

Municipal Code Enforcement Officer Training & Certification Program



Introduction to Building Standards And The Use of Model Building Codes

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INTRODUCTION TO BUILDING STANDARDS and USE OF MODEL BUILDING CODES

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CEO Training and Certification Program
State Planning Office
38 State House Station
Augusta, Maine 04330-0038
(207) 287-3261

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EDUCATIONAL OBJECTIVES

A number of major elements have been identified in this material as those that the reader should understand and retain a working knowledge of. An effort to highlight these elements within the material has been made. These objectives are based upon the selected elements. They are presented here to help the reader organize his or her study of the topic and to assist the applicant for certification in preparation for the Building Standards examination. **Applicants for Building Inspector Certification Examinations should note that the test is not based on this material alone. The Building Standards portion of the Certification Examination contains questions based upon other materials in addition to that found in this manual.**

Following the completion of the Basic training workshop, each participant shall be able to:

1. Identify the major events of history which prompted the enactment of the first building codes.
2. Discuss the statutes of the State of Maine which deal with building construction.
3. Explain the requirements for the position of municipal Building Inspector.
4. Describe the intent of a building code.
5. Define the two types of building codes.
6. Explain what a model code is.
7. Explain the process of making changes to a model code.
8. Explain the authority to adopt municipal building codes.
9. Discuss the process of adopting a building code in a Maine community.
10. Demonstrate knowledge of the International Building Codes organizational numbering system.
11. Classify a building by use group.
12. Classify a building by type.
13. Demonstrate a simple plan review procedure.
14. Define the three elements of an egress.
15. List the major forms used in the building permit process.

16. Discuss the kind of inspections and number of each kind required for any given building or project.
17. Discuss the importance of and uses of an inspection checklist.
18. Discuss the individuals, boards, and agencies that a CEO will be involved with during the permitting and inspection processes.
19. List the requirements for State review of certain classes of structures.
20. Explain the evaluation procedure of the Insurance Service Office (ISO).
21. Discuss the impact of the *ISO's Code Enforcement Effectiveness Survey* upon the State of Maine.

INTRODUCTION

The authority to establish building and other land use regulations is derived from Federal and State Constitutional power to legislate for the protection of the public health, safety, and welfare.

Maine State Statutes, specifically Title 25 M.R.S.A § 2351 requires all municipalities of a population of 2,000 or more to have an inspector of buildings. Implementation of this State Law at the local level requires that municipalities must deal with permitting, inspection, and certification of the safety of structures within the community. On July 30, 2004 the Maine Model Building Code Act took effect in the State of Maine. Title 10 M.R.S.A. §§ 9701-9706 requires any municipality that adopts a building code after July 30, 2004 to adopt only the 2003 International Building Code and/or the 2003 International Residential Code. The Law was changed in 2005 to include the 2003 International Existing Building Code. Building Code adoption requirements is covered more in depth in Chapter 1. The adoption of a code is a function of each municipality. It is highly recommended that each community that issues building permits and certificates of occupancy for structures have pre-established standards and procedures to insure that the health, safety and welfare of individuals and the community are protected. Those standards and procedures should be adopted in the form of a local ordinance. This allows municipal officials, land owners, contractors, and citizens to understand the requirements and the procedure by which they must comply. In this age of citizen's awareness of civil and other property rights it is critical to have these standards established correctly. Most municipalities with any development history have adopted such codes. Because it is strictly a local function there are differences in standards and procedures from one municipality to another leading to a good deal of confusion. Presently in Maine there are Building Inspectors administering and enforcing different versions of a model building Code, there are some inspectors trying to enforce home grown standards, and there are even some Building Inspectors without any standards at all. One of the reasons behind the Model Code legislation and a goal of building officials should be to minimize any confusion.

