy, as applicable in Section 101.2, which are equal to or less than 24 inches (610 mm) deep, do not exceed 5,000 gallons (18 927 L) capacity and are installed entirely above ground.

10. Shade cloth structures constructed for nursery or agricultural purposes and not including service systems.
11. Swings and other playground equipment accessory to 1 and 2 family dwellings.
12. Window awnings in Group R-3 and U occupancies, supported by an exterior wall that do not project more than 54 inches (1372 mm) from the exterior wall and do not require additional support.
13. Nonfixed and movable fixtures, cases, racks, counters, and partitions not higher than 5 feet 9 inches (1753 mm) and not containing any electrical, plumbing, or mechanical equipment.
14. Portable grandstands or bleachers providing seating for fewer than 100 persons when located outside of a building.
15. Decks not exceeding 200 square feet (18.58 m<sup>2</sup>) not more than 30 feet (9144 mm) above grade, detached, and do not serve an exit door.

**Electrical:**

1. Minor repairs and maintenance work, including replacement of lamps and fuses or the connection of approved portable electrical equipment to approved permanently installed receptacles.
2. Electrical equipment used solely for radio and television transmissions, but a permit is required for equipment and wiring for power supply and for the installation of towers and antennas.
3. Temporary testing systems required for the testing or servicing of electrical equipment or apparatus.

**Gas:**

1. Portable heating or cooking appliances with a self-contained fuel supply.
2. Replacement of any minor part that does not alter approval of equipment or make such equipment unsafe.
3. Portable fuel cell appliances that are not connected to a fixed piping system and are not interconnected to a power grid.

**Mechanical:**

1. Portable heating appliances with a self-contained fuel supply.
2. Portable ventilation appliances.
3. Portable cooling units.
4. Steam, hot or chilled water piping within any heating or cooling equipment regulated by this code.
5. Replacement of any minor part that does not alter approval of equipment or make such equipment unsafe.
6. Portable evaporative coolers.
7. Self-contained refrigeration systems containing 10 pounds (4.54 kg) or less of refrigerant or that are actuated by motors of 1 horsepower (746 W) or less.
8. Portable fuel cell appliances that are not connected to a fixed piping system and are not interconnected to a power grid.

**Plumbing:**

1. The stopping of leaks in drains, water, soil, waste or vent pipe; provided, however, that if any concealed trap, drain pipe, water, soil, waste or vent pipe becomes defective and it becomes necessary to remove and replace the same with new material, such work shall be considered new work and a permit shall be obtained and inspection made as provided in this code.
2. The clearing of stoppages or the repairing of leaks in pipes, valves or fixtures, and the removal and reinstallation of water closets, provided such repairs do not involve or require the replacement or rearrangement of valves, pipes or fixtures.

**Emergency Repairs:**

Where equipment replacements and repairs must be performed in an emergency situation, the permit application shall be submitted within the next working business day to the building official.

**XI. CERTIFICATE OF OCCUPANCY:**

When a Building Permit is required on any building project under this ordinance, such building project shall not be used or occupied, in whole or in part, as provided for in section IV, until the Certificate of Occupancy/Completion shall be issued by the Building, Planning & Zoning Department, unless approved in writing. No Certificate of Occupancy shall be issued unless there is compliance with the Building Code Ordinance, Zoning Ordinance, Subdivision Regulations and Site Plan Review Regulations, as required by RSA 673:13 I. All provisions contained in any of the national codes adopted under section IV relating to Certificates of Occupancy/Completions shall be enforced by the Building, Planning & Zoning Department. A Partial/Temporary Certificate of Occupancy/Completions, as provided for in any State building Code, may be issued for a period not to exceed thirty (30) days which may be extended at the discretion of the Building, Planning, and Zoning pursuant to RSA 676:12 III. The additional inspections required in order to issue a Temporary Certificate of Occupancy/Completion shall be paid for as established in the Rate & Fee Schedule adopted by the Board of Selectmen.

**XII. ENFORCEMENT & PENALTIES**

This ordinance shall be enforced by the Building, Planning & Zoning Department. In addition to any remedies available to the Town, specifically including those under RSA 676:15, any person who violates this ordinance.

- A. Shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.
- B. Shall be subject to a civil penalty not to exceed \$275 (\$500 for subsequent violations) for each day that such violation is found to continue after the date on which the violator receives written notice from the municipality that he/she is in violation, whichever is earlier.
- C. No action may be brought under this provision unless the alleged offender has been served with written notice which clearly sets forth the nature of the violation with reference to specific provisions of the Building Code. (A posted Stop Work Order constitutes such notice.)

**XIII. BOARD OF APPEALS:**

The Board of Appeals shall be the Henniker Zoning Board of Adjustments. Any person aggrieved by a decision of the Building, Planning, and Zoning Department may appeal such decision to the Board of Appeals. The Board of Appeals shall have the power by vote of a majority of its members to vary the application of any provision of the Building Code to any particular case when, its opinion, the enforcement thereof would do manifest injustice and would be contrary to the spirit and purpose of the Building Code.

Any appeal to the Board of Appeals shall be taken within fifteen (15) days of the date of the decision except for decisions that a violation exists. With regards to decisions by the Building, Planning, and Zoning that there has been a violation of the Building Code, the applicant and/or contractor shall have seven (7) days from the receipt of the Notice of Violation to appeal the decision of the Building, Planning, and Zoning. The time notice and manner of the hearing before the Board of Appeals shall conform to the same requirements as a hearing before the Zoning Board of Adjustment. Any person aggrieved by a decision of the Board of Appeals may appeal such decision to the Superior Court for Merrimack County.

**XIV. APPENDICIES:**

The following Appendices are attached hereto:

- A. Appendix A – Application for Building Permit
- B. Appendix B – Schedule for Processing Building Permit Applications
- C. Appendix C – Procedures for Handling Non-compliance

**XV. AMENDMENTS:**

The following amendments as adopted by the State of NH, reviewed by the BCRB on Nov 20,2021 and signed by the Governor on July 1,2022 are hereby adopted by the Town of Henniker:  
NH Building Code Revision One Effective July 1,2022 in its entirety

**XVI. EFFECTIVE DATE:**

This ordinance shall take effect as of upon its passage at Town Meeting, and shall thereupon supersede all prior Zoning Ordinances in the Town of Henniker

**APPENDICIES**

**APPENDIX A – APPLICATION FOR BUILDING PERMIT**

Application for a permit shall be made to the code official and shall be accompanied by one complete set of plans and specifications showing the work to be done. Additional sets of plans shall be provided for, if required by the Building, Planning, and Zoning Department. All plans shall bear the seal of an architect or engineer licensed by the State of New Hampshire, except for single or two-family residences or any structure which does not have its principal structural members reinforced concrete or structural steel and its two and one-half stories or less and 4,000 square feet or less in area and is not a building of assembly, church, hospital, or school use.

**APPENDIX B – SCHEDULE FOR PROCESSING PERMIT APPLICATION**

Upon submission of a complete application, the code official shall act to approve or deny a Building Permit within fourteen days (14) for one- and two-family dwellings and thirty (30) days for non-residential application encompassing more than two (2) dwelling units.

An application which is incomplete shall be deemed abandoned if no further action is taken by the applicant within 180 days after the original filing. All material furnished will be returned to the applicant upon written request. If construction is not started within one (1) year after the date of approval of the permit, the job will be considered abandoned and twenty-five (25%) percent of the Building Permit fee will be returned to the applicant upon written request.

**APPENDIX C – PROCEDURE FOR HANDLING NON-COMPLIANCE**

The owner/owner’s representative shall obtain an appointment for an inspection 24 hours before any work is covered to determine Building Code compliance. If the code official finds work covered the contractor shall, upon request uncover the work for inspection. If an owner/contractor is not available at a scheduled inspection, the owner may be charged a fee as established in the current Rate & Fee Schedule as adopted by the Board of Selectmen to cover the Building, Planning, and Zoning Department costs and will be required to reschedule immediately the required inspection.

If the code official determines that work is proceeding without the required inspections being requested, the Building Permit will be suspended and the code official shall remove the Permit Card from the project and no further work shall be done under the Building Permit until the suspension has been lifted. Reinstatement of the Building Permit will require the contractor to pay to the Building, Planning, and Zoning Department a sum equal to one-half of the original permit fee or fifty dollars (\$50.00), whichever is greater.

