

Chapter 101

GROWTH MANAGEMENT

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[HISTORY: Adopted by the Town Council of the Town of Windham 7-28-2020 (Ch. 116 of the 1991 Code); amended 6-22-2021; 1-11-2022. Subsequent amendments noted where applicable.]

§ 101-1. Title.

This chapter shall be known as the "Growth Management Ordinance of the Town of Windham, Maine" and shall be referred to herein as the "chapter."

§ 101-2. Legal authority. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

This chapter is adopted pursuant to the home rule powers as provided for in Article VIII-A, Part Second, of the Maine Constitution and 30-A M.R.S.A. § 3001, 30-A M.R.S.A. § 4323, and 30-A M.R.S.A. § 4360.

§ 101-3. Purpose.

The purpose of this chapter is to protect the health, safety, and general welfare of the residents of Windham through placing reasonable and appropriate limitations on residential development in accordance with the ~~2016 Update of the Town of Windham~~ Comprehensive Plan, more specifically:

- A. To plan for continued residential population growth in Windham which will not impose an undue burden upon the provision of community services, including, but not limited to, education, public safety, transportation infrastructure, waste disposal and health services.
- B. To provide for the immediate housing needs of the existing residents of the Town of Windham;
- C. To ensure fairness in the allocation of building permits;
- D. To ensure that the building permit issuance system does not prevent the creation of a reasonable number of multiple dwelling units or dwelling structures simultaneously; and
- E. To allow for reasonable growth while maintaining the rural character of the Town.

§ 101-4. Definitions.

As used in this chapter, the terms below shall be defined as indicated. All other terms used in this chapter, if not defined below, shall have the same definition as set forth in § 120-301 of Chapter 120, Land Use.

AFFORDABLE HOUSING — A dwelling unit that may be purchased or leased by a qualifying household such that annual housing costs will be less than or equal to 30% of household income. A qualifying household is one whose income does not exceed 80% of the most recently published Median Family Income for the Portland, Maine Metropolitan Statistical Area, adjusted for family size, as determined by the U.S. Department of Housing and Urban Development (the "MFI Standard").

BUILDING PERMIT — A permit issued by the Code Enforcement Officer pursuant to Chapter 28, Building Construction.

DWELLING UNIT — A dwelling unit as defined in § 120-301 of Chapter 120, Land Use.

DWELLING STRUCTURE – A structure that contains one or more dwelling units.

FAMILY GIFT LOT — A lot which is not within a subdivision, and which has been created by a gift from a parent to a child (including an adopted child or stepchild) or from a child to a parent (including an adoptive parent or stepparent).

GIFT — The conveyance of property for which the grantor receives no money, property or any other value as consideration for the conveyance.

GROWTH PERMIT — A permit, issued in accordance with the provisions of this chapter, which allows the issuance of a building permit for the construction, creation or placement of one new dwelling ~~unit~~**structure** within the Town of Windham.

STRUCTURE – A structure as defined in § 120-301 of Chapter 120, Land Use.

SUBDIVISION — A subdivision as defined in 30-A M.R.S.A. § 4401, as such may be amended from time to time, and approved by the Windham Planning Board pursuant to Chapter 120, Land Use.

§ 101-5. Applicability.

Except as provided in § 101-6 below, this chapter shall apply to the construction, creation or placement of any new dwelling unit within the Town of Windham.

§ 101-6. Exemptions.

This chapter shall not apply to:

- A. The repair, replacement, reconstruction, or alteration of an existing dwelling unit or dwelling structure, provided that no new dwelling units or dwelling structures are created, and no seasonal dwelling units are converted into year-round dwelling units.
- B. ~~AA~~ dwelling structure containing a single dwelling unit on a family gift lot.
- C. The construction, repair, replacement, reconstruction, or alteration of any dwelling unit meeting the definition of "housing for older persons" as set forth in 5 M.R.S.A. § 4581, Subdivision 2, and as may be amended from time to time.
- D. The construction, repair, replacement, reconstruction, or alteration of an accessory apartment.

§ 101-7. Administration.

- A. Share of growth permit required per dwelling ~~unit~~**structure**.
 - (1) The creation of each new single-family detached dwelling structure shall require one growth permit.
 - (2) The creation of each new two-family dwelling structure shall require one growth permit.
 - (3) The creation of ~~each~~ new multifamily dwelling ~~structure~~**structures** shall ~~require one growth~~

permit be governed by the following rules:

(a) Multifamily dwelling structures consisting of less than 210 dwelling units shall require one growth permit from the annual allocation.

