

## Chapter 118

### GROWTH MANAGEMENT

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[HISTORY: Adopted by the Town Council of the Town of Cumberland 6-28-2000, as amended through 5-2-2012. Subsequent amendments noted where applicable.]

#### GENERAL REFERENCES

Impact fees — See Ch. 137.

Subdivision of land — See Ch. 250.

Site plan review — See Ch. 229.

Zoning — See Ch. 31.

#### § 118-1. Title.

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

#### § 118-2. Authority.

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

#### § 118-3. Purpose.

The purpose of this chapter is to protect the health, safety and general welfare of the residents of Cumberland by placing limitations on residential development and meeting the following:

- A. To provide for the immediate housing needs of the existing residents of Cumberland.
- B. To ensure fairness in the allocation of building permits.
- C. To plan for continued residential population growth of Cumberland which would be compatible with orderly and gradual expansion of community services, including but not limited to education, public safety, transportation infrastructure, waste disposal and health services.
- D. To avoid a situation in which the rapid development of new residences, potentially housing many families with school age children, could outpace the Town's capability to expand its schools and other services soon enough to avoid serious school overcrowding and a significant reduction in other

services.

#### § 118-4. Definitions.

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

**BUILDING PERMIT** — A permit as defined by and issued in accordance with the Maine Uniform Building and Energy Code and § 315-76A of Chapter 315, Zoning, of this Code.<sup>1</sup>

**CALENDAR YEAR** — The period of time comprised of 52 weeks commencing on January 1 and extending through December 31 of any given year.

**DWELLING UNIT** — A room or group of rooms designed and equipped exclusively for use as living quarters for a family, including provisions for living, sleeping, cooking and eating. The term shall include but not be limited to manufactured housing, modular/mobile homes, apartment units, duplexes and multiplexes and condominium units. The term shall not include trailers or recreational vehicles used for overnight or temporary lodging only.

**FAMILY** — A person or persons occupying a dwelling unit and living as a single housekeeping unit, as distinguished from a group occupying a boardinghouse, lodging residence, hotel or motel.

**GROWTH PERMIT** — A permit issued, in accordance with the provisions of this chapter, by the CEO to allow the establishment of a new dwelling unit.

**MANUFACTURED HOUSING** — A fabricated, pre-assembled dwelling unit designed to be transported after fabrication and to be used as living quarters. The term "manufactured housing" may include the terms "modular home" and "mobile home," except that the fabricated single-family modular home is assembled on the building site on a permanent foundation.

**PERSON** — Includes an individual's spouse, parents, siblings and members of his or her immediate family, unless the spouse, parent, sibling or immediate family member can demonstrate that the person seeking the growth permit owned the title to the property that is the subject of the growth permit independently of his spouse, parents, siblings or immediate family members as of May 1, 2000.

#### § 118-5. Applicability.

This chapter shall apply to all new dwelling units (including manufactured housing) within the Town of Cumberland. No new dwelling unit which fails to meet the requirements of this chapter shall be constructed or placed within the Town of Cumberland.

#### § 118-6. Exemptions.

This chapter shall not apply to the following:

- A. The repair, replacement, reconstruction or alteration of any existing building or structure, provided that the number of dwelling units is not increased, regardless of the need for a variance.
- B. Dwelling units constructed by the Cumberland Housing Authority, an agency of the state or federal government, or by a private developer or contractor with a continuing age restriction of persons 55 years of age or older. Any conversion of these units eliminating the age restriction would require a growth permit.
- C. Accessory apartments as allowed in § 315-45A of Chapter 315, Zoning, of this Code.

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1. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- D. Dwelling units constructed pursuant to a contract zoning agreement in which the Council authorizes the units to be exempt from the requirements of this chapter. **[Added 9-23-2013]**

**§ 118-7. Growth permits.**

A. Maximum number of dwelling units.

- (1) Unless and/or until this chapter is amended pursuant to § 118-10, the maximum number of new growth permits issued annually shall be 65 plus seven additional growth permits that shall be for affordable housing constructed by Habitat for Humanity or a similar not-for-profit organization. **[Amended 9-23-2013]**
- (2) All growth permits shall be issued in accordance with the issuance procedure described in Subsection C of this section.

B. Application procedure.

- (1) All growth permit applications shall be submitted in person to the Code Enforcement Officer or his/her assistant or agent (hereinafter the CEO) during normal office hours on the form designated "Growth Permit Application." No growth permit applications shall be accepted by mail.
- (2) The CEO shall indicate on the application form the date and time the growth permit application was received and provide the applicant with a receipt. The applications shall be reviewed in the order in which they were received. Only complete applications will be accepted.
- (3) The growth permit application shall be accompanied by a nonrefundable administrative fee established by order of the Town Council, documentation establishing the applicant's right, title and interest to the property, and one copy of a subsurface wastewater disposal system application form (HHE-200 or equivalent) and/or confirmation for eligibility of a sewer user unit. **[Amended 9-10-2012]**
- (4) A separate application shall be required for each dwelling unit.