Most Shoreland Zoning Ordinances in the State authorize the CEO to issue permits for uses and structures pursuant to those ordinances, however, the Shoreland Zoning ordinance does not contain structural standards, only environmental and zoning issues. There are, however, in State Statutes several references to building standards. All CEOs should know these procedures and standards even if they are not a building inspector since they impact other permits they issue. This manual will review the current situation in the State of Maine concerning building codes, discuss options for adopting a building code in a community, review the permitting, inspection, and preliminary enforcement processes, and introduce the reader to the International Building Code. It is not the purpose of this manual to instruct an individual as a certified International Code Inspector.

CHAPTER I: STANDARDS AND AUTHORIZATION

Building construction is a sophisticated process, governed by interrelated codes and standards that regulate structural issues, zoning, electrical, plumbing, energy conservation, accessibility, fire safety and other specialized aspects of construction. The Maine State Legislature passed a Law in 2004 that defines the adoption of building codes for municipalities. The law (Title 10 M.R.S.A. §§ 9701-9706) does **not mandate** adoption of a building code at the local level. However, if a municipality chooses to adopt a code after July 30, 2004 they are **required** to adopt only the International Building Code (IBC), International Residential Code (IRC), and/or International Existing Building Code (IEBC). Although State Law does not require a municipality to adopt a building code, it does require municipalities with a population over 2,000 to appoint an inspector of buildings (Title 25 M.R.S.A. § 2351). There are many State Laws that require certain procedures and prescribe standards that relate to the construction of structures within the State. All CEOs, even if they are not a building inspector, should know what these procedures and standards are since they have an impact upon other permits issued. As a municipal code official, regardless of your “official” responsibilities, you should remember that you’re primary purpose is to help the citizens and the community to understand how to develop an environment for living, working and recreating that is reasonably safe and healthy while protecting individual and property rights.

Among the State standards and procedures, in addition to the Model Code, relating to building construction are:

- Requirements that plans for certain buildings be reviewed for compliance with a State adopted Life Safety Code.
- Requirements that all new buildings meet insulation and energy conservation standards.
- Requirements that prohibit adverse impact of structures upon valuable natural resources.
- Specific standards of accessibility to structures established by State and Federal Governments.
- Requirements of Lending and Insurance Institutions that standards be met before their guarantee will be offered to owners of structures. (This situation is increasing dramatically on the national level as a result of natural disasters over the last 20 or so years).
- Regulations of Local, State, and Federal governments that are not "directly" building standards, impact upon the requirements of building standards, such as criteria for State and Federal Grants and Loans to businesses and homeowners, human rights requirements in employment, protection of community, State and National Resources (zoning and prohibited materials).
- Standards for structures built by the State or with State funds.

- Standards regulating the Manufactured Housing Industry.
- Regulations of certain trades, such as Electrical, Heating, Plumbing, Gas, and well installations.

State Statutes for reference of above laws may be found in Appendix C.

There are basically two types of Building Inspectors in the State of Maine. The first is the individual named as Municipal Building Inspector pursuant to Title 25 MRSA Chapter 313 §§ 2351-2361. This Law states that, "In every town and city of more than 2,000 inhabitants, the municipal officers shall annually in the month of April appoint an inspector of buildings". The Law also states that smaller communities may have a building inspector, if authorized by the voters (25 MRSA § 2351).

This Law establishes certain duties, procedures and responsibilities for the Building Inspector, which must be performed. These include:

- Inspection of buildings under construction, whether new or under renovation.
- Ensuring that the construction is "made *safe* against the catching of fire".
- Issuing a certificate of occupancy for a building that is found to be *safe*, or issuing an order to make the changes necessary to make it *safe*.
- A new building or newly renovated building may not be occupied until this certificate of occupancy has been issued.

This statute does not prescribe nor require that a building code be adopted or followed. The standards provided, by this law, for the Inspector to determine when a structure is *safe* are contained in section 2353, "All proper safeguards against the catching or spreading of fire are used, that the chimneys and flues are made *safe* and that the proper cutoffs are placed between the timbers in the walls and flooring where fire would be likely to spread." Many communities are required to have an inspector to perform this duty. However, the requirements are notably vague.

