

# TOWN OF WINDHAM MORATORIUM ORDINANCE FOR CERTAIN NON-RESIDENTIAL USES IN SHORELAND ZONING DISTRICTS

## Section 1. Definitions.

*Agricultural use* means any use involving the production, storage, keeping, harvesting, grading, packaging, processing, boarding or maintenance, for sale, lease, or personal use, of plants and animals useful to humans, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules, or goats or any mutations or hybrids thereof, including the breeding and grazing of any or all of such animals; bees and apiary products; fur animals; trees and forest berries; fruits and vegetables; nursery, floral, ornamental and greenhouse products. This term does not include forestry or gardens.

*Boat-launching facility* means a facility designed for the launching and landing of watercraft, and which may include an access ramp, docking area, and parking spaces for vehicles and trailers, but does not include a dock or similar facility serving an existing principal single-family dwelling.

*Commercial campground* means any premises providing temporary accommodation for campers in any recreational vehicle or tent and open to the public for a fee.

*Commercial use* means the use of lands, buildings, or structures, other than a home occupation (defined below in this section), the intent and result of which activity is the production of income from the buying and selling of goods and/or services, exclusive of rental of residential buildings and/or dwelling units and agricultural uses.

*Home occupation* means an occupation or profession which is customarily conducted on or in a residential structure or property and which is clearly incidental to and compatible with the residential use of the property and surrounding residential uses and which employs no more than two persons other than family members residing in the home. For purposes of this Ordinance, a boat-launching facility, a commercial campground or a marina shall not be allowed as a home occupation.

*Industrial use* means the assembling, fabrication, finishing, manufacturing, packaging or processing of goods, but does not include any agricultural use or the extraction of minerals.

*Marina* means an establishment having frontage on navigable water and, as its principal use, providing offshore moorings or docking facilities for watercraft, and which may also provide accessory services such as watercraft and related sales, watercraft repair and construction, indoor and outdoor storage of watercraft and marine equipment, bait and tackle shops and marine fuel service facilities.

*Non-residential use* means any commercial, industrial or other principal use that is not a dwelling unit. This term shall not include agricultural or extractive uses or any proposal that is subject to site plan review.

*Shoreland zoning district* means any zoning district established by the Town of Windham Shoreland Zoning Ordinance, Chapter 185 of the Town of Windham Code of Ordinances.

*Site plan review* means review of any development proposal that is subject to the requirements of Article 8 (Site Plan) of Chapter 120 (Land Use) of the Town of Windham Code of Ordinances.

*Town* means the Town of Windham, Maine, a municipal corporation organized and existing under the laws of the State of Maine.

## **Section 2. Moratorium Declared.**

**WHEREAS**, there is increasing non-residential development located in the shoreland zoning districts in the Town; and

**WHEREAS**, many properties located in the shoreland zoning districts are accessed by narrow roads that may be insufficient to handle the traffic and parking associated with new or expanded non-residential uses; and

**WHEREAS**, the development of new or expanded non-residential uses in the shoreland zoning districts may have other negative impacts on existing uses in those districts; and

**WHEREAS**, the Town is under threat of improperly regulated non-residential development in the shoreland zoning districts; and

**WHEREAS**, many types of non-residential development, including the expansion of existing non-residential uses, are not subject to site plan review or similar land use regulations that provide for the review of the impacts of such development

**WHEREAS**, this development pressure is unanticipated and has not been adequately provided for in the Town's current Shoreland Zoning Ordinance or any other ordinance adopted by the Town; and

**WHEREAS**, the development of new or expanded non-residential uses in the shoreland zoning districts could pose serious threats to the public health, safety and welfare of the residents of Windham abutting or in close proximity to such new or expanded uses without adequate provision for issues of health, safety, land use compatibility, noise, visual degradation and environmental degradation; and

**WHEREAS**, the Town needs time to study its ordinances to determine the implications of development proposals involving non-residential uses in the shoreland zoning districts and to develop reasonable ordinances for the protection of the health, safety, and welfare of Windham's residents, property owners and natural resources; and

**WHEREAS**, the Town Council and the Planning Board, with such professional advice and assistance as they deem necessary and appropriate, shall study the Town's ordinances to determine the land use, environmental and other regulatory implications of development proposals involving the development of new or expanded non-residential uses in the shoreland zoning districts and consider what regulations might be appropriate for such activities; and

**WHEREAS**, the Town's current Shoreland Zoning Ordinance is not adequate to prevent serious public harm from proposed development proposals involving new or expanded non-

residential uses in the shoreland zoning districts; and

**WHEREAS**, the Town's current Shoreland Zoning Ordinance does not contain sufficient standards to effectively provide municipal review and approval of development proposals involving new or expanded non-residential uses in the shoreland zoning districts where such development proposals are not otherwise subject to site plan review;