(b) Multifamily dwelling structures consisting of 210 or more dwelling units shall require one growth permit from the annual allocation, and one additional growth permit for each 10 additional dwelling units.

(c) For any multifamily dwelling structures described in either subparagraph (a) or (b) above that contain dwelling units with three or more bedrooms, one additional growth permit is required for every five such dwelling units.

- B. Two sources of growth permits. Growth permits are available from two sources, from an annual allocation of growth permits, and from a reserve pool of growth permits.
- (1) The number of growth permits allocated annually and the process for the issuance of growth permits from this annual allocation are set forth in Subsections C, D and E.
 - (2) The operation of the reserve pool of growth permits is set forth in Subsections F and G.
- C. Annual allocation of growth permits per calendar year.
- (1) The maximum number of growth permits issued between January 1 and December 31 of each year shall be 135. For the year of enactment, the number of permits shall be prorated to 12 permits per month or portion of a month remaining in the calendar year. Any growth permits from the annual allocation that are not issued in the calendar year shall expire and shall be transferred to the reserve pool of growth permits. Permits shall be allocated as follows:
 - (a) No more than 118 growth permits shall be issued for new single-family detached dwelling structures.
 - (b) No more than 14 growth permits shall be issued for new two-family dwelling structures.
 - (c) No more than three growth permits shall be issued for new multifamily dwelling structures.
 - (2) During each calendar year, no more than 45 growth permits shall be issued from the annual allocation to dwelling structures located in the Farm District (F) shown on the Town of Windham Zoning Map, which is approximately the area designated as a Limited Growth Area in the Town of Windham Comprehensive Master Plan 2016 Update.
 - (3) During each calendar year, no more than 20 of the growth permits available from the annual allocation shall be issued for dwelling ~~units~~structures within any one subdivision or other development.
 - (4) During each calendar year, no more than five growth permits per quarter, up to 15 growth permits per year, shall be granted to any one person, firm, or corporation (this includes corporations with the same majority ownership).
- D. Application procedure for growth permits.
- (1) A growth permit application must be completed and signed by a record owner of the lot for which the growth permit is sought, on a growth permit application form provided by the Code Enforcement Officer.
 - (2) The growth permit application shall be accompanied by:
 - (a) A deed or other instrument establishing the applicant's ownership interest in the property;

- (b) A completed building permit application;
 - (c) Payment of the building permit and impact fees, including a nonrefundable application fee as specified in the Schedule of Fees established by order of the Town Council. Note: The Code Enforcement Officer and Town Manager or designee(s) may in their discretion extend the requirement for payment of impact fees by no more than 90 days should the applicant demonstrate financing constraints imposed by a third-party lender; and
 - (d) Either a copy of the completed subsurface wastewater disposal system application (Form HHE-200) for the lot for which the growth permit application is sought or evidence that the lot will be served by public sewer.
- (3) The growth permit application shall be submitted to the Code Enforcement Officer either by mail or in hand during normal business hours at the Town office. The Code Enforcement Officer shall endorse each application with the date and time of receipt. In the event two or more growth permit applications are received simultaneously, the Code Enforcement Officer shall determine their order by random selection.
- (4) The Code Enforcement Officer shall review growth permit applications for completeness and accuracy in the order in which they are received. If an application is incomplete, the Code Enforcement Officer shall notify the applicant of the additional information or material needed to complete the application and shall resume review of the application only when such additional information or materials are provided. Once the Code Enforcement Officer determines that an application is complete, he/she shall approve the application as complete, endorsing the date and time of such approval on the application.
- (5) A separate application is required for each growth permit sought.
- (6) No growth permit application shall be accepted by the Code Enforcement Officer until the effective date of this chapter.
- E. Issuance procedure for growth permits from the annual allocation.
- (1) Growth permits shall be issued on a monthly basis from all pending completed applications.
- (2) Up to 12 growth permits from the annual allocation shall be granted in any calendar month, provided that no more than 135 growth permits from the annual allocation are issued in each calendar year. Unused growth permits from the previous calendar month shall carry over and may be issued in the following calendar month.
- (3) In the event that there are more applications than permits available, permits shall be issued by the Code Enforcement Officer on the basis of points allocated according to the following system:
- (a) Four points if the applicant has been a resident of the Town of Windham on a continuous basis during the calendar year immediately preceding submission of the application (awarded once per resident per year);
 - (b) Four points for each year (six months or more) which the applicant has been the owner of record of the subject property;
 - (c) Three points for each year (six months or more) which the subject property has been a lot in an approved subdivision;
 - (d) Two points for each month the application has had a pending, complete application on file but has failed to receive a permit.
- (4) In the case of a tie, growth permits shall be awarded in the order in which a complete application was submitted.
- (5) Once issued, a growth permit must be replaced by a building permit for the construction,