The provision of this Appendix shall equally apply to the owner if the owner is performing the work on the building or structure.

**ARTICLE XXXI HOUSING STANDARDS ORDINANCE**

**XVII. STATEMENT OF PURPOSE.**

This Ordinance provides health-based provisions to simplify and complement existing policies, ordinances, codes, and laws already in use by the Town of Henniker and State of New Hampshire for the upkeep of existing homes. Individually and together, the Ordinance constitutes minimum performance standards for property and housing use and maintenance necessary to preserve neighborhoods, abate nuisances, and protect the public health, safety, and welfare of Town residents.

The following is a list of current codes, ordinances, and some of the laws used to both create this document and to aid in the enforcement goal of safe and healthy housing.

**HENNIKER NH 2018 IRC Table R301.2 (1) CLIMATIC AND GEOGRAPHIC DESIGN CRITERIA**

Ground Snow Load	WIND DESIGN				SEISMIC DESIGN CATEGORY <sup>f</sup>	SUBJECT TO DAMAGE FROM			WINTER DESIGN TEMP <sup>e</sup>	ICE BARRIER UNDERLAYMENT REQUIRED <sup>h</sup>	FLOOD HAZARDS <sup>g</sup>	AIR FREEZING INDEX <sup>i</sup>	MEAN ANNUAL TEMP <sup>j</sup>
	Speed <sup>d</sup> (mph)	Topographic-effects <sup>k</sup>	Special wind region <sup>l</sup>	Wind-borne debris zone <sup>m</sup>		Weathering <sup>a</sup>	Frost line depth <sup>b</sup>	Termite <sup>c</sup>					
80psf	110	No	No	No	B	Severe	48"	Slight to Moderate	0	Yes	March 1989 DFIRMS 2005	2000	47

For SI: 1 pound per square foot = 0.0479 kPa, 1 mile per hour = 0.447 m/s.

- a. Weathering may require a higher strength concrete or grade of masonry than necessary to satisfy the structural requirements of this code. The weathering column shall be filled in with the weathering index (i.e., "negligible," "moderate" or "severe") for concrete as determined from the Weathering Probability Map [Figure R301.2(3)]. The grade of masonry units shall be determined from ASTM C 34, C 55, C 62, C 73, C 90, C 129, C 145, C 216 or C 652.
- b. The frost line depth may require deeper footings than indicated in Figure R403.1(1). The jurisdiction shall fill in the frost line depth column with the minimum depth of footing below finish grade.
- c. The jurisdiction shall fill in this part of the table to indicate the need for protection depending on whether there has been a history of local subterranean termite damage.
- d. The jurisdiction shall fill in this part of the table with the wind speed from the basic wind speed map [Figure R301.2(4)A]. Wind exposure category shall be determined on a site-specific basis in accordance with [Section R301.2.1.4.](#)
- e. The outdoor design dry-bulb temperature shall be selected from the columns of 97<sup>1/2</sup>-percent values for winter from Appendix D of the *International Plumbing Code*. Deviations from the Appendix D temperatures shall be permitted to reflect local climates or local weather experience as determined by the building official.
- f. The jurisdiction shall fill in this part of the table with the seismic design category determined from [Section R301.2.2.1.](#)
- g. The jurisdiction shall fill in this part of the table with (a) the date of the jurisdiction's entry into the National Flood Insurance Program (date of adoption of the first code or ordinance for management of flood hazard areas), (b) the date(s) of the Flood Insurance Study and (c) the panel numbers and dates of all currently effective FIRMS and FBFMs or other flood hazard map adopted by the authority having jurisdiction, as amended.
- h. In accordance with [Sections R905.1.2, R905.4.3.1, R905.5.3.1, R905.6.3.1, R905.7.3.1 and R905.8.3.1](#), where there has been a history of local damage from the effects of ice damming, the jurisdiction shall fill in this part of the table with "YES." Otherwise, the jurisdiction shall fill in this part of the table with "NO."
- i. The jurisdiction shall fill in this part of the table with the 100-year return period air freezing index (BF-days) from Figure R403.3(2) or from the 100-year (99%) value on the National Climatic Data Center data table "Air Freezing Index-USA Method (Base 32°)"
- j. The jurisdiction shall fill in this part of the table with the mean annual temperature from the National Climatic Data Center data table "Air Freezing Index-USA Method (Base 32°F)"
- k. In accordance with [Section R301.2.1.5](#), where there is local historical data documenting structural damage to buildings due to topographic wind speed-up effects, the jurisdiction shall fill in this part of the table with "YES." Otherwise, the jurisdiction shall indicate "NO" in this part of the table.
- l. In accordance with figure R301.2(4)A, where there is no local historical data documenting unusual wind conditions, the jurisdiction shall fill in this part of the table with "YES" and identify any specific requirements. Otherwise, the jurisdiction shall indicate "NO" on this part of the table.
- m. In accordance with Section R301.2.1.2.1, the jurisdiction shall indicate the wind-borne debris wind zone(s). Otherwise the jurisdiction shall indicate "NO" in this part of the table.

- A. State Fire Code Saf-C 6000**
- B. International Building Code 2018 with Amendments (or per the latest edition and Amendments as adopted by the State of New Hampshire)**
- C. International Energy Conservation Code 2018 with Amendments (or per the latest edition and Amendments as adopted by the State of New Hampshire)**
- D. International Existing Building Code 2018 with Amendments (or per the latest edition and Amendments as adopted by the State of New Hampshire)**

ARTICLE XXXI HOUSING STANDARDS ORDINANCE

- E. International Mechanical Code 2018 with Amendments (or per the latest edition and Amendments as adopted by the State of New Hampshire)
- F. International Plumbing Code 2018 with Amendments (or per the latest edition and Amendments as adopted by the State of New Hampshire)
- G. International Residential Code 2018 with Amendments (or per the latest edition and Amendments as adopted by the State of New Hampshire)
- H. National Electrical Code 2020 with Amendments
- I. State of New Hampshire Health Officers Manual
- J. Town of Henniker Zoning Ordinance
- K. National Healthy Housing Standard 2014 (NHHS 2014)
- L. State of New Hampshire RSA 141-E
- M. State of New Hampshire RSA 48-A
- N. State of New Hampshire RSA 130-A
- O. State of New Hampshire RSA 540-A
- P. State of New Hampshire Department of Environmental Services (NH DES)
- Q. National Fire Protection Association 1 (NFPA 1)
- R. National Fire Protection Association 72 (NFPA 72)

**XVIII. DEFINITIONS.**

For this Ordinance, the following words and phrases shall have the meaning respectively ascribed to them by this Section. Where the words “dwelling,” “dwelling unit,” “premises,” and “structure,” or a particular building component are used in this Ordinance, they shall be construed as if they were followed by the words “or any part thereof.” Words used in the singular include the plural, and the plural the singular:

**Adequate** shall mean sufficient to accomplish the purpose intended without unreasonable risk to human health or safety, per the AHJ or designated official.

**AHJ** shall mean Authority Having Jurisdiction

**Approved** shall mean established by the local or state authority having such administrative authority or determined by the designated official.

**Asbestos** shall mean chrysotile, amosite, crocidolite; or, in fibrous form, tremolite asbestos, anthophyllite asbestos, or actinolite asbestos.

**Asbestos-containing material** shall mean any material or product containing more than one percent asbestos.

**Backdrafting** shall mean improper venting of combustion appliances that causes combustion by-products or other gases to enter the indoor environment rather than to exhaust outdoors.

**Balusters** shall mean pillars or columns in a series supporting a rail or guard.

**Basement** shall mean a portion of a building located partly or entirely below grade.

**Biological agent** shall mean but not be limited to mold, infestation, human and animal waste, wastewater, sewage, rotting material, and accumulation of trash that may harbor viruses, parasites,

fungi, and/or bacteria.

**Carbon monoxide alarm** shall mean an electronic device that measures the level of carbon monoxide gas in the air and is equipped with a sensor that activates an audible alarm when an amount of carbon monoxide above the device's threshold level accumulates in the area in which the alarm is located.

