

# Town of Windham

Planning Department  
8 School Road  
Windham, ME 04062

voice 207.894.5960

fax 207.892.1916

## MEMO

DATE: September 12, 2014

TO: Windham Town Council

THROUGH: Tony Plante, Town Manager

FROM: Ben Smith, Director of Planning *BWS*

Cc: Amanda Lessard, Planner  
Windham Planning Board

RE: Planning Board Recommendation - Ordinance Amendment – Automobile Auction Facilities

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At the Planning Board's meeting on September 8, 2014, a public hearing was held on the proposed amendments to the Land Use Ordinance Sections 300, 400 and 500 related to defining and creating standards for Automobile Auction Facilities.

One member of the public spoke for the proposed amendment to allow this type of use in the Economic Development (ED) zoning district.

During Planning Board discussion, there was a focus on the environmental and traffic impacts of such a use in the ED zone, also the screening requirements and operations of such a use. Specifically, if cars were stacked on top of each other, 6-foot fencing may not adequately screen vehicles from the road, and how much noise should be expected from such a use. These items could be addressed as either standards written into the ordinance, or as conditions of approval on an individual business basis as part of site plan approval.

Following discussion of the proposed changes, the Board made the following motion:

Keith Elder made a motion to forward to Town Council with a positive recommendation and with recommendation to address the apparent contradiction between the requirement of 506.D, that leaking fluids will be collected or contained, and 506.E, that the storage of fluids will not be allowed on site, by placing a gallon limit on the storage of fluids on site.

Seconded by David Douglass, AIA.

Vote: All in favor (4-0).

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## MEMO

DATE: August 19, 2014

TO: Windham Planning Board  
FROM: Ben Smith, Director of Planning *BWS*  
Cc: Amanda Lessard, Planner  
Heather McNally, Director of Code Enforcement  
Tom Bartell, Executive Director, WEDC

RE: Ordinance Amendment – Creation of standards for Automobile Auction Facilities

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At the Town Council meeting on July 22, 2014, the Council adopted ordinance changes related to Automobile Repair and Automobile Storage Lot standards. Part of the discussion that evening was related to the needs of a particular business that was interested in locating a facility in Windham. This business, Copart, is an automobile auction business and needs to store many vehicles on site for longer periods of time than allowed under the Automobile Storage Lot standards, which were drafted and adopted with impound lots in mind.

The Town Council voted to send the proposed ordinance changes that follow to the Planning Board for review and recommendation at their August 12 meeting. These changes reflect input from Copart, Tom Bartell, Executive Director of the WEDC, and the Town Council. Highlights of the proposed changes are outlined below.

### Section 300

- Automobile Auction Facility added to the Definition section of Chapter 140.

### Section 400

- Automobile Auction Facility is allowed as a Permitted Use in the Economic Development (ED) zoning district.
  - A district standard has been added to use opaque fencing to screen this use from the view of abutting properties instead of evergreen trees as otherwise required in the ED zone.

## **Section 500**

- Performance standards include limits on the length of time vehicles can be kept on site, screening and setbacks for storage areas and annual inspections by Code Enforcement.
  - The Town Council requested the following items, and they have been added to Section 500:
    - Covered storage for burned vehicles in order to protect them from the elements and avoid vehicle fluids from being washed into the stormwater from the site.
      - Added to 506.D.
    - Fencing would be required only on sides of the property where there are structures on abutting properties. When new structures are built on abutting properties, the operator of the Automobile Auction Facility would then be responsible for adding the necessary fencing.
      - Staff suggests, “The designated parking area shall be screened from public ways and abutting properties,” as drafted in Section 506.C. This is consistent with the existing and proposed zoning district standards in on page 4-34.
    - Annual checklist to be used in Code Enforcement inspection has been added.

The Planning Board should also note that a member of the public, Dustin Roma, provided comment at the Council meeting on August 12, and stated the 180 days proposed as a limit on the amount of time for vehicles to be stored at an Automobile Auction Facility should be changed to 365 days or removed entirely, as all vehicles will be screened, and the documentation will be burdensome for Code Enforcement to collect and verify.