placement or creation of ~~the dwelling unit or units~~structures authorized by the growth permit on the specific lot for which the growth permit was issued, no later than 90 days after the date of issuance. A growth permit which is not replaced by a building permit within such ninety-day period shall expire, except that the Code Enforcement Officer may approve one extension for one additional period of 90 days if a request for the extension is made prior to the expiration of the original ninety-day period. If a growth permit expires, a subsequent application for a growth permit on the same lot shall be processed and ranked as a new application pursuant to § 101-7D above. Expired growth permits shall be added to the following month's allocation of available permits.

- (6) At the end of each calendar year, if the number of approved applications for growth permits from the annual allocation exceeds the number of permits available for issuance, such approved applications shall remain pending into the next calendar month and shall retain their ranking according to the order in which they were approved as complete, and the basis of points earned pursuant to § 101-7D(4) above.

F. Establishment of the reserve pool of growth permits.

- (1) On the effective date this chapter, a reserve pool of 50 growth permits shall be established. Growth permits from the reserve pool shall be allocated in accordance with the provisions of Subsection G below.
- (2) The growth permits in the reserve pool ~~shall remain available until used, and, as well as any unissued growth permits shall carry over from year to year~~transferred to year the reserve pool pursuant to § 101-7C(1) above, shall expire five years after they are added to the pool.
- (3) Twenty of the growth permits in the reserve pool at the beginning of each calendar year shall be set aside for affordable housing units and may be used during the year as set forth in Subsection G. If any of these growth permits are not issued during the year, they shall not be carried forward, but the affordable housing set aside for the following year shall be reset at 20 growth permits.
- (4) The Town Council may by order add growth permits to the reserve pool following public hearing as part of its periodic review of this chapter or if the available growth permits are not adequate to allow the construction of a project in accordance with Subsection G below. If the Town Council votes to add growth permits to the reserve pool, a minimum of 10% of those permits shall be set aside for affordable housing.
- (5) If the number of growth permits remaining in the reserve pool at the end of a calendar year is less than 20, additional growth permits shall automatically be added to the pool so that 20 growth permits are available, and these 20 permits shall be set aside for affordable housing units.

G. Allocation of growth permits from the reserve pool.

- (1) The Code Enforcement Officer may issue up to 10 growth permits from the reserve pool each calendar year for detached single-family ~~dwelling~~dwelling structures that are located on lots that are not part of a subdivision. These permits shall be issued according to the order in which they were approved as complete.
- (2) Except as provided in ~~Subsection G~~§ 101-7G(1) above, the Town Council shall be responsible for determining if a subdivision or other development is eligible for the allocation of growth permits from the reserve pool.
- (3) A property owner or his/her representative may request that a project be designated as eligible to receive growth permits from the reserve pool at the time of subdivision or site plan review for new or expanded projects. An approved subdivision or project as of the date of adoption of this provision may also be determined to be eligible to receive growth permits from the reserve pool. This request shall be in writing on forms provided by the Code Enforcement Officer and shall demonstrate how the project conforms to the requirements of this subsection.