**Chemical agent** shall mean chemicals that have the potential to cause adverse health effects.

**Chimney** shall mean a vertical masonry shaft of reinforced concrete or other approved noncombustible, heat-resisting material enclosing one or more flues, to remove products of combustion from solid, liquid, or gaseous fuel.

**Class ABC fire extinguisher** shall mean a fire extinguisher capable of putting out (1) fires in ordinary combustible materials, such as wood, cloth, paper, rubber, and many plastics (Class A); (2) fires in flammable liquids, combustible liquids, petroleum greases, tars, oils, oil-based paints, solvents, lacquers, alcohols, and flammable gases (Class B); and (3) fires that involve energized electrical equipment (Class C).

**Cleanable** shall mean moisture-resistant, free from cracks, pitting, chips, or tears, and designed to be cleaned frequently.

**Common areas** shall mean areas within multifamily housing that are designated for use by all occupants, owners, tenants, or users of a building or building complex, including but not limited to corridors, hallways, lobbies, parking areas, laundry rooms, recreational spaces, pools, and exterior property.

**Dwelling** shall mean any building wholly or partly used or intended to be used for living, sleeping, cooking, and eating.

**Dwelling unit** shall mean a room or group of rooms used or intended to be used for living, sleeping, cooking, and eating by one or more individuals living together as a single household.

**Egress** shall mean the path available for a person to leave a building. This route shall be unobstructed, and doors along this route cannot be subject to locking from the side to which people will be leaving.

**Electrical system** shall mean a system that makes electricity available in a building and distributes it through outlets and lighting fixtures for occupant use.

**Emergency escape and rescue opening** shall mean an operable window, door, or other similar device that provides for a means of escape and access for rescue in the event of an emergency.

**Flue** shall mean a conduit made of non-combustible heat-resisting material that is used to remove the products of combustion from solid, liquid, or gaseous fuel.

**Formaldehyde** shall mean the colorless, flammable carcinogenic chemical, an organic compound with the formula HCHO, which is used in the manufacture of building materials (e.g., pressed wood products) and household products. Federal limits for formaldehyde emissions from building materials (hardwood plywood, medium-density fiberboard, and particleboard) were established in 15 U.S.C. 2697(b) (2).

**Friable** shall mean asbestos-containing material that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

**Grade** shall mean the finished ground level adjoining building at all exterior walls.

**Graywater system** shall mean a system for collecting household wastewater from plumbing fixtures other than toilets and treating it for non-potable reuse.

**Guard** shall mean a building component or a system of building components located near the open sides of elevated walking surfaces or adjacent to a window that minimizes the possibility of a fall from the walking surface or window to the lower level.

**Habitable room** shall mean an enclosed floor space used or intended to be used for living, sleeping, cooking, or eating, and excluding bathrooms, toilet rooms, laundries, furnace rooms, pantries, kitchenettes, utility rooms, foyers, communicating corridors, stairways, closets, storage spaces, workshops, or rooms with less than 70 ft<sup>2</sup> (6.5 m<sup>2</sup>) of floor space.

**Handrail** shall mean a horizontal or sloping rail intended for grasping by the hand for guidance or support that adheres to code.

**Harborage** shall mean any conditions or place where pests can obtain water or food, nest, or obtain shelter.

**Healthy:** See “safe and healthy.”

**Heating system** shall mean facilities that, for the purpose of maintaining thermal comfort during cold weather, heat air or water through a furnace or heat pump and distribute such heat through vents, ducts, pipes, or radiators, or hardwired electrical heaters. Neither a cooking appliance nor a portable, unvented fuel-burning space heater is a heating system. No solid fuel appliance can act as a primary source of heat.

**Infestation** shall mean the recurrent presence of any life stages of a pest that presents a hazard to humans, property, or the environment.

**Insects** shall mean all species of classes of Arachnida and Insecta (Hexapoda) of the phylum Arthropoda and includes but is not limited to flies, mosquitoes, bed bugs, crickets, cockroaches, moths, bees, wasps, hornets, fleas, lice, beetles, weevils, gnats, ants, termites, mites, ticks, spiders, and scorpions.

**Integrated pest management** shall mean a systematic strategy for managing pests that consists of prevention, exclusion, monitoring, and suppression of pests. Where chemical pesticides are necessary, a preference is given to materials and methods that maximize safety and reduce environmental health risk. Methods to manage pests include eliminating their harborage places; removing or making inaccessible their food and water sources; routine inspection and monitoring; identification of evidence found; treatment that is scaled to and designed for the infestation; using the least-toxic pesticide for the identified pest; and follow-up inspection until the infestation is gone. Low-toxicity pesticide products are labeled with the signal word of CAUTION while WARNING, DANGER, and POISON indicate higher levels of toxins.

**Lead-based paint** shall mean equal to or greater than 1.0 milligram lead per square centimeter or 0.5 percent lead by weight for existing surfaces, paint, or other surface coatings, and equal to or greater than 90 parts per million (ppm) or .009 percent lead for paint and other surface coatings at the point of purchase.

**Lead-based paint hazard** shall mean any deteriorated lead-based paint, dust-lead hazard, soil-lead hazard, lead-based paint present on chewable surfaces with teeth marks, or lead-based paint present on friction surfaces, in accordance with 40 C.F.R. § 745.65.

**Let** shall mean to lease or grant the use and possession of real property whether for compensation.

**Long-lasting battery** shall mean a battery having a life of ten or more years.

**Methamphetamine** shall mean the synthetic drug with more rapid and lasting effects than amphetamine, sometimes used or manufactured illegally as a stimulant.

**Mold** shall mean a growth that a fungus produces on damp or decaying organic matter or on living organisms.

**Multifamily housing** shall mean any dwelling containing more than two dwelling units.

**Occupant** shall mean any individual living, sleeping, cooking, or eating in and having possession of a dwelling or dwelling unit.

**Owner** shall mean any person who alone, jointly, or severally with others, has legal title to the premises, dwelling, or dwelling unit, with or without accompanying actual possession thereof; has charge, care, or control of any premises, dwelling, or dwelling unit, as owner, agent of the owner, or other person; is executor, administrator, trustee, or guardian of the estate of the owner; is a mortgagee in possession; or is the senior officer or trustee of the association of unit owners of a condominium.

**Person** shall mean any individual, firm, corporation and its officers, association, partnership, cooperative, trustee, executor of an estate, governmental agency, or any other legal entity recognized by law.

**Pesticide** shall mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant.

**Pests** shall mean insects, rodents, or other vermin.

**Plumbing** shall mean and include any and all of the following facilities and equipment: water pipes, garbage disposal units, waste pipes, toilets, sinks, bathtubs, shower baths, catch basins, drains, vents, installed clothes washing machines and dishwashers, and any other supplied plumbing fixtures, together with all connections to water, sewer, or gas lines.

**Potable water** shall mean water that complies with the maximum contaminant limits of the United States Environmental Protection Agency (EPA) or a regulatory limit that is more protective than EPA's.

**Premises** shall mean a lot or parcel of land or plot of land, either occupied or unoccupied by any dwelling, and includes any such building, accessory structure, or other structure thereon.

**Privacy** shall mean the existence of conditions that permit an individual or individuals to be without observation, interruption, or interference by unwanted individuals.

**Properly connected** shall mean installed in accordance with all applicable codes and ordinances, and in good working order and not constituting a hazard to life or health.

**Recyclable materials** shall mean disposable products composed of glass, metal, paper, plastic, and similar content that can be processed to produce a new supply of the same material or be reused in the production of other materials.

**Riser** shall mean the vertical surface that connects one tread of a step or stair to the next.

**Rodent** shall mean any member of the order Rodentia, including but not limited to field and wood mice, wood rats, squirrels, woodchucks, gophers, Norway rats (*Rattus norvegicus*), roof rats (*Rattus rattus*), and house mice (*Mus musculus*).

**Rubbish** shall mean garbage, refuse, trash, or ashes.

**Safe and healthy** shall mean the condition of being free from danger and chemical, biological, and physical agents that may cause injury, disease, or death; and fit for human occupancy.

**Sleeping room** shall mean a room that meets the area, placement, and egress requirements for such a use per the reasoned judgement of the AHJ.

**Smoke** shall mean emissions from a lighted pipe, cigar, cigarette, hookah, weed, herbs, or any other lighted biomass-burning substances such as but not limited to tobacco, marijuana, and incense.