The second type of Building Inspector in the State is found in a community that may or may not fall under the requirements of 25 MRSA, Chapter 313, but have chosen to adopt specific building standards or code for their community. Most of the duties of the Building Inspector and procedures to be followed are prescribed by this code or ordinance.

The State does set some general standards for permitting and enforcement of standards in 30-A MRSA, chapter 185 §§ 4101-4104, which must be followed by an inspector appointed in any community.

It can not be emphasized enough that a community issuing permits, inspecting, and certifying buildings must establish standards and procedures by which construction is reviewed for compliance, permitted, inspected, and certified for occupancy. In a world of growing Federal and State regulations, as well as, requirements within the private sector, these pre-established standards and procedures are increasingly needed. The enforcement and appeals procedures must also be clearly established in a community's code or ordinance. It is critical that the Building Inspector be specifically authorized to administer and enforce the standards established and adopted.

There are standards that have been adopted by the State of Maine that may be used by some communities. For example, the Office of the State Fire Marshal has adopted fifty-seven Fire Prevention and Life Safety Codes for their use. These adopted codes include:

- NFPA 101-Life Safety Code
- NFPA 211 - Chimneys, Fireplaces, and Vents
- NFPA 13 – Installation of Sprinkler Systems
- Section 2463 (25 MRSA) Installation of sprinkler systems and smoke, heat or fire detection systems

All codes adopted by the Fire Marshal's Office may be found at <http://www.maine.gov/dps/fmo/Rules1104.htm> There is State Law that enables communities to adopt and enforce these and other regulations within their jurisdictions. See 25 MRSA, Chapter 317 and 30-A MRSA § 3002 -3006 in Appendix C for enabling language.

If the standards of a State Statute or State adopted Code are to be enforced within a community by the Building Inspector, the municipality must specifically authorize that enforcement.

The need for municipal building standards is clearly established. It is important that a municipality establish standards that fit its own needs. It is important to recognize that there is both a Municipal and a State function in many areas involving building construction. It is also important that the standards, procedures, and authorization be clearly established by ordinance or other municipal order. The establishment of the Building Inspector's authority and the process of adopting a Building Code in a community will be discussed in detail in Chapter 2 of this manual. The concerns that must be addressed prior to adoption of the Maine Model Building Code will also be discussed.

CHAPTER II. THE BUILDING CODE

HISTORY OF THE BUILDING CODE

The building code is not a modern idea. We find mention of building laws in the code of Hammurabi in ancient Babylon from about 2,000 B.C.

"If a builder built a house for a man and completed it, that man shall pay him two shekels of silver per sar (approx. 12 sq.ft.) of house as his wage. If the builder has built a house for a man and his work is not Strong, and if the house he has built falls in and kills the householder, that builder shall be slain. If the householder's slave is killed the builder must give a slave to the household. If goods are destroyed they must be replaced by the builder, and if the house falls, the builder must rebuild the house out of his own materials".

Throughout the past 5,000 years, one can find examples of societies extending some limited control over the construction and utilization of buildings. Generally, one can find that attempts at controlling standards and use of building have historically come in response to great destructive events such as the burning of Rome during the reign of Emperor Nero, the London fire of 1666, the Chicago fire of 1871, or the earthquakes and hurricanes of the 1990s.

Prior to the reign of Emperor Nero, construction safeguards were ignored, except with regard to public edifices. Many buildings collapsed before completion, killing and maiming. Emperor Nero had a master plan for a new Rome prepared some time prior to the fire that destroyed most of it. Thus, the rebuilding of Rome was accomplished in accordance with some principals of construction. These required that some consideration be given to the function of the building and also to sanitation.