C. Issuance procedure.

- (1) Growth permit applications shall not be accepted by the CEO until on or after the effective date of this chapter. Growth permit applications shall be on file with the CEO. From the time of the adoption of this chapter onward, applications will be accepted, and growth permits issued, as provided for in this section.
- (2) Growth permits shall be available on the basis of first come, first served.
  - (a) The CEO shall notify an applicant once the applicant is entitled to have a growth permit issued. Once the CEO has notified the applicant that the applicant is entitled to have a growth permit issued, the applicant shall have 30 days to accept the growth permit from the CEO, and the CEO shall notify the applicant in writing of the date of the expiration of said 30 days. If the applicant shall fail to accept the growth permit, then the growth permit shall expire.
  - (b) Expired growth permits shall be available for reissue during the same calendar year.
  - (c) The CEO shall issue growth permits for all complete applications if they do not outnumber the supply of growth permits. If applications exceed supply for any given year, permits

shall be issued on the basis of the order complete applications were received by the CEO. Up to 10 growth permits may be issued in excess of the supply for the current calendar year, provided that they are subtracted from the maximum allowable growth permits in the subsequent calendar year. Those on the list who do not get a permit for the calendar year in which they submitted a complete application shall have first priority to get a permit in the next calendar year. **[Amended 9-23-2013]**

- (d) Commencing January 1, 2012, and annually thereafter, all growth permits shall be issued on the basis of the calendar year (January 1 through December 31).
- (e) If, at the end of any calendar year, there are any unissued growth permits still available, a maximum of 10 growth permits may be carried over to the next calendar year. **[Amended 9-23-2013]**

**D. Replacement with building permit and expiration. [Amended 9-10-2012]**

- (1) A growth permit shall be replaced by a building permit for a dwelling on the specific site for which the growth permit was issued. A growth permit which has not been replaced with a building permit within 90 days of growth permit approval by the CEO shall be considered expired and must be resubmitted for consideration. Resubmitted growth permit applications will not have any priority over other growth permit applications. The expiration of the building permit shall be in conformity with the Maine Uniform Building and Energy Code.
- (2) Reissuance of an expired growth permit from a previous calendar year shall not be counted toward the annual allocation in any category. An administrative reinstatement fee established by the Town Council shall be assessed to the applicant.<sup>2</sup>

**E. Transferability.** Growth permits are not transferable. They shall be valid for construction on the lot specified on the application and by the applicant; provided, however, that such valid permits shall be transferable to new owners of the lot should the property change hands. If a permit is transferred, the date of issuance remains unchanged.

**§ 118-8. Effect on other regulations.**

This chapter shall not repeal, annul, or otherwise impair or remove the necessity of compliance with any federal, state or other local laws or ordinances. Where this chapter imposes a greater restriction upon the use of land, buildings, or structures, the provisions of this chapter shall prevail.

**§ 118-9. Periodic review.**

This chapter shall be reviewed by the Planning Board periodically (but not less frequently than once every three years) to ensure that the annual maximum growth rate has not become inconsistent with the Town's capital program requirements to establish, maintain, or enlarge needed public facilities and services. Based on its review the Planning Board may recommend amending this chapter as provided in § 118-10.

**§ 118-10. Amendments.**

An amendment to this chapter may be initiated by one of the following:

- A. The Planning Board.

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2. Editor's Note: See Ch. 84, Fees and Fines.

- B. The Town Council.
- C. The residents, pursuant to Article X, Section 2, of the Town Charter.

**§ 118-11. Construction or occupancy without growth permit.**

- A. A violation of this chapter shall be deemed to exist when any person, partnership or corporate entity engages in any construction activity directly related to the erection or placement of a dwelling unit upon any land within the Town without first having obtained a growth permit from the CEO.
- B. If a dwelling unit has been constructed or placed without a growth permit, it shall be deemed a violation for any person, firm, or corporate entity to sell, lease, rent or occupy such dwelling unit until such permit has been duly issued.

**§ 118-12. Notice of violation; remedies.**

When a violation of any provision of this chapter shall be found, the CEO shall send a written notice of the violation to the responsible party or parties and shall notify the Town Council of the violation. If the notice does not result in the correction of the violation, the Town Council may institute any and all actions and proceedings, either legal or equitable, including seeking injunctive relief, the imposition of fines, removal of the structure, or other action, that may be appropriate or necessary to enforce the provisions of this chapter. The remedies set forth herein are intended to be cumulative and not exclusive of each other. The Town Council is authorized to enter into administrative consent orders to eliminate violations with or without court action. Such agreement shall not allow an illegal structure or use to continue.

**§ 118-13. Violations and penalties.**

- A. Any person owning or controlling the use of any dwelling unit being constructed or occupied in violation of this chapter shall be liable to be fined not less than \$100 nor more than \$2,500 for each day such a violation (i.e., construction activity or unlawful occupancy) continues after notification by the CEO.
- B. If a dwelling unit has been built in violation of this chapter and is then occupied, for residential use, the owner may be fined as provided in Subsection A of this section.

**§ 118-14. Appeals.**

The Board of Adjustment and Appeals, in accordance with Chapter 315, Zoning, § 315-77, may, upon written application of an aggrieved party and after public notice, hear appeals from determinations of the Code Enforcement Officer in the administration of this chapter. Following such hearing, the Board of Adjustment and Appeals may reverse the decision of the Code Enforcement Officer only upon a finding that the decision is clearly contrary to the specific provisions of this chapter.