**Smoke detector** shall mean a device that is equipped to activate an audible alarm when it detects the presence of combustion products in air.

**Space heater** shall mean a self-contained convection or radiant heater designed to heat a room, two adjoining rooms, or some other limited space or area.

**Supplied** shall mean paid for, furnished by, provided by, or under the control of the owner or operator.

**Toilet room** shall mean a room containing a water closet or urinal but not necessarily a bathtub or shower.

**Trash** shall mean garbage, refuse, rubbish, or ashes.

**Trash container** shall mean a container with a tight-fitting lid that is constructed of metal or other durable material that is impervious to rodents, insects, and handling stress; and is capable of being filled, emptied, and cleaned without creating unsanitary conditions.

**Tread** shall mean the horizontal surface of a step or stair.

**Unblockable drain** shall mean a pool, spa, or whirlpool drain of any size and shape that a human body cannot sufficiently block to create a suction entrapment hazard, per code.

**Ventilation system** shall mean the natural or mechanical process of supplying or removing conditioned or unconditioned air to or from a space.

**Volatile organic compounds, or VOCs**, shall mean organic chemical compounds whose composition makes it possible for them to evaporate under normal indoor atmospheric conditions of temperature and pressure.

**Waterproof** shall mean impervious to water.

**Watertight** shall mean closely sealed, fastened, or fitted so that no water enters or passes through the surface.

**Weathertight** shall mean secure against penetration by air, wind, rain, snow, and other weather conditions.

## **XIX. ADMINISTRATION AND ENFORCEMENT**

**A. Inspection.** In the administration of this Ordinance, the Code Enforcement Officer may inspect buildings, premises, and dwellings or dwelling units with consent or pursuant to an administrative warrant issued under RSA 155-A:7 and RSA 595-B.

**B. Notice of Violation.** If the Code Enforcement Officer observes a violation but determines it does not rise to the magnitude of an immediate notice to vacate because said violation does not pose a serious hazard to life, health, or safety, the Code Enforcement Officer shall issue a notice of violation to the property owner or occupant stating the nature of the violation and the time period within which such violation must be corrected, and describing the administrative appeals process. If the owner or occupant fails to correct the violation in a timely manner, the Code Enforcement Officer may commence formal enforcement action, as allowed by law, to correct the violation.

**XX. PENALTIES**

**A. Violations**

- i. Any violation of a provision of this Ordinance or any failure to comply with this Ordinance shall be prosecuted within the limits provided by NH RSA 31:39 III, with penalties not to exceed \$1,000 for each offense.
- ii. Each day that a violation continues shall constitute a separate offense.

**XXI. EXEMPTIONS**

**A. Exempt Units**

- i. All owner occupied single and two-family dwellings
- ii. All non-owner-occupied dwelling units which are condemned as uninhabitable for human occupancy or dwellings which are being renovated, for which a legal current building permit has been issued, shall be exempt from this ordinance while the permit is valid.

**XXII. APPEALS.**

For this Ordinance, the Zoning Board of Adjustment shall be designated as the acting Building Code Board of Appeals for the Town of Henniker. Any party who has been aggrieved by a decision of the Code Enforcement Officer in the application of this Ordinance may appeal from such action by filing a written appeal from said administrative decision within thirty (30) days from the date of decision, said appeal to be filed with the Zoning Board of Adjustment through the Building, Planning, and Zoning Department. All appeals to the Building Code Board of Appeals shall be subject to the limitations and requirements of RSA 674:34.

**XXIII. DUTIES OF OWNERS AND OCCUPANTS.**

- A. Duties of Owners.** The owner has the duty to ensure that the structure, dwelling, dwelling unit, common areas, and premises are maintained in a safe and healthy condition, in compliance with this Ordinance and other applicable requirements.
- i. The owner shall ensure there is no accumulation of garbage or rubbish in common areas resulting from the landlord failing to provide and maintain trash containers, bulk storage containers, recycling containers, and areas where the containers are stored or have a written lease agreement to the contrary. NH RSA 48-A:14
  - ii. The owner shall maintain the building and premises to keep pests from entering the building and dwelling units, inspect and monitor for pests, and eliminate pest infestation in accordance with integrated pest management methods. NH RSA 48-A:14
  - iii. The owner shall provide occupants with at least 48 hours written notice of the planned use of a chemical agent such as a pesticide or herbicide, the date and location of application, and a copy of the warning label. NH RSA 540-A:3
  - iv. The owner shall not cause or allow any water, sewage, electrical, or gas service, facility, or equipment required for safe and healthy occupancy to be removed, shut off, or discontinued for any occupied dwelling, except for such temporary interruption as may be necessary while repairs or alterations are being performed, or during temporary emergencies

requiring discontinuance of service. This provision does not apply where the occupant has contractual control over the service and shall not be interpreted as preventing a utility company from discontinuing service for reasons allowed by law. NH RSA 540-A:3

- v. The owner shall investigate occupant reports of unsafe or unhealthy conditions, respond in writing, and make needed repairs in a timely manner per applicable laws, codes, and ordinances. NH RSA 540-A:3

**B. Duties of Occupants.** The occupant shall properly use and operate the dwelling unit and owner-supplied fixtures and facilities controlled by the occupant in order to maintain a safe and healthy environment within the dwelling unit, and report unsafe or unhealthy conditions, including breakdowns, leaks, and other problems requiring repair to the owner in a timely manner. RSA 540-A:3

- i. The occupant shall place trash and recyclables in the appropriate containers per written signed agreement. NH RSA 540-A:3
- ii. The occupant shall work with the owner to ensure pest-free conditions in accordance with integrated pest management. If the occupant's action leads to pooling of water or another excessive moisture problem inside the dwelling unit, the occupant shall clean up and dry out the area in a timely manner. NH RSA 540-A:3

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**ALL SECTIONS BELOW ARE EXAMPLES OF COMMON VIOLATIONS AND CONCERNS, BUT ARE NOT LIMITED TO THE FOLLOWING:**

**XXIV. STRUCTURE, FACILITIES, PLUMBING, AND SPACE REQUIREMENTS**

**A. Structure.** Every slab foundation, roof, floor, exterior and interior wall, ceiling, inside and outside stair, porch, deck, trim, accessory structure, fence, door, window, and window glass shall be safe to use and capable of supporting the intended design loads and load effects and shall be in good condition. NHHS 2014 / IPMC 2015

**B. Facilities.** Every plumbing fixture and pipe, chimney, flue, smoke pipe, and every other facility, piece of equipment, or utility shall be installed in conformance with applicable statutes, ordinances, and regulations. NH RSA 48-A:14

- i. Mechanical, utility, and heating equipment shall be separated from habitable rooms. In multifamily buildings, equipment rooms shall be secured per applicable laws, codes, and ordinances. NH RSA 48-A:14

**C. Plumbing Systems.** Every plumbing fixture, stack, vent, water, waste, and sewer pipe shall be properly installed, maintained in a safe and functional order, and kept free from obstructions, leaks, and defects. NH RSA 48-A:14

- i. An approved potable water supply system shall provide an adequate amount of running water under pressure to all fixtures simultaneously. NH RSA 48-A:14
- ii. An adequate supply of heated running water under pressure shall be supplied to sinks, bathtubs, showers, and laundry facilities. Water heaters shall be set at a minimum temperature of 110° F (43° C). At bathtub faucets and shower heads, the maximum temperature shall be 120° F (49° C). Heated water shall be provided by either a tank- type or tankless water heater. A tank-type water heater shall have a temperature/ pressure relief valve that discharges to a drip pan, storage tank, or the outside. The temperature of water discharged from a tankless water heater shall not exceed 140° F (60° C). NH RSA 48-A:14 / IRC 2015 P2708.4 / P2801.6.1 / P2803.2

- iii. Every waste pipe shall be connected to a public sewer system, an approved private sewage disposal system, or an approved graywater system. No toilet waste pipe shall be connected to a graywater system. The drainage system shall have an accessible cleanout. IRC 2015 P2602.1
- iv. Bathtub and shower faucets shall have anti-scald devices, such as an automatic temperature control mixing valve, water temperature limiting devices, or temperature actuated flow reduction valve. IRC 2015 P2708.4
- v. Multifamily housing with one or more central water heaters shall comply with ASHRAE Standard 188P to assess and manage the risks associated with Legionella in building water systems. NHHS 2014