Most historians agree that the destruction of London in 1666 was more a blessing than a calamity. London by the mid 17th Century was crowded with public and private buildings mostly of wood with no attention to type or use, let alone protection. It was a filthy place with no attention to sanitation or fire control. People were dying at a rate of 1,000 per week. At the start of the fire of 1666, little attention was paid to the fire, at its onset, as fires were common. But, due to its rapid advance, King Charles ordered the demolition of buildings in the fire's path. Five days later, 15,000 buildings including 84 churches were lost. However, only six individuals lost their lives as a direct result of the fire.

Two years after the fire, Parliament finally enacted building controls. The resulting London Building Act was only applicable within city boundaries. The architect of Saint Paul's Cathedral asked the Parliament to enact city regulations requiring wider streets, boulevards, green spaces, building set backs, and the use of noncombustible materials in construction. His pleas were ignored and London was reconstructed much as before.

The earliest building controls enacted in the United States are found to have been in New York City. In 1648 wooden chimneys were subjected to inspection and later in 1657 were disallowed

in buildings with thatched roofs. In 1766 New York City established the first fire districts in the U.S.

In the 1790's, fire walls of stone and brick were required in Washington D.C. to separate dwelling units. New construction of wooden buildings with a height greater than 12 ft., or any containing a volume greater than 328 sq. ft., were not allowed. In 1862 New York City had a population of 800,000 compelling the city to adopt a more encompassing building code.

Fires occurring from 1800 to 1900 devastated eleven major cities of the United States. A considerable number of lives were lost and property damaged or destroyed was assessed in the billions of dollars. The Chicago fire of 1871 was the most devastating and costly fire in American history. Thousands of buildings were lost; most were of wooden construction. Prior to the fire, Lloyds of London, alarmed by the extensive use of combustible construction materials, had warned its underwriters of the conflagration potential. The warning went unheeded. The fire burned out of control for two days, consuming 17,000 buildings, 250 lives, and leaving 100,000 people homeless. In 1875 Chicago adopted a building and fire prevention ordinance.

In response to the great fire in Portland, Maine in July of 1866, subsequent fire prevention action in the State and across the Nation, and pressure from the Insurance Industry the Maine Legislature enacted the first of many Laws to regulate building construction in the 1890s.

Floods, hurricanes, and earth quakes in the U.S. in 2005 alone cost the U.S. insurance industry \$200 billion dollars. Since that time there have been efforts ongoing by the industry to expand the use of building and fire prevention codes and improve enforcement of these codes.

DEFINING A BUILDING CODE

A building code is a collection of laws, regulations, ordinances or other statutory requirements adopted by a government legislative authority having to do with the physical structure of buildings. It is a statement of standards and procedures for building construction, in language that can be administered as legal regulation. This code may govern all aspects of construction; from the foundation of a building or structure to the ridge of the roof on the exterior and everything within.

INTENT OF A BUILDING CODE

The main purpose of a building code is to establish minimum, **reasonable** control over the construction of new or proposed buildings and structures, and their use and occupancy. Building codes must be based upon what are generally accepted engineering and fire protection standards of construction. Only provisions that are reasonable, practical, or necessary can be legally enforced by a municipality.

Municipalities have the authority and responsibility to help ensure that the constructed environment for living, working, and recreating in their community is reasonably safe and healthy. Municipalities have the authority under certain guidelines to adopt regulations to accomplish that responsibility.

CONTENT AND APPLICATION OF A BUILDING CODE

A building code is the set of generally accepted construction and fire prevention standards that governs how a building or structure is constructed and the use or occupancy of that building or structure. The provisions of the code also usually include regulations that ensure the safe and efficient functioning of the plumbing, electrical, mechanical, fire-protection, air distribution, lighting systems, and other systems within the structure. The provisions of a building code are applicable to, and should regulate all matters concerning the construction, alteration, addition, repair, demolition, removal, occupancy, maintenance and use, and location, of all buildings and structures, except as otherwise provided for in other ordinances or statutes.