- (4) If the Town Council determines that a subdivision or other development is eligible to receive growth permits from the reserve pool, it shall notify the Code Enforcement Officer, in writing, of this determination.
- (5) The Town Council shall determine that a subdivision or other development is eligible to receive growth permits from the reserve pool only if it finds that at least one of the following are met:
 - (a) The dwelling ~~units~~structures to which the growth permits may be allocated are part of a contract zone in which the provisions of the zoning provide for some or all of the growth permits needed for the project to come from the reserve pool.
 - (b) The dwelling ~~units~~structures to which the growth permits may be allocated are part of an affordable housing project in which at least 50% of the dwelling units are affordable housing.
 - (c) The dwelling ~~units~~structures to which the growth permits may be allocated are part of an approved subdivision or other project and will be located in two-family, multifamily, or mixed-use buildings.
 - (d) The dwelling ~~units~~structures to which the growth permits may be allocated are in an area designated as a Growth Area in the Town of Windham Comprehensive Master Plan 2016 Update.
 - (e) The applicant has established that it would be an undue hardship to delay construction of the dwelling ~~unit~~structure. This basis for allocation shall not be available to any applicant that is the developer or owner of the subdivision in which the dwelling ~~unit~~structure will be located.
- (6) The growth permits in the reserve pool are intended to allow the construction of housing that is not easily accommodated within the annual allocation or that could unreasonably reduce the availability of growth permits to other property owners because of the scale or type of development. Therefore, in considering requests for the eligibility of projects to receive growth permits from the reserve pool, the Town Council shall approve such requests only if it finds that the use of growth permits from the annual allocation [see ~~Subsection G~~§ 101-7G(3) above] may not permit the dwelling ~~units~~structures to be constructed in a timely and efficient manner or that the use of the growth permits from the annual allocation may unreasonably reduce the availability of growth permits to other property owners due to the scale of the project and the number of permits available through the annual allocation.
- (7) If the Town Council determines a project to be eligible to receive growth permits from the reserve pool, the record owner of the property shall apply for a growth permit for each dwelling ~~unit~~structure in accordance with ~~Subsection D~~§ 101-7D above.
- (8) The Code Enforcement Officer shall process the application for growth permit(s) from the reserve pool in accordance with Subsection E above except as follows:
 - (a) Growth permits shall first be issued from the annual allocation. If no growth permits from the annual allocation are available at the time of application, the Code Enforcement Officer shall issue the growth permits from the reserve pool.
 - (b) If the subdivision or development has not previously received 20 of the available growth permits from the annual allocation during the current calendar year, the Code Enforcement Officer shall issue the growth permits from the annual allocation until the 20 limit is reached, and any additional growth permits shall be issued from the reserve pool.
 - (c) The issuance of growth permits for a subdivision or other project that is subject to contract zoning shall occur in accordance with these provisions unless the contract zoning contains specific alternative provisions. In this case, the Code Enforcement Officer shall issue the

growth permit in accordance with the terms of the contract zone.

- (d) If the subdivision or other project utilizing growth permits from the reserve pool is an affordable housing project or includes affordable housing units, the growth permits for the ~~affordable units~~dwelling structure(s) shall first be taken from the 20 reserve pool permits set aside for affordable housing. If the growth permits available in the affordable housing allocation are not adequate to allow construction of the project, the balance of the growth permits shall be taken from the permits in the reserve pool that are not set aside for affordable housing.

- H. Transferability. Growth permits are issued only for the specific lot identified in the growth permit application. A growth permit may be transferred to a new owner of the lot, provided notice of the transfer of ownership is given, in writing, to the Code Enforcement Officer before the growth permit is replaced by a building permit. Transfer of ownership does not change the date of issuance or the ranking of an issued growth permit. An application for a growth permit is not transferable; however, if property which is the subject of a growth permit application is conveyed to another person and the grantee submits a growth permit application within 30 days of such conveyance, the application shall be credited the same number of points assigned to the prior application under § 101-7E(3)(d).

§ 101-8. Periodic review of provisions.

The Town Council shall conduct a periodic review of this chapter to evaluate whether the rate of residential growth remains consistent with the Town's ability to absorb the growth and shall determine whether the number of growth permits available under this chapter should be adjusted by amendment to this chapter. The Town Council shall conduct a review at least once every three years. The Town Council may seek assistance or advice from the Planning Board in connection with such review. This section does not limit the Council's authority to review and/or amend this chapter at any other time.

§ 101-9. Violations and penalties; enforcement.

Any person who constructs, creates or places a dwelling ~~unit~~structure within the Town of Windham without a growth permit required by this chapter or who owns or occupies a dwelling ~~unit~~structure constructed, created or placed within the Town of Windham without a growth permit required by this chapter commits a civil violation and is subject to the fines, penalties and remedies, including but not limited to payment of all attorney fees and costs, as provided in 30-A M.R.S.A. § 4452. Each day a violation continues to exist after notice of the violation constitutes a separate violation. This chapter shall be enforced by the Town of Windham Code Enforcement Officer in the manner provided for enforcement of violations of the Zoning Ordinance under § 120-1004 of Chapter 120, Land Use.

§ 101-10. Appeals.

- A. An applicant for a growth permit who is adversely affected by a decision or action of the Code Enforcement Officer in the administration of this chapter may appeal to the Windham Board of Appeals under the provisions governing administrative appeals in § 120-1105 of Chapter 120, Land Use. Decisions of the Code Enforcement Officer to approve a growth permit application as complete or to issue a growth permit are not appealable.
- B. An applicant requesting that a subdivision or other development be determined to be eligible to receive growth permits from the reserve pool who is adversely affected by a decision of the Town Council may appeal to Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure; ~~Rule 80B~~. Actions of the Town Council with respect to this chapter are not appealable to the Windham Board of Appeals.