**D. Kitchen.** Every dwelling unit shall have a single kitchen equipped with the following:

- i. A kitchen sink in good working condition that is properly connected to heated and unheated water supplies and waste pipes. Any provided dishwasher and components of the sink, including disposal and water filtration devices, shall be in good working condition and properly connected. RSA 48: A, 2015 / IPMC 502.1
- ii. A counter for food preparation and cabinets and/or shelves sufficient to store occupants' food that does not require refrigeration and eating, drinking, and food preparation equipment. Cabinets shall have tight-fitting doors and no gaps between any surfaces. The counter, countertop edges, cabinets, and shelves shall be of sound construction and furnished with surfaces that are impervious to water, smooth, and cleanable. NHHS 2014
- iii. A range for cooking food. The range shall be properly installed with all necessary connections for safe and efficient operation and shall be maintained in good working condition. NHHS 2014
- iv. The range shall include an oven unless both a separate oven, other than a microwave oven, and a cooktop are provided. A hot plate is not an acceptable substitute for burners on a range or cooktop. The range or cooktop shall have a vertical clearance of not less than 30 inches (762 mm) from above its surface to unprotected combustible material. Reduced clearances are permitted in accordance with the listing and labeling of a range hood. NHHS 2014
- v. If the lease does not provide for a range, adequate connections for the occupant's installation and operation of a range shall be provided. NHHS 2014
- vi. A refrigerator with a freezer. The refrigerator shall be in good working condition, of sufficient size to store occupants' food that requires refrigeration, and capable of maintaining a temperature less than 41° F (6° C) but more than 32° F (0° C). The freezer section shall be capable of maintaining a temperature below 0° F (-18° C). If the lease does not provide for a refrigerator, adequate connections for the occupant's installation and operation of a refrigerator shall be provided. NHHS 2014
- vii. A kitchen floor in good condition with a sealed, water-resistant, nonabsorbent, and cleanable surface. NHHS 2014 / 2015 IPMC 404.7
- viii. Wall surfaces immediately adjacent to the range, sink, and counter shall be covered with an impervious finish. NHHS 2014 / 2015 IPMC 404.7
- ix. The joints where a wall meets a cabinet or counter, and where a counter meets a stove or sink shall be sealed or covered to permit thorough cleaning and deter pests. NHHS 2014 / 2015 IPMC 404.7

**E. Bathroom.** Every dwelling unit shall have a private bathroom equipped with the following:

- i. A toilet in good working condition that is sealed to the waste pipe and affixed to the floor and properly connected to both the dwelling's water supply and a waste pipe leading to an approved sewage system or private waste disposal system. IRC 2015 R306.1
- ii. A sink in good working condition, with a stable connection to the wall or secure attachment to the floor that is properly connected to the heated and unheated potable water supply and a sealed trap leading to a waste pipe. IRC 2015 R306.4
- iii. A bathtub or shower in good working condition that is properly connected to the heated and unheated potable water supply and a waste pipe. The bottoms of bathtubs and shower floors shall have permanent or removable nonslip surfaces. IRC 2015 307.2 / IPMC 502.1
- iv. Cleanable nonabsorbent water-resistant material on floor surfaces and extending on bathroom walls at least 72 inches (183 cm) above the floor of a bathtub or shower stall. Such materials on walls and floors shall form a watertight joint with each other and with the bathtub or shower. IRC 2015 R307.2
- v. Ventilation for the bathroom provided. IRC 2015 R303.3
- vi. A door that latches and locks and operates without the need for special knowledge or tools. IPMC 2015 F 702.3
- vii. Grab bars shall be firmly anchored to the wall adjacent to each bathtub, shower, and toilet in accordance with the Americans with Disabilities Act Design Guidelines if needed by tenants upon request. NHHS 2014
- viii. Tub and shower enclosures composed of tile or panel assemblies with caulked joints shall be installed over moisture-resistant backing material, such as cement board behind such tub and shower enclosures. Monolithic tub and shower enclosures (e.g., fiberglass with no seams) are exempt from these limitations unless required by the manufacturer. NHHS 2014

**F. Minimum Space.** The dwelling shall provide privacy and adequate space for sleeping and living.

- i. A bedroom shall not be the only passageway to the only bathroom in a dwelling unit with more than one bedroom. 2015 IPMC 404.4.3
- ii. A bathroom or toilet room shall not be the only passageway to any habitable room, hall, basement, or the exterior of the dwelling. 2015 IPMC 503.1
- iii. Every habitable room shall have a minimum floor area of 70 ft<sup>2</sup> (6.5 m<sup>2</sup>) and the room shall not be less than 7 feet in any horizontal direction. IRC 2015 R304.2
- iv. Every dwelling shall have closet space or other storage space to store occupants' clothing and personal belongings. NHHS 2104
- v. The ceiling height of any habitable room shall be at least 84 inches (213 cm). In a habitable room with a sloping ceiling, at least one-half of the floor area shall have a ceiling height of at least 84 inches (213 cm). If any part of a room has a ceiling height lower than 60 inches (152 cm), its floor area shall not be considered when computing the floor area of the room. 2015 IRC 305
- vi. A habitable non-sleeping room located partly, or totally below grade shall be provided with natural light by windows in accordance with Section VIII, Article C, and ventilation in accordance with Section IX, Article C. In such a room, the ceiling and any ducts, pipes, and other obstructions shall be at least 84 inches (213 cm) above the floor throughout the room, and walls and floors shall be waterproof and free of dampness. 2015 IRC 305

**G. Floors and Floor Coverings.** Floors and floor coverings shall be attached at each threshold, maintained in safe and healthy condition, capable of being cleaned, and free of bulges and buckling. Carpets shall have no tears, folds, or bumps. NHHS 2014

**XXV. SAFETY AND PERSONAL SECURITY.**

**A. Egress.** In accordance with local fire codes, every dwelling unit shall have at least two means of egress that serve as emergency escapes and rescue openings. Each egress shall lead outside without passing through another dwelling unit or garage. IRC 2015 311.1

- i. Egress routes shall be unobstructed. Doors along egress routes shall be openable from the inside without the use of a key or tool or special knowledge. IRC 2015 section R310,R311.1
- ii. Any bedroom located below the fourth floor shall be provided with an exterior window openable from the inside that can be used as a means of emergency egress. IRC 2015 R310.2.1
- iii. If a habitable room partly or totally below grade is intended for sleeping purposes, at least one exterior window shall be openable from the inside and accessible for easy and ready use as an emergency exit. The window shall have the following minimum dimensions: a net clear opening of 5.7 ft<sup>2</sup> (0.53 m<sup>2</sup>); 24 inches (61 cm) from the top of the sill to the bottom of head of the window frame; a width of 20 inches (51 cm); and a sill height of not more than 44 inches (112 cm) from the floor. IRC 2015 R310.2.1, R310.2.3, R310.2.4
  - a. If the window opening sill height is below ground elevation, the horizontal dimension (width times projection) of the window well shall be at least nine sq. ft. and the horizontal projection shall extend at least 36 inches (91 cm) from the exterior side of the window. IRC 2015 R 310.2.3
  - b. If the egress window well is deeper than 44 inches (112 cm) below ground elevation, there shall be steps, or a ladder permanently attached to serve as an emergency exit to ground elevation. The distance between steps or rungs shall be 18 inches (46 cm), their width shall be at least 12 inches (31 cm), and their projection from the wall shall be between three and six inches (7.6 and 15 cm). IRC 2015 310.2.3.1
  - c. A door leading directly from the room to the outside that provides an exit at grade level shall fulfill this requirement. IRC 2015 311.2
  - d. A roof is required over a single exterior stair serving second and third floor dwelling units. No enclosing or storage shall be permitted beneath dedicated exterior egress stairs. 2015 IBC 1011.7.2 / 1011.7.4

**B. Locks/Security.** Means of egress (i.e., windows and/or doors) from dwellings shall have locks compliant with local laws, codes, and ordinances.