TWO TYPES OF BUILDING CODES

There are two types of building codes. These are *specification codes* and *performance codes*. Specification is defined in Webster's dictionary as "the act or process of specifying a detailed precise presentation of something or of a plan or proposal for something". A *specification code*, when taken literally, is a fixed concept. Therefore, a *specification code* allows for very few or no alternative methods of performance. One of the disadvantages of implementing a specification code is that one could not use new products or new methods for construction.

The *performance code*, on the other hand, does make provisions for the use of new materials and methods, but would still contain specifications. The performance code looks for the finished product that will meet the code. The essential difference between the two codes is that the *performance code* emphasizes results rather than the methods used to achieve those results. Think of the performance code as relying on some specifications while it strives for results. The designer is given a wide choice of materials and methods. The performance code regulates their quality and use via accepted engineering design and material standards that take the form of specification documents. The International Building Code (IBC) and the International Residential Code (IRC) are a combination of performance and specification codes. The IBC is more weighted to performance standards and the IRC is more weighted to specifications, but there are elements of both in each.

The International Building Code (IBC) and the International Residential Code (IRC) are two codes widely adopted across the nation, and even in other countries. The IRC contains minimum regulations for residential housing. The IBC establishes minimum regulations for all building types and uses. Both of these codes are fully compatible with all other codes of the International Code Council.

An EXAMPLE of a specification code: From the IRC, Section R608.1.2.2 “Bonding with adjustable wall ties”, states that “Where the facing and backing of masonry are bonded with adjustable wall ties, there **shall** be at least one tie for each 2.67 square feet of wall area.”

An EXAMPLE of a performance code: From the IRC, Section 607.2.2 Masonry unit placement, “The mortar **shall be sufficiently** plastic and units **shall be placed with sufficient pressure** to extrude mortar from the joint and produce a tight joint.”

Note in the two examples that, the specification code states "**shall be**", where the performance code states, "**sufficient**".

DEVELOPMENT OF MODEL CODES

Prior to the early 1900's, each state, city, or town that had a building code, wrote their own building code. These codes were based upon materials and practices that quickly became obsolete, yet were so entrenched that they obstructed the adoption of sound and economical construction procedures.

Early in the 1900's, it became obvious that building codes had to keep pace with changing engineering, fire prevention, and construction practices in order to better serve the public. Thus, the first model building code was written in 1905 by the National Board of Fire Underwriters. Other such codes were written, primarily by special interest groups. As models, these codes provided up to date standards with sample ordinances that governments could select in adopting "the building code" for their implementation. For some time, building officials had no input into the drafting of the codes. However in 1922, members of the Pacific Coast Building Officials Conference produced the first model code written by building officials. In 1946, a second model was written by the Southern Building Code Congress, entitled *The Southern Standard Building Code*. And finally in 1950 (the oldest building officials organization in the United States), the Building Officials Conference of America, wrote its own code entitled *The Basic Building Code*. This code was known as and subsequently became entitled BOCA National Building Code after the organization. In 1994 the leading code groups joined together to support common code development. The need for a common code arose from the fact that even international impact of natural disasters, or the needs of business models (Insurance) or the development and maintenance of all model codes previously dealt with by the above mentioned code organizations. Today there are two model building codes that may be adopted by government officials. These are:

1. The International Code Council Codes (International Building Code, International Residential Code, and a great number of other codes)
2. The National Fire Protection Agency Codes (101 Life Safety, 211 Chimneys Fireplaces, and Flues, 5000 Building Code and a great number of other codes primarily dealing with fire issues)

These codes are under constant study and are revised regularly to keep pace with the changing nature of the construction industry, and the needs of the users of the codes; governmental agencies and the public.

Some of the benefits of a model code are:

1. Promotion of a common interpretation of standards.
2. Ongoing revision through a democratic process to include the latest in construction technology.
3. Use of performance standards to evaluate new concepts.
4. Constant revision to conform to legal challenge.
5. Professional expert help and assistance for adopting jurisdictions.
6. Establish standards and procedures that are recognized and acceptable by a large number of interested parties over a wide geographic area.