**Agriculture.** 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, horse, 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; vegetables; nursery, floral, ornamental, and greenhouse products. Agriculture does not include forestry or sawmills, as defined in this Ordinance. (*See Sec. 500 Performance Standards*)

**Agriculture, Piggery.** A premises, area, fenced enclosure, building or structure, or portion thereof, used or designed for the keeping of pigs. (*See Sec. 500 Performance Standards*)

**Agriculture, Poultry Facility.** A premises, area, fenced enclosure, building or structure, or portion thereof, used or designed for the keeping of poultry or fowl. (*See Sec. 500 Performance Standards*)

**Antenna.** Any structure or device used for the purpose of wireless transmitting or receiving electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunication signals, including but not limited to directional antennas, such as panels, microwave dishes, and satellite dishes, and omni-directional antennas, such as whip antennas.

**Area of Special Flood Hazard.** The land in the flood plain having a one per cent (1%) or greater chance of flooding in any given year, as specifically identified by the Federal Emergency Management Agency in a report entitled “Flood Insurance Study - Town of Windham, Maine, Cumberland County.”

**Arterial Street.** See definition of, “Street Classification: Arterial Street”

**Artist Studio.** A place of work for an artist, artisan, or craftsperson, including persons engaged in the application, teaching, or performance of fine arts such as, but not limited to, drawing, vocal or instrumental music, painting, sculpture, writing, woodworking, sewing, and saw sharpening.

**Assisted Living Facility.** Residences for the frail elderly that provide rooms, meals, personal care, and supervision of self-administered medication. They may provide other services, such as recreational activities, financial services, and transportation.

**Auction House.** A place where objects or art, furniture, and other goods are offered for sale to persons who bid on the object in competition with each other.

**Automobile Auction Facility.** Any parcel of land, building or other premises, or portion thereof, which is used for the temporary storage of whole, wrecked automobiles that are offered for sale by an automobile auction business. This use does not include Automobile Graveyards,

automobile recycling businesses or Junkyards, as defined according to 30-A, M.R.S.A §3752, of the Maine Revised Statutes, as amended from time to time.

**Automobile Gas Station.** Any building, land area, or other premises, or portion thereof, used for the retail dispensing or sales of vehicular fuels; and as an accessory use the sale of lubricants, tires, batteries, and similar vehicle accessories. The sale of additional items or services on the same site must also be allowed by the applicable zoning district(s). (*See definition of "Retail Store, Minimart"; "Automobile Repair Services, Minor"*)

**Automobile Graveyard.** An automobile graveyard shall be defined according to 30-A, M.R.S.A. § 3752, of the Maine Revised Statutes, as amended from time to time.

**Automobile Repair Services.** Establishments primarily engaged in the maintenance and repair of passenger vehicles, pickup trucks, all classes of commercial trucks and similar vehicles. The type of work typically provided includes, but is not limited to engine tune-ups and overhauls, transmission repairs, glass repair and replacement, oil changes, tire repairs and replacement, brake and muffler work, bodywork, painting and diagnostic tune-ups. (*See Sec. 500 Performance Standards*)(*See definition of "Small Engine Repair"*)

**Automobile Sales.** See "Retail Sales, Automobile Sales."

**Automobile Storage Lot.** A parcel of land, building, or facility that is used for the temporary storage of wrecked, towed or impounded motor vehicles usually awaiting insurance adjustments, reclamation by titleholders or their agents, or transport to a repair shop. (*See Sec. 500 Performance Standards*)

**Bank.** A bank or similar financial institution.

**Backlot.** See definition of, "Lot, Backlot"

**Base Flood.** The flood having a one-percent (1%) chance of being equaled or exceeded in any given year, commonly called the "one-hundred year flood."

**Bed and Breakfast Inn.** Overnight accommodations and a morning meal in a dwelling unit provided to transients for compensation. (*See Sec. 500 Performance Standards*).

**Boarding Home for Sheltered Care.** A group home for the sheltered care of persons with special needs, which, in addition to providing food and shelter, may also provide some combination of personal care, social or counseling services, and transportation. This definition does not include facilities for the treatment of substance abuse. (*See Sec. 500 Performance Standards*)

**Buffer Strip.** Open spaces, landscaped areas, fences, walls, berms, or any combination thereof used to physically separate or screen one use or property from another so as to visually shield or block noise, lights, or other nuisances.