- i. Dwelling unit entry doors shall be equipped with a dead bolt lock with a minimum throw of one inch (2.54 cm) that is capable of being opened from the interior side without a key and a device that permits the occupant to see a person at the entry door without fully opening the door. 2015 IPMC 304.18.1
- ii. Exterior doors on multifamily buildings with a common entry that leads into a foyer or hallway shall have a self-closing mechanism and shall be equipped with a locking device capable of being opened from the interior side without a key. NHHS 2014 IBC Chapter 10

- iii. Exterior windows that are capable of being opened and are potential means of entry shall be equipped with a lock on the interior side. All locks shall be operable without the need of special knowledge or tools. 2015 IPMC 304.18

**C. Smoke Alarm.** Every dwelling unit shall have a functioning smoke alarm located on the ceiling outside each sleeping area in the immediate vicinity of the bedrooms, in each additional room used for sleeping purposes, and on every level except crawlspaces and uninhabitable attics. In dwellings or dwelling units with split levels that have no door between adjacent levels, the smoke alarm installed on the upper level shall suffice for the adjacent lower level. In the event a smoke alarm sounds, the cause of the alarm condition shall be identified and corrected. IRC 2015 314 / Saf-C6015

- i. In multifamily housing, a tamper-proof smoke detection system (interconnected with a central fire alarm system) or stand-alone smoke alarms in good working condition shall be installed on each level including basements, in heating system and storage rooms, in garages, and in other common areas. Saf-C 6015.02 / Saf-C 6015.03
- ii. Battery-operated smoke alarms and the battery backup for hardwired smoke alarms shall be powered with long-lasting batteries. Property owner/landlord shall be responsible for maintenance and battery replacement per manufacturer's recommendations. IRC 2015 R314.6 / Saf-C 6015.05
- iii. Alternative visual and or physical notification shall be provided for hearing-impaired occupants upon request of the tenant or their agent. NFPA 72
- iv. Smoke alarms shall be hardwired with battery backup. 2015 IRC 314.6
- v. Smoke alarm batteries shall be sealed-in and tamper-proof. NHHS 2014
- vi. Multiple smoke detection stations shall be interconnected. IRC 2015 R314.4 / Saf-C6015.02

**D. Carbon Monoxide Alarm.** Every dwelling unit shall have at least one functioning carbon monoxide (CO) alarm on every habitable floor. IRC 2015 R315.3 / Saf-C 6015.04

- i. CO alarms shall be hardwired, CO alarms shall have long-lasting battery backup. Property owner/landlord shall be responsible for maintenance and replacement of batteries per manufacturer's recommendations. IRC 2015 315.5
- ii. Alternative visual and or physical notification shall be provided for hearing-impaired occupants upon request of the tenant or their agent. NHHS 2014
- iii. CO alarms and combination smoke/CO alarms shall include voice notification.
- iv. CO batteries shall be sealed-in and tamper-proof within unit to unit interconnection. NHHS 2014
- v. CO present at or above 30 ppm (35 mg/m<sup>3</sup>) when measured over one hour or above nine ppm (10.5 mg/m<sup>3</sup>) measured over eight hours, shall be deemed hazardous. The cause of a hazardous CO level shall be investigated to identify and eliminate its source prior to re-habitation. NHHS 2014

**E. Fire Extinguisher.** Fire extinguishers shall be rated Class ABC and shall be readily accessible.

- i. Each dwelling unit shall have at least one no less than one 5-pound fire extinguisher in good working condition in or near the kitchen. NFPA 1

- ii. In multifamily housing, there shall be fire extinguishers in common areas on each floor and in areas where flammable or combustible liquids are stored, used, or dispensed. The fire extinguishers shall be in conspicuous, unobstructed locations that are not obscured from view. IBC 2015 906

**F. Walking Surfaces.** Every interior and exterior stairway, ramp, deck, porch, and balcony shall be maintained structurally sound, in good repair, properly anchored, and capable of supporting the imposed loads.

- i. Treads on exterior stairways shall have nonskid surfaces.
- ii. Every interior and exterior stairway with four or more risers shall have at least one structurally sound continuous handrail installed not less than 34 inches (86.7 cm) and not more than 38 inches (96.5 cm), measured vertically from above the nose of the tread. The handrail shall be firmly fastened, capable of supporting a load of 300 pounds, and in good condition. If a side of a stairway is open to the floor or grade below, and the handrail provides the guard required by Section VII, Article G, the rail shall be supported by balusters 34 to 38 inches (86.7 to 96.5 cm) in height, measured vertically from the nose of the tread. IRC 2015 R311.7.8
- iii. Every interior and exterior stairway shall have uniform risers and treads. Risers shall be no higher than 7 <sup>3</sup>/<sub>4</sub> inches (19.6cm) and treads shall be at least 10 inches (25,4 cm) deep unless the existing space and construction do not allow a reduction in pitch or slope. IRC 2015 R311.7.5

**G. Guards.**

- i. Every stairway, porch, patio, landing, and/or balcony located more than 30 inches (76.2 cm) above an adjacent area shall have a structurally sound guard between 30 inches (76.2 cm) and 42 inches (107 cm) high, measured vertically from the floor. The guard shall be firmly fastened, capable of supporting normally imposed loads, capable of being opened in case of emergency, and in good condition. Balusters with a minimum thickness of one-half inch (13 mm) shall be placed at intervals that do not allow passage of a sphere greater than four (10.2 cm) inches in diameter. The railing system should be able withstand a side load of 300lbs. There shall be no climbable cross pieces. If the balusters do not reach the floor, the narrowest opening between the bottom of the stair guard and the floor shall be a maximum of four inches (10.2 cm). IRC 2015 R312
- ii. The fall prevention device for a window that provides access to a fire escape or is otherwise designated for emergency egress shall be compliant with the local authority having jurisdiction (AHJ). IRC 2105 R312.2, R312.2.1

**H. Flammable and Combustible Liquid Storage.**

- i. Storage space for flammable and combustible liquids, if permitted by rental / lease agreement, shall be available in a building separate from the dwelling's habitable space. NHHS 2014

**XXVI. LIGHTING AND ELECTRICAL SYSTEMS**

**A. Electrical System.** Every dwelling unit shall have electric service, outlets, and fixtures that are grounded and installed properly, maintained in good and safe working condition, and connected to a source of electric power.

ARTICLE XXXI HOUSING STANDARDS ORDINANCE

- i. Every dwelling unit shall be supplied with a three-wire, 120/240-volt, single-phase electrical service that is not shared with another dwelling unit. NEC 2014 2015 IRC E3601.2.
- ii. Temporary wiring or extension cords shall not be used as permanent wiring. NHHS 2014
- iii. The electrical service shall have a rating of not less than 100 amperes. IRC 2015 E3602.1

**B. Outlets.** Every habitable room shall have at least two separate and remote grounded duplex electric receptacle outlets.

- i. Each kitchen and each room containing a toilet, sink, bathtub, or shower stall shall have at least one grounded duplex electrical receptacle outlet protected by ground-fault circuit interrupter (GFCI). IRC 2015 Chapter 39 Section E3902
- ii. Receptacle outlets in garages, crawl spaces, unfinished basements, and outdoors shall be protected by GFCIs. 2015 IRC E3902.2
- iii. Habitable rooms shall have sufficient receptacle outlets so that no location on a wall is more than six feet from an outlet. IRC 2015 E3901.2.1
- iv. Every countertop space 12 inches (305 mm) or wider shall have a grounded duplex electric convenience receptacle outlet protected by a GFCI. No section of counter shall be more than 24 inches (610 mm) measured horizontally from an outlet. IRC 2015 3901.4.1
- v. Receptacle outlets in habitable rooms that are not protected by GFCI's shall be protected by arc-fault circuit interrupters (AFCI's) 2015 IRC E3902.16

**C. Natural Lighting.** Every habitable room shall receive daylight from at least one exterior window or skylight.

- i. If a habitable room receives daylight from an adjacent room or area used seasonally, such as a porch, the daylight through this interconnection shall be available year-round. 2015 IRC R303.2 / NHHS 2014
- ii. Every bathroom and kitchen shall comply with the daylight requirement for habitable rooms contained in this section unless the room is equipped with a ventilation system. 2015 IRC R303.3 / NHHS 2014

**D. Artificial Lighting.** Each room containing a toilet, sink, bathtub, or shower stall shall contain at least one ceiling- or wall-type electric lighting fixture. Each non-habitable room, including laundry rooms, furnace rooms, and public halls, shall contain at least one ceiling- or wall-type electric lighting fixture. NHHS 2014

- i. Light switches that control ceiling- or wall-type electric light fixtures shall be located conveniently for safe use. NHHS 2014
- ii. Every public hall, exterior entry door, and stairway in multifamily housing shall be always illuminated by ceiling- or wall-type electric lighting fixtures providing 800 lumens for every 200 ft<sup>2</sup> (18.6 m<sup>2</sup>) of floor area. The distance between light fixtures shall not be greater than 30 feet (762 cm). NHHS 2014
- iii. In a building containing one or two dwelling units, every public hall, exterior entry door, and stairway shall be illuminated by ceiling- or wall-type electric lighting fixtures providing 800 lumens for every 200 ft<sup>2</sup> (18.6 m<sup>2</sup>) of floor area that is controlled by a three-way switch or a motion-activated device. 2015 IRC R303.7 / NEC?