**WHEREAS**, it is anticipated that such a study, review, and development of recommended ordinance changes will take at least one hundred and eighty (180) days from the date the Town first considers this moratorium on development proposals involving the development or expansion of non-residential uses in the shoreland zoning districts that are not subject to site plan review;

**WHEREAS**, amendments to the Shoreland Zoning Ordinance, or the adoption of any other ordinance to properly regulate the development or expansion of non-residential uses in the shoreland zoning districts that are not subject to site plan review both require a public hearing by the Planning Board and then a public hearing and vote by the Town Council; and

**WHEREAS**, in the judgment of the Town, these facts create an emergency within the meaning of 30-A M.R.S. § 4356(1)(B) and require this Ordinance as immediately necessary for the preservation of the public health, safety and welfare.

**NOW, THEREFORE**, the Town does hereby ordain that this Ordinance be, and hereby is, enacted, and, in furtherance thereof, the Town does hereby declare a moratorium on development proposals involving the development of new or expanded non-residential uses in any shoreland zoning district where such development proposals are not otherwise subject to site plan review. The moratorium shall remain in effect for a minimum of sixty-one (61) days as set forth in Section 4 of this Ordinance, unless extended, repealed, or modified by the Town Council, for the express purpose of drafting an amendment or amendments to Town ordinances to protect the public from health and safety risks including, but not limited to, the potential adverse environmental, health, safety, land use compatibility, noise, and visual degradation effects of development proposals involving the development of new or expanded non-residential uses in the shoreland zoning districts that are not subject to site plan review if such proposals are not properly regulated; and

**BE IT FURTHER ORDAINED**, that this Ordinance shall apply to any new development proposals involving the creation of any new or expanded non-residential use after the March 26, 2024 applicability date of this Ordinance, regardless of whether such proposal includes construction or expansion of any new structure if such development proposal is not otherwise subject to site plan review; and

**BE IT FURTHER ORDAINED**, that notwithstanding the provisions of 1 M.R.S. § 302 or any other law to the contrary, this Ordinance, when enacted, shall govern any new development proposal involving the creation or expansion of a non-residential use in any shoreland zoning district for which an application for a license, building permit, and/or any other required land use approval has not been both submitted and finally acted on by the Code Enforcement Officer, Planning Board, Board of Appeals or other Town official or administrative board or agency prior to March 26, 2024, the applicability date of this Ordinance, provided that such application is not subject to site plan review; and

**BE IT FURTHER ORDAINED**, that no person or organization shall start or engage in the construction, development or operation of a new or expanded non-residential use in any shoreland zoning district, and that is not subject to site plan review, on or after the March 26, 2024 applicability date of this Ordinance without complying with whatever ordinance amendment or amendments the Town may enact as a result of this moratorium; and

**BE IT FURTHER ORDAINED**, that during the time this moratorium is in effect, no officer, official, employee, office, administrative board or agency of the Town shall accept, process, approve, deny, or in any other way act upon any application for a license, building permit, certificate of approved use, conditional use review and/or any other permits, licenses or approvals related to a new or expanded non-residential use in the shoreland zoning districts that is not subject to site plan review; and

**BE IT FURTHER ORDAINED**, that those provisions of the Town's Zoning Ordinance or other ordinances that are inconsistent or conflicting with the provisions of this Ordinance, are hereby repealed to the extent that they are applicable for the duration of the moratorium hereby ordained, and as it may be extended as permitted by law, but not otherwise; and

**BE IT FURTHER ORDAINED**, that should any section or provision of this Ordinance be declared by any court of competent jurisdiction to be invalid, such a declaration shall not invalidate any other section or provision.

### **Section 3. Violations; Civil Penalties.**

If the construction or operation of a new or expanded non-residential use in any shoreland zoning district that is not subject to site plan review is established in violation of this Ordinance, each day of any continuing violation shall constitute a separate violation of this Ordinance, and the Town shall be entitled to all rights available to it in law and equity, including, but not limited to, fines and penalties in accordance with 30-A M.R.S. § 4452, injunctive relief, and its reasonable attorney's fees and costs in prosecuting any such violations.

### **Section 4. Emergency Enactment; Applicability Date.**

Due to the emergency set forth in Section 2, this Ordinance shall take effect immediately upon passage by the Town Council, pursuant to Article II, Section 11(D) of the Town Charter. The applicability date of this Ordinance is March 26, 2024. This Ordinance shall stand repealed as of the sixty-first (61<sup>st</sup>) day following the date on which it was adopted, unless reenacted by the Town Council prior to that date.