## I. Enterprise Development District (ED)

### 1. Intent

The intent of this district is to provide a unique area within the Town of Windham to allow manufacturing, processing, treatment, warehousing, storage, research and distribution with safe, well regulated vehicle access located off a major street which can conform to the performance standards set forth in this section and in all other applicable ordinances of the Town of Windham.

### 2. Permitted Uses

The following uses, as they are defined in Section 300, shall be permitted in the Enterprise Development District as a matter of right. Refer to Section 500, Performance Standards or Subsection 6. District Standards for additional use information:

- Auction House
- [Automobile Auction Facility](#)
- Automobile Repair Services
- Building, Accessory
- Business and Professional Office
- Construction Services
- Convention Center
- Distribution Facility
- Forestry
- Hotel
- Industry, Heavy
- Industry, Light
- Mineral Extraction
- Motel
- Public Utility Facility
- Retail Sales, Accessory
- Small Engine Repair
- Use, Accessory
- Warehousing, Private
- Warehousing, Public
- Wireless Telecommunications Tower and Facility

### 3. Conditional Uses

The following uses, as defined in Section 300, shall be allowed as a Conditional Use in accordance with Section 513. Refer to Section 500, Performance Standards or Subsection 6. District Standards for additional use information:

- Automobile Storage Lot
- Shipping Container

### 4. Prohibited Uses

Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

**5. Dimensional Standards**

The following dimensional standards shall apply in the Enterprise Development District:

- (a) Minimum Lot Size: None
- (b) Minimum Frontage: 100 ft.
- (c) Minimum Front Setback: 40 ft.
  - (1) Minimum Landscaped Buffer Strip 40 ft.
- (d) Minimum Side Setback: Greater of 30 ft. or 50% of Building Height
- (e) Minimum Rear Setback: Greater of 30 ft. or 50% of Building Height
- (f) Maximum Building Height: 40 ft.
  - (1) Maximum Building Height Exemption See District Standards
- (g) Maximum Building Coverage: 50%
- (h) Maximum Impervious Area: 75%

**6. District Standards**

In addition to Section 500, Performance Standards, these standards shall apply to the following uses in the Enterprise Development District:

- (a) **Access Management**
  - (1) Any parcel of land which is divided or developed may be required by the Town to provide one (1) or more sixty (60) foot right-of-ways to abutting land in the Enterprise Development Zone.
  - (2) An Enterprise Development District may have one (1) or more dead-end access streets from an existing public right-of-way.
    - (i) If two (2) or more entrances to an Enterprise Development District are proposed, such entrances shall be separated by at least one thousand (1000) linear feet, unless waived by the Planning Board.
  - (3) The Town may require that one (1) or more turning lanes be provided on the public right-of-way from which the Enterprise District is accessed. The need for these lanes will be based on proposed traffic volumes and conditions.

- (4) Access to all lots within an Enterprise Development District shall be limited to the District's interior road system.
- (b) **Convention Center.** Convention Centers shall only be permitted as an Accessory Use to a Hotel or Motel.
- (c) **Buffers and Screening**
- (1) **Residential District Boundary Buffer.** Where a lot abuts, or is within one hundred (100) feet of the side or rear boundary line of any residential district (including any residential district in an adjacent municipality), or within one hundred (100) feet of the side or rear boundary line of an existing improved residential lot within an ED District a fifty (50) foot wide buffer strip shall be provided. The following standards shall apply to the required buffer:
- (i) Twenty (20) feet nearest the boundary shall be used and maintained as a landscaped buffer strip, as defined.
- a) Within the landscaped buffer strip, screening of adjoining properties must be achieved as defined for a Buffer in Section 300 Definitions.
- (ii) The remaining thirty (30) feet of the landscaped buffer strip shall also be used and maintained as a suitable planting area for lawns with trees, shrubs or other landscape material. Within this portion of the buffer strip, underground utilities such as septic systems, sewer pipes, storage tanks and wells shall be allowed. Employee picnic tables shall also be permitted in this area.
- (iii) No building, structure, parking area, storage area, or display of equipment or materials shall be constructed, located or otherwise placed within any portion of the buffer strip.
- (2) **Commercial District Boundary Buffer.** In an ED District where a lot abuts or is within one hundred (100) feet of the side or rear boundary line of any commercial zone, there shall be provided on those sides facing the commercial zone a buffer strip fifteen (15) feet wide which shall be used and maintained as a suitable planting area for lawns, trees, shrubs or other landscape materials.
- (i) Within the landscaped buffer strip, screening of the adjoining commercial district properties must be achieved as defined for a Buffer Strip in Section 300 Definitions.
- (3) **Frontage on Existing Public Rights-of-Way Buffer.** A landscaped buffer strip of at least one hundred (100) feet shall be required where the District, or a lot within the District, has frontage on an improved public right-of-way



