CHAPTER 116
TOWN OF WINDHAM
GROWTH MANAGEMENT ORDINANCE

Adopted July 28, 2020

A. TITLE

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

B. LEGAL AUTHORITY

This Ordinance is adopted pursuant to the home rule powers as provided for in Article VIII-A 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.

C. PURPOSE

The purpose of this Ordinance 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 Comprehensive Plan, more specifically:

1. 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.

2. to provide for the immediate housing needs of the existing residents of the Town of Windham.

3. to ensure fairness in the allocation of building permits.

4. to ensure that the Building Permit issuance system does not prevent the creation of a reasonable number of multiple dwelling units simultaneously; and

5. to allow for reasonable growth while maintaining the rural character of the town.

D. DEFINITIONS

As used in this Ordinance, the terms below shall be defined as indicated. All other terms used in this Ordinance, if not defined below, shall have the same definition as set forth in Section 300 of the Town of Windham Land Use Ordinance.

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 66, Building Construction Ordinance.

Dwelling unit: A dwelling unit as defined in Section 300 of the Land Use Ordinance.

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 Ordinance, which allows the issuance of a building permit for the construction, creation or placement of one new dwelling unit within the Town of Windham.

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 the Town of Windham Land Use Ordinance.

E. APPLICABILITY

Except as provided in Section F below, this Ordinance shall apply to the construction, creation or placement of any new dwelling unit within the Town of Windham.

F. EXEMPTIONS

This Ordinance shall not apply to:

1. The repair, replacement, reconstruction or alteration of an existing dwelling unit, provided that no new dwelling units are created, and no seasonal dwelling units are converted into year-round dwelling units.

2. A single dwelling unit on a family gift lot.

3. 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. § 4581(2), and as may be amended from time to time.

4. The construction, repair, replacement, reconstruction, or alteration of an accessory apartment.

G. ADMINISTRATION

1. Share of growth permit required per dwelling unit.

   a. The creation of each new single-family detached dwelling shall require one (1) growth permit.

   b. The creation of each new two-family dwelling structure shall require one (1) growth permit.

   c. The creation of each new multi-family dwelling structure shall require one (1) growth permit

2. 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.

   a. The number of growth permits allocated annually and the process for the issuance of growth permits from this annual allocation are set forth in sub-sections 3 4 and 5.

   b. The operation of the reserve pool of growth permits is set forth in sub-sections 6 and 7.

3. Annual allocation of growth permits per calendar year.

   a. The maximum number of growth permits issued between January 1st and December 31st of each year shall be one-hundred twenty-five (125). For the year of enactment, the number of permits shall be prorated to 11 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:

      (1) No more than One-hundred eight (108) growth permits shall be issued for new single-family detached dwelling.
      (2) No more than fourteen (14) growth permits shall be issued for new two-family dwelling structures.
      (3) No more than three (3) growth permits shall be issued for new multi-family dwelling structures.

   b. During each calendar year, no more than forty (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.

c. During each calendar year, no more than twenty (20) of the growth permits available from the annual allocation shall be issued for dwelling units within any one subdivision or other development.

d. During each calendar year, no more than five growth permits per quarter, up to fifteen (15) growth permits per year, shall be granted to any one person, firm, or corporation (this includes corporations with the same majority ownership).

4. Application procedure for growth permits.

a. 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.

b. The growth permit application shall be accompanied by:

(1) a nonrefundable application fee as specified in the Schedule of Fees established by order of the Town Council;
(2) a deed or other instrument establishing the applicant's ownership interest in the property; and
(3) 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.

c. 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.

d. 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.

e. A separate application is required for each growth permit sought.

f. No growth permit application shall be accepted by the Code Enforcement Officer until the effective date of this Ordinance.