PROCESS OF CHANGING A MODEL CODE

There is an orderly process by which changes to building, plumbing, electrical, and other model codes are adopted. These changes are necessary to allow for the acceptance of new materials and methods of construction that can be evaluated according to established standards. The Model code organizations develop and change the codes using thoughtful, democratic procedures involving the input of virtually any person or organization with an interest in the codes.

In short, code changes do not "just happen". This process makes the model codes of today dynamic and useful. The ICC annually revises its codes using this process. The revisions are printed as a "new" code on a three year cycle.

ADOPTION OF A BUILDING CODE

Ordinance Drafting and Authority

A. Ordinances Generally

An ordinance is a local law that usually is adopted by the municipality's legislative body; i.e., the town meeting or town or city council, depending upon the form of government in that municipality. If properly adopted in conformance with applicable procedures and if carefully drafted to avoid legal problems, an ordinance generally has the same legal weight as a State statute enacted by the Maine legislature.

It is absolutely crucial to the successful administration and enforcement of municipal ordinances that they be properly adopted and drafted to avoid conflicts with case law, State statutes or the Maine or United States constitutions, as well as, to avoid internal conflicts or conflicts with other ordinances. The discussions that follow outline some of the legal requirements that ordinances must satisfy.

Local CEO's have an important role to play in the drafting of local ordinances, even if the CEO has not been asked to "take the lead" in writing an ordinance. The CEO should share any ideas about activities that need to be regulated by the ordinance and practical suggestions regarding what would make the ordinance easier to administer and enforce. Comments and criticisms will usually be well-received, if the CEO offers them in a positive, constructive, helpful way.

1. Ordinance Enactment Procedures

As a general rule, whether a municipality operates under a charter or only under the State statutes, its legislative body must adopt in ordinance form, any requirement that the municipality wants to enforce against the general public. The basic procedure for adopting an ordinance at open town meeting is found in Title 30-A § 3002, a detailed discussion of which is included in Appendix A. If the municipality is governed by a charter (usually this means a town or city which has a council/manager form of government), ordinance enactment procedures would be spelled out there. In addition to the statutory or charter procedures, there also may be local requirements that the municipality has adopted, such as a requirement that a zoning ordinance be enacted by a two-thirds majority vote of the legislative body.

2. Form of the Ordinance

Although a "one-liner" (for example, "No building may be constructed without a permit.") may seem like an effective, simple-to-understand kind of ordinance, it would not contain enough detail to make it easy to administer or legally enforceable. In preparing an ordinance, the following checklist should be used to ensure that the ordinance has all the basic provisions:

- Statement of statutory authority
- Statement of purpose
- Definitions section
- Basic requirements/prohibition
- Designation of person or board to make decision on applications
- Application fees, if any required
- Standards to guide the person or board in deciding whether to issue or deny a permit or other necessary approval; standards to guide imposition of conditions on approval
- Right to appeal, to whom and within what time frame
- Designation of who enforces the ordinance and procedures to follow
- Period after which a permit expires if substantial work has not been completed
- Penalty section
- A severability clause explaining what happens to the rest of the ordinance if part is held invalid by a court
- Section dealing with effect of other inconsistent ordinances
- Effective date

3. Scope of the Ordinance

When developing the basic requirements of the ordinance, the drafter should try to keep in mind all the possible types of activities that the municipality would want to regulate through the ordinance and all of the problems that might be associated with a particular activity. As difficult a job as this will be, it is very important that an ordinance "cover all the bases," since the municipality will not be able to control an activity through a given ordinance if it is not covered by the provisions of that ordinance. The drafter should contact neighboring municipalities, the regional planning agency, Maine Municipal Association, and the State Planning Office for examples of the kind of ordinance the municipality wants to adopt.