that was in existence prior to the creation of the Enterprise Development District.

- (i) One (1) sign that identifies the establishments within the Enterprise Development District shall be permitted within the landscaped buffer strip. See Section 800 Signs and Graphic Displays.
  - (ii) No equipment, vehicles, materials, articles for sale or signs in addition to that allowed in Subsection 400 I.6.(c)(1)(ii) above, shall be placed within any portion of the landscaped buffer strip unless otherwise provided for in this chapter.
- (4) Screening of Outdoor Storage. Outdoor storage shall be completely screened from adjoining properties by means of evergreen trees at least six (6) feet in height at time of planting.
- (i) Automobile Auction Facility. Opaque fencing six (6) feet in height shall enclose any outdoor storage area in lieu of evergreen trees.
- (5) Screening of Lighting: See Subsection 400 I.6.(g)(5) below.
- (d) **Industry, Heavy.** In accordance with the Conditional Use standards in Section 500, the appropriate Review Authority may approve the manufacturing or use of hazardous material, as defined in Section 300. (*See Sec. 300 for definition of “manufacturing, hazardous”*)
- (e) **Maximum Building Height Exemption.** Buildings over 40 ft. high shall be allowed if approved by the Zoning Board of Appeals.
- (1) The Zoning Board of Appeals shall use the Conditional Use standards in Section 513 to make its findings on the application.
- (f) **Parking Lot Setback.** Parking lots shall maintain a 30 ft. setback from all property lines.
- (g) **Performance Standards**
- (1) Air Pollution: All uses shall comply with minimum Federal, State and local air pollution requirements.
    - (i) Applicants shall submit information demonstrating compliance with any applicable federal, state or local requirements. If the application does not require subdivision or site plan review, the information shall be submitted to the Code Enforcement Officer for approval before a building permit is issued.

- (ii) The maximum permitted density of smoke, dust and other particulate emissions during normal operations of any activity shall not exceed the maximum allowable under the regulations of the Maine Department of Environmental Protection. In case of doubt, the Code Enforcement Officer may employ such independent, recognized consultants as necessary, at the expense of the applicant, to assure compliance with performance standards and all other requirements of this chapter related to the public health, safety and welfare and the abatement of nuisances.
- (2) Electromagnetic Interference. No use, activity or process shall be conducted which produces electromagnetic interference in the transmission or reception of electrical impulses beyond any lot lines, including radio and television. In all cases, Federal, State and local requirements shall be met. Violations of this standard shall be considered a public nuisance.
- (3) Fire Protection.
  - (i) All buildings or structures shall be connected to the public water supply and have a sprinkler system or a fire suppression system installed when required by the Town of Windham Building Code.
  - (ii) Storage, utilization, or manufacture of solid materials or products including free burning and intense burning is permitted provided that said materials or products shall be stored, utilized, or manufactured within completely enclosed buildings having incombustible walls and protected throughout by an automatic fire-extinguishing system.
  - (iii) The storage, utilization, or manufacture of flammable liquids, or materials which produce flammable or explosive vapors or gases shall be permitted in accordance with the most current edition of the National Fire Protection Association Standards for Flammable and Combustible Liquids (NFPA 30) or the most current edition of the Building Officials and Code Administrators (BOCA) Fire Prevention Code. The most restrictive standards shall apply.
  - (iv) Any change in use or occupancy shall require a review and approval by the Code Enforcement Officer and the Fire Chief.
  - (v) Tanks or other underground storage facilities abandoned or not in use for a period exceeding one (1) year shall be removed or otherwise assured safe conditions are present. In all cases, applicable Federal, State and local regulations shall prevail.
- (4) Groundwater and Surface Water Protection.