5. Issuance procedure for growth permits from the annual allocation.

a. Growth permits shall be issued on a monthly basis from all pending completed applications.

b. Up to nine (9) growth permits from the annual allocation shall be granted in any calendar month, provided that no more than one hundred (100) 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.

c. 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:
   (1) 4 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);
   (2) 4 points for each year (six months or more) which the applicant has been the owner of record of the subject property;
   (3) 3 points for each year (six months or more) which the subject property has been a lot in an approved subdivision;
   (4) 2 points for each month the application has had a pending, complete application on file but has failed to receive a permit.

d. In the case of a tie, growth permits shall be awarded in the order in which a complete application was submitted.

e. Once issued, a growth permit must be replaced by a building permit for construction, placement or creation of the dwelling unit or units 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 90-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 90-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 Section G.4 above. Expired growth permits shall be added to the following month's allocation of available permits.

f. 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 Section G.4.d above.

6. Establishment of the reserve pool of growth permits.

a. On the effective date this ordinance, a reserve pool of fifty (50) growth permits shall be established. Growth permits from the reserve pool shall be allocated in accordance with the provisions of subsection 7 below.

b. The growth permits in the reserve pool shall remain available until used, and unissued growth permits shall carry over from year to year.

c. Twenty (20) 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 7. 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 twenty (20) growth permits.

d. The Town Council may by order add growth permits to the reserve pool following public hearing as part of its periodic review of the Ordinance or if the available growth permits are not adequate to allow the construction of a project in accordance with subsection 7 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.

e. If the number of growth permits remaining in the reserve pool at the end of a calendar year is less than twenty (20), additional growth permits shall automatically be added to the pool so that twenty (20) growth permits are available and these twenty (20) permits shall be set aside for affordable housing units.

7. Allocation of growth permits from the reserve pool.

a. The Code Enforcement Officer may issue up to Ten (10) growth permits from the reserve pool each calendar year for detached single-family dwellings 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.

b. Except as provided in subsection (a) 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.

c. 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.

d. 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.

e. 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:

(1) The dwelling units 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.

(2) The dwelling units to which the growth permits may be allocated are part of an affordable housing project in which at least fifty (50) percent of the dwelling units are affordable housing.

(3) The dwelling units 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.

(4) The dwelling units 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.

(5) The applicant has established that it would be an undue hardship to delay construction of the dwelling unit. 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 will be located.

f. 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 C above) may not permit the dwelling units 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.

g. 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 in accordance with subsection 4 above.

h. The Code Enforcement Officer shall process the application for growth permit(s) from the reserve pool in accordance with subsection 5 above except as follows:

(1) 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.

(2) If the subdivision or development has not previously received twenty (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 twenty (20) limit is reached and any additional growth permits shall be issued from the reserve pool.

(3) 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.

(4) 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 shall first be taken from the twenty (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.

8. 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 Section G(5)(c)(4).

H. PERIODIC REVIEW OF ORDINANCE

The Town Council shall conduct a periodic review of this Ordinance 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 Ordinance should be adjusted by amendment to this Ordinance. The Town Council shall conduct a review at least once every three (3) 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 the Ordinance at any other time.

I. VIOLATION, PENALTIES AND ENFORCEMENT

Any person who constructs, creates or places a dwelling unit within the Town of Windham without a growth permit required by this Ordinance or who owns or occupies a dwelling unit constructed, created or placed within the Town of Windham without a growth permit required by this Ordinance 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 Ordinance shall be enforced by the Town of Windham Code Enforcement Officer in the manner provided for enforcement of violations of the Zoning Ordinance under Section 1004 of the Land Use Ordinance.

J. APPEALS

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 Ordinance may appeal to the Windham Board of Appeals under the provisions governing administrative appeals in Section 1105 of the Land Use Ordinance. Decisions of the Code Enforcement Officer to approve a growth permit application as complete or to issue a growth permit are not appealable.

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 the Maine Rules of Civil Procedure, Rule 80B. Actions of the Town Council with respect to this Ordinance are not appealable to the Windham Board of Appeals.