- iv. Polychlorinated-biphenyl (PCB)-containing lighting ballasts (e.g., older pre-1978 T- 12 lighting ballasts) shall be removed, replaced with lighting fixtures that do not contain PCB's, and disposed of in accordance with applicable state and federal regulations. NHHS 2014
- v. The parking areas and walkways of multifamily housing shall be illuminated by outdoor lighting devices suitable for the premises. NHHS 2014

**XXVII. THERMAL COMFORT, VENTILATION, AND ENERGY EFFICIENCY**

- A. Heating, Ventilation, and Air Conditioning Systems.** Facilities for heating, cooling, ventilation, and humidity control shall be maintained in good working condition and operated when necessary for the health and comfort of the occupants and in accordance with the design capacity of the installed equipment. Within 48 hours after equipment has become inoperative due to a mechanical problem or power failure other than a utility outage, an alternative safe source of necessary heating, ventilating, or cooling shall be provided. RSA 48-A
- B. Heating System.** Every dwelling shall have a properly installed heating system in good and safe working condition that is capable of safely and adequately heating all habitable rooms, bathrooms, and toilet rooms. The heating system, filtration components, distribution components, heating elements, and cooling elements (if provided), shall be sealed, cleaned, maintained, and operated in accordance with manufacturer specifications and shall be inspected and serviced annually by a licensed heating, ventilation, and air conditioning systems contractor. RSA 48-A
  - i. **Venting and Air Supply for Heating Equipment.** Furnaces, water heaters, wood stoves, and other devices that employ combustion-burning fuel shall be vented to the outside of the structure in an approved manner that meets manufacturer specifications and is in compliance with applicable codes and standards (e.g., ANSI 223.1/NFPA 54 National Fuel Gas Code, NFPA 31 Standard for the Installation of Oil-Burning Equipment, NFPA 211 Standard for Chimneys, Fireplaces, Vents, and Solid Fuel- Burning Appliances) and shall be supplied with sufficient air to support the continuous complete combustion of fuel and prevent back draft. NHHS 2014
  - ii. **Heating Supply.** If the dwelling unit is rented, leased, or let on terms either expressed or implied that heat will be supplied per the rental/lease agreement, heat shall be provided to maintain a minimum temperature of 65° F (20° C) in habitable rooms, bathrooms, and toilet rooms. RSA 48-A
  - iii. **Forced-Air Systems.** Any dwelling with a forced-air system shall have at least one thermostat within each dwelling unit capable of controlling the heating system, and cooling system if provided. The system shall have a clean air filter installed in accordance with manufacturer specifications at each change in tenancy and at least annually. This filter shall have a minimum efficiency reporting value of eight (MERV-8) unless the system is not equipped to use a MERV-8 filter. NHHS 2014 / 2015 IMC
  - iv. **Steam and Hot Water Systems.** In dwellings with heating equipment utilizing steam or hot water with a temperature of 110° F (43° C) or greater, protective covers/barriers shall be installed on and maintained for exposed surfaces of baseboard units, radiators, and piping between radiators. NHHS 2014

- v. **Wood Stoves.** A wood stove manufactured after June 1988 shall have a manufacturer's label certifying compliance with the emission standard at 40 C.F.R. § 60-part AAA. Clearance of 30 inches (76 cm) shall be maintained between combustible materials and a stove with no heat shield. Where a heat shield is present, the clearance between combustible materials and the stove shall be compliant with manufacturer specification for the heat shield. NH DES ARD-53 / NHHS 2014
- vi. **Pellet Stove.** A pellet stove should be installed based on the manufacturer specifications.

**C. Ventilation.**

- i. Every dwelling shall have a ventilation system compliant with ASHRAE Standard 62.2 (Ventilation and Acceptable Indoor Air Quality in Low-Rise Residential Buildings) or ASHRAE 62.1 (Ventilation for Acceptable Indoor Air Quality) as applicable to the dwelling.
- ii. The air exhausted from a bathroom, toilet room, clothes dryer, or basement shall not be vented into any other parts of the building's habitable space or an attic; such air shall discharge directly to the outdoors but not near any intake on the building exterior. 2015 IRC M1501.1
- iii. The exhaust vent from a clothes dryer shall consist of a rigid or corrugated semi-rigid metal duct. 2015 IRC M1502
- iv. Pipes, ducts, conductors, fans, and blowers shall not discharge gases, steam, vapor, hot air, grease, smoke, odors, or other gaseous or particulate wastes directly upon abutting or adjacent public or private property or that of another occupant. Vent pipe openings and any pest-proofing screens that cover them shall be maintained free of debris. 2015 IPMC 302.6 / NHHS 2014 / 2015 IRC M1804 / 2015 IMC 401.5
- v. Basement air shall not be used as supply air for an air handling system. 2015 IECC / 2015 IRC M1602.2

**D. Air Sealing.** Openings into dwellings and dwelling units shall be sealed to limit uncontrolled air movement.

- i. Exterior doors, windows and skylights, openings where siding and chimneys meet, utility penetrations, electrical outlets, and other openings shall be weather tight. NHHS 2014
  - a. Pads, door sweeps, weather stripping, and seals shall be used and maintained to minimize air leaks. NHHS 2014
- ii. Openings separating an attached garage from a habitable room, including doors, ceilings, floors, and utility and ductwork penetrations, shall be sealed. 2015 IRC R302.11
  - a. Any doorway between a habitable room and a garage shall be equipped with a wood door not less than 1 3/8 inches (35 mm) in thickness, a solid or honeycomb core steel door not less than 1 3/8 inches (35 mm) thick, or a 20-minute fire-rated door. The door shall have an automatic closing mechanism and be sealed with weather stripping. 2015 IRC 302.5.1
  - b. There shall be no door, window, or other opening from a garage into a room used for sleeping purposes. 2015 IRC 302.5.1
  - c. There shall be no supply or return vent openings in a garage that connect to air handlers serving habitable spaces. NHHS 2014

- iii. In a multifamily building, walls, ceilings, and floors that separate a dwelling unit from neighboring units, corridors, chases, stairwells, and other openings shall be sealed. NHHS 2014 / NFPA / 2015 IECC