- (i) **Water Pollution.** No activity shall locate, store, discharge, or permit the discharge of any treated, untreated or inadequately treated liquid, gaseous, or solid materials of such nature, quantity, obnoxiousness, toxicity or temperature that run off, seep, percolate, or wash into surface or ground waters so as to contaminate, pollute or harm such waters or cause nuisances, such as objectionable shore deposits, floating or submerged debris, oil or scum, color, odor, taste, or unsightliness or be harmful to human, animal, plant or aquatic life.
  - a) All provisions of 38 M.R.S.A. Chapter 3, Protection and Improvements of Waters and such rules and regulations adopted by the Maine Board of Environmental Protection pursuant to the referenced purpose shall apply.
  - b) No development or use shall result in the existing groundwater quality becoming inferior to the physical, biological, chemical and/or radiological levels for raw and untreated drinking water supply sources specified in the Maine State Drinking Water Regulations, pursuant to 22 M.R.S.A., §2601 et seq. If the existing groundwater quality is inferior to the State Drinking Water Regulations, the developer or land owner will not degrade the water quality any further.
  - c) Representatives of the municipality or the Maine Department of Environmental Protection may enter the premises for the purpose of gauging, sampling and testing any waste water systems which may enter into water courses.
  - d) No development or use of land shall lower the groundwater table more than ten (10) feet.
- (ii) **Subsurface Wastewater Disposal.** The Enterprise Development District has been determined by the Town of Windham to be particularly sensitive to the discharge of pollutants from on-site subsurface sewage disposal systems and is therefore designated as a groundwater sensitive area. when the sewage contains effluent other than usual bathroom and/or on-premises food preparation water, the Town of Windham may require a pretreatment system of the effluent before its entry into any subsurface sewage disposal system
  - a) The Town may hire a third party consultant to review any subsurface wastewater disposal applications. The costs for this review shall be the responsibility of the applicant.
  - b) The Town of Windham may require groundwater monitoring of the project at the owner's expense.

- (5) Lighting
- (i) No lights shall be placed in view of any public roadway or street so that its beams or rays are directed at any portion of the roadway when the light is of such brilliance and so positioned as to impair the vision of the driver of any motor vehicle upon said roadway.
  - (ii) Lighting with a lumen output equal to or greater than a two-hundred watt mercury light shall not be directed towards the sky or adjacent residential properties.
  - (iii) No rotating or flashing lights or signals, except safety signaling devices as required by law, are permitted.
  - (iv) Adequate buffers using either the natural landscape or artificial screening are required to prevent unnecessary light from being directed beyond any lot lines onto adjacent residential properties.
- (6) Noise. Noise is required to be muffled so as not to be objectionable due to emission, beat frequency or shrillness. The average dBA count resulting from any activity shall not exceed at any point on or beyond any lot line, sixty (60) dBA during the day and fifty (50) dBA at night. The average dBA count for any activity shall be computed based on samples taken at intervals over a twenty-four hour period.
- (i) During the peak activity of sixty (60) minutes in a twenty-four hour period, a noise may not exceed these average dBA counts by more than ten (10) dBA.
  - (ii) Temporary activities that are unable to meet these requirements shall require a special permit from the Code Enforcement Officer. The noise standards shall not apply to the temporary use of such machinery as chainsaws, lawn mowers and snowmobiles.
- (7) Odors. The emission of odorous or toxic matter in such quantities as to be readily detectable at any point along any lot lines so as to produce a public nuisance or hazard is prohibited.
- (i) Such activities shall comply with applicable minimum Federal, State and local requirements.

- (ii) Detailed plans shall be submitted to the Code Enforcement Officer for approval before a permit is granted.
  - (iii) Violations of this standard shall be considered a public nuisance.
- (8) Vibrations. No vibration shall be produced which is transmitted through the ground and is discernible without the aid of instruments at or at any point beyond any lot line.
- (h) **Street and Road Design**
  - (1) All streets in the Enterprise Development District shall be designed and constructed to meet the industrial road standards set forth in Section 900 Subdivision Review.
  - (i) **Utilities.** All utilities, including telephone and electrical services, shall be placed underground. If the development is being reviewed by the Planning Board as either a site plan or subdivision, the applicant may request a waiver under the applicable waiver standards of either Section 800 Site Plan or Section 900 Subdivision.