## **XXVIII. MOISTURE CONTROL, SOLID WASTE, AND PEST MANAGEMENT**

- A. Moisture Prevention and Control.** Every foundation, roof, roofing component, exterior wall, door, skylight, and window shall be watertight, weather-tight, free of persistent dampness or moisture, and in good condition.
- i. The building's drainage system, such as footing or foundation drains, gutters, downspouts, rainwater collection containers, or other elements, shall direct water away from the structure. 2015 IPMC 302.2
  - ii. Exterior wood surfaces shall be protected from the elements and decay by paint or other protective treatment. Weep holes in brickwork shall be left open. NHHS 2014
  - iii. Premises shall be graded and maintained to prevent the erosion of soil and to prevent the accumulation of water on the premises, within a crawlspace, or within the structure. 2015 IPMC 302.2
  - iv. Interior and exterior surfaces and surface coverings, such as but not limited to carpet, wood, cellulose insulation, and paper, paint, and other wall coverings, including paper-faced gypsum board, shall have no signs of visible mold growth or chronic or persistent excessive dampness or moisture. 2015 IPMC 305.3 / NHHS 2014
  - v. Building material that is discolored or deteriorated by mold or mildew or causes a moldy or earthy odor shall be cleaned, dried, and repaired. Structurally unsound material shall be removed and replaced. NHHS 2014 / NH RSA 48-A / NH RSA 540-A
  - vi. The underlying cause of excessive dampness or moisture or moldy or earthy odor shall be investigated and corrected. NHHS 2014 / NH RSA 48-A / NH RSA 540-A
  - vii. Unless the crawl space is sealed and insulated from the outdoors, the crawl space shall be free of high- moisture conditions or be separated from the dwelling by an air seal or other method suitable to the climate and conditions. NH RSA 48-A / NH RSA 540-A
  - viii. Water/mold-resistant materials shall be used on bathroom walls and floors, showers, and other areas of the home that are likely to be exposed to moisture. IRC 2015 R307.2 / NHHS 2014
- B. Solid Waste.** Every dwelling shall have adequate facilities for temporary storage of trash, rubbish, and recyclable materials.
- i. There shall be trash/rubbish containers outside the dwelling for the storage of trash/rubbish awaiting collection or disposal. The total capacity of these facilities shall be sufficient to store occupants' trash/rubbish between scheduled collection times and shall be placed on a cleanable surface constructed to minimize spillage. 2015 IPMC 308 / NH RSA 48-A
  - ii. There shall be containers outside the dwelling for recyclable materials awaiting collection, with capacity sufficient to store occupants' recyclable materials between scheduled collection times. 2015 IPMC 308 / NH RSA 48-A
- C. Pest Management.** Integrated pest management (IPM) methods shall be used to maintain every dwelling free of infestation, openings that allow pest entry, conditions that harbor pests or provide them with food or water, and visible pest residue or debris.

- i. Every dwelling, premise, accessory structure, and fence shall be maintained in good repair, free of pest infestation, and inspected for pests and building conditions that attract and support pests. 2015 IPMC 302.5
  - a. There shall be no accumulation of trash, rubbish, paper, boxes, lumber, scrap metal, food, or other materials that support rodent harborage in or about any dwelling or premises. Stored materials shall be placed in boxes or stacked in stable piles elevated at least six inches (152 mm) above the ground or floor and at least six inches (152 mm) from the walls. Stored materials shall not block any egress routes. 2015 IPMC 302
  - b. There shall be no accumulation of water in or about any dwelling or premises. 2015 IPMC 302.2
- ii. Every openable window and storm door shall be supplied with adequate screens to prevent the entry of pests. NH RSA 48-A
  - a. The areas surrounding windows, doors, pipes, drains, wires, conduits, vents, and other openings that penetrate exterior walls shall be sealed with low-VOC caulk closed cell insulation or other job specific product. NH RSA 48-A
- iii. Pest infestation and the underlying cause shall be eliminated using control methods such as exclusion, sanitation, and least-risk pesticides scaled to and designed for the targeted infestation. RSA 48-A / 2015 IPMC 309.1
- iv. The owner of any structure shall be responsible for pest elimination within the structure prior to renting or leasing the structure. 2015 IPMC 309.2

## XXIX. CHEMICAL AND RADIOLOGICAL AGENTS

- A. General Requirements.** All chemical and radiological agents in dwellings, premises, and accessory structures, including but not limited to deteriorated lead-based paint, friable asbestos-containing material, formaldehyde, volatile organic compounds, radon, pesticides, and methamphetamine, shall be contained, stored, removed, or mitigated in a safe and healthy manner consistent with federal, state, and local laws and regulations. When an applicable regulatory limit is more protective than the level included in this section, the more restrictive limit shall apply.
- B. Lead-Based Paint.** Lead poisoning continues to be a significant, preventable environmental health problem, particularly among children. Most children with elevated blood lead levels have no obvious symptoms. Lead affects every system in the body, particularly the developing brain and nervous systems of young children and fetuses. Effects also include reproductive system disorders, intelligence deficiencies, delays in physical development, cognitive and behavioral changes, and hypertension. Title X (ten), a federal law enacted in 1992 requires landlords to disclose any known lead-based paint hazards within those properties constructed prior to 1978 to prospective tenants. It also mandates a landlord provide an EPA-approved lead paint disclosure form and approved informational brochure as part of the lease or rental agreement that includes an explicit checklist of information received and a space for both parties to sign and date verifying receipt of information.
  - i. Lead based substances which are peeling, chipping, chalking or cracking, or any paint located on an interior or exterior surface of fixture that is damaged or deteriorated and is likely to become accessible to a child shall be properly remediated. RSA 130-A

ARTICLE XXXI HOUSING STANDARDS ORDINANCE

- ii. Lead based substances on interior or exterior surfaces that are subject to abrasion or friction or subject to damage by repeated impact shall be properly remediated. RSA 130- A
- iii. The presence of lead-based substances on chewable, accessible, horizontal surfaces that protrude more than 1/2 inch and are located more than 6 inches but, less than 4 feet from the floor or ground shall be properly remediated. RSA 130-A
- iv. Bare soil in children’s play areas that has equal to or greater than 400 parts per million (PPM) of lead or 1200ppm average of lead for bare soil in the rest of the yard shall be properly remediated. RSA 130-A
- v. It shall be unlawful for any person to use or apply, or cause to be used or applied, in any childcare facility, dwelling or dwelling unit any paint containing more than 0.06 percent lead. NH RSA 130-A

**C. Asbestos.** Every owner shall maintain in good repair all asbestos-containing material on the premises. All asbestos-containing material shall be maintained non-friable and free from any defects such as holes, cracks, tears, and/or looseness that may allow the release of fibers into the environment. NH RSA 141-E

- i. Friable asbestos-containing material shall be abated by licensed asbestos professionals in accordance with federal, state, or local requirements. NHDES Env-A 1803
- ii. Any renovation, demolition, or other activity that will disturb asbestos-containing materials shall be preceded by asbestos abatement performed by certified asbestos professionals in accordance with federal, state, or local requirements. NHDES Env-A 1804
- iii. Abatement, removal, and disposal of all asbestos-containing material shall comply with all appropriate federal, state, and local requirements. NH DES - Asbestos

**D. Pesticides.** Pesticides shall only be used in accordance with IPM methods using the least toxic pesticide with demonstrated efficacy for the identified pest. NHHS 2014

- i. Pesticides shall be stored and disposed in accordance with manufacturer specifications. NHHS 2014 / NH DES

**E. Methamphetamine.** A dwelling that has been used for methamphetamine manufacture shall be vacated until certified by an approved testing method as safe from hazardous materials related to the methamphetamine manufacturing process. NHHS 2014

**XXX. POOLS, HOT TUBS, AND OTHER WATER FEATURES**

- A.** Swimming pools, hot tubs, spas (except a residential spa or hot tub with a safety cover complying with ASTM F 1346-91), ornamental ponds, and other water features that hold water more than 24 inches (61 cm) in depth shall be completely surrounded by a fence or barrier at least 48 inches (122 cm) in height above the finished ground level that is accessible only through a self-closing and self-latching gate. The gate’s latch shall be located 54 inches (137 cm) above the bottom of the gate on the interior side of the gate facing the water feature. The fence and gate shall not have climbable crosspieces. 2015 SC 305 / 2015 IPMC 303.2
- B.** All pools and spas shall have anti-entrapment drain covers compliant with ANSI/ASME A112.19.8, ANSI/ APSP 16-2011, or any successor standard on every suction outlet. 2015 ISPC 310

ARTICLE XXXI HOUSING STANDARDS ORDINANCE

- C. Pool drains and drain covers shall be clearly visible and in good repair. Where there is a single main drain (other than an unblockable drain), a second anti-entrapment system shall be installed. 2015 ISPC 310
- D. Luminaries, receptacles, and other outlets shall have ground-fault circuit interrupter (GFCI) protection. IRC 2015 E4203.1.3

**XXXI. SEVERABILITY**

If any provisions of this Ordinance or the application of such provisions to any person or circumstances shall be held invalid, the validity of the remainder of this Ordinance and applicability of such provisions to other persons or circumstances shall not be affected thereby.

**XXXII. EFFECTIVE DATE**

This Ordinance was adopted on May 10, 2021 at Town Meeting.