- D. Spreading or Disposal of Manure. All spreading or disposal of manure shall be accomplished in conformance with the, “Manual of Best Management Practices for Maine Agriculture,” published by the Maine Department of Agriculture in January, 2007, and as this may be amended or superseded.

**505 Adult Business Establishment**

- A. Such establishment shall be at least two thousand (2,000) feet from the nearest property line of any school, place of worship, library, playground, child care family home, child care facility or any residential zoning district. Said distance shall be measured in a straight line without regard to intervening structures or objects.
- B. No sexually explicit materials, entertainment, or activity shall be visible from the exterior of the premises.

**506 Automobile Auction Facility**

- A. Automobiles shall be kept on the lot for no more than 180 cumulative days.
  - 1. After 180 days, the operator must prove application to the State of Maine for an abandoned vehicle title or show a legal reason the automobile cannot be sold, such as active litigation.
- B. All stored automobiles shall be kept in a designated parking area. The designated parking area shall be no closer than three hundred (300) feet to a residential structure that conforms to this ordinance and is not owned or controlled by the operator of the Automobile Auction Facility.
- C. The designated parking area shall be screened from public ways and abutting properties. Such screening shall consist of opaque fencing which must be a minimum of six (6) feet in height.
- D. The Automobile Auction Facility shall ensure that leaking fluids from damaged or wrecked vehicles are collected or contained, per applicable Maine Department of Environmental Protection standards.
  - a. Burned vehicles shall be stored under cover to protect them from the elements.
- E. No dismantling of automobiles or storage of fluids will be allowed on site.
- F. Automobile Auction Facilities shall require an annual inspection by the Code Enforcement Officer.
  - a. The following checklist will be used as a guide for annual inspections:

	<u>Compliant</u>	<u>Not Compliant</u>
<u>Proof of application to state for automobiles stored for more than 180 days?</u>	-	-
<u>All stored vehicles stored in designated parking area?</u>	-	-
<u>Fencing installed around the designated parking area?</u>	-	-

<u>All burned vehicles stored under cover?</u>	-	-
<u>No evidence of dismantling of automobiles or storage of fluids on site?</u>	-	-
-	-	-
<u>Date of Inspection:</u>	-	-
<u>Code Officer signature:</u>	-	-

**506 Automobile Repair Services**

- A. The following standards shall apply to all Auto Repair Services:
  1. The sale of gasoline or other petroleum products shall not be allowed as an accessory use (*see standards for Automobile Gas Station*).
  2. Upon completion of all repair work, as requested by the customer, no more than two (2) registered automobiles shall be left on site in excess of forty-five (45) cumulative days each in a calendar year. (*See definition for “Automobile Graveyard” in Section 300.*) The storage of automobiles in excess of this standard shall not be allowed as an accessory use for Automobile Repair Services established after August 7, 2014 (*see standards for Automobile Storage Lot*).
  3. Automobiles may not be displayed for sale, or sold, on the premises, unless Automobile Sales, Outdoors is a permitted use or a conditional use in the applicable zoning district.

**507 Automobile Storage Lot**

- A. The following standards shall apply to Automobile Storage Lots created after August 7, 2014:
  1. Automobiles shall be kept on the lot for no more than 45 cumulative days in a calendar year.
  2. All stored automobiles shall be kept in a designated parking area. The designated parking area shall be no closer than 300 feet to a residential structure that conforms to this ordinance and is not owned or controlled by the operator of the Automobile Storage Lot.
  3. The designated parking area shall be screened from public ways or structures on abutting properties. Such screening shall consist of opaque fencing, which must be a minimum of six (6) feet in height.
  4. The Automobile Storage Lot shall ensure that leaking fluids from damaged or wrecked vehicles are collected or contained, per applicable Maine Department of Environmental Protection standards.
  5. Automobile Storage Lots shall require an annual inspection by the Code Enforcement Officer.