4. Availability

According to Title 30-A, section 3002, copies of any ordinance proposed for adoption by the legislative body must be on file with the municipal clerk and must be accessible to any member of the general public. Copies also must be made available for a reasonable fee to any member of the public requesting them. The clerk must post a notice regarding the availability of ordinances.

B. Constitutional Issues

1. Standards; Delegation of Legislative Authority

It is very important for an ordinance to contain fairly specific standards of review if it is an ordinance that requires the issuance of a permit or the approval of a plan. The standards must be something more than "as the CEO deems to be in the best interest of the public" or "as the CEO deems necessary to protect the public health, safety and welfare." *Cope v. Inhabitants of Town of Brunswick*, 464 A.2d 223 (Me. 1983). It also is very important to have language in the ordinance instructing the CEO reviewing an application filed under the ordinance as to the action that he or she must take. It is not enough merely to say that the CEO must "consider" or "evaluate" certain information. It also is not legally permissible to include a review standard in an ordinance that requires the CEO to find that a project will be "compatible with the neighborhood" or "harmonious with the surrounding environment." If an ordinance gives the CEO basically unlimited discretion in approving or denying an application, it creates two constitutional problems. It violates the applicant's constitutional rights of equal protection and due process because (1) it does not give the applicant sufficient notice of what requirements he or she will have to meet and (2) it does not guarantee that every applicant will be subject to the same requirements. It also essentially gives the CEO the power to write and then adopt part of the ordinance. The courts call this an "improper delegation of legislative authority." Legally, only the legislative body can adopt ordinances, unless the statute gives that authority to some other person or board.

2. Reasonableness

Another constitutional limitation to keep in mind when drafting an ordinance is that the ordinance must be a reasonable means to protect the public health, safety and welfare. If it is a land use regulation, it cannot be so restrictive that a landowner is deprived of all reasonable use of the property being regulated. Otherwise, the ordinance cannot be enforced unless the

municipality compensates the landowner. In addition, an ordinance generally cannot totally prohibit a land use unless the use is "ultrahazardous" (i.e., cannot be regulated safely).

C. Statutes Which Affect Municipal Ordinance Authority

The following is a list of some of the State land use laws that affect municipal land use ordinance authority:

1. Home Rule

In 1969 the Maine Legislature adopted a statute (30 MRSA §1917) that delegated broad "home rule" ordinance powers to towns and cities. This statute was revised and renumbered in 1989 (30- A MRSA § 3001) to make it clear that the Legislature intended "home rule" to be a very broad grant of authority. In its present form, the "home rule" statute reads as follows:

“A municipality may, by the adoption, amendment or repeal of ordinances or bylaws, exercise any power or function which the Legislature has power to confer upon it, *which is not denied either expressly or by clear implication*, and *exercise* any power or function granted to the municipality by the Constitution of Maine, general law, or charter. . . The Legislature shall not be held to have implicitly denied any power granted to municipalities under this section, unless the municipal ordinance in question would frustrate the purpose of any State law.”

This statute provides a basis for the adoption of local land use ordinances that are not expressly authorized or expressly or impliedly prohibited by other statutes. Several Maine Supreme Court decisions have addressed the issue of whether an ordinance has been implicitly prohibited by the Legislature. In *Central Maine Power v. Town of Lebanon*, 571 A.2d 1189 (Me. 1990), the court found that a local ordinance relating to herbicide spraying was within the town's home rule authority because it did not frustrate the State's regulatory program. The court found no home rule authority to prohibit the disposal of out-of-town waste within the boundaries of the town in *Midcoast Disposal, Inc. v. Town of Union*, 537 A.2d 1149 (Me. 1988), holding that the authority to *regulate* solid waste disposal did not include the authority to totally prohibit certain activities.

One type of ordinance commonly adopted under the authority of home rule is a "Site Plan Review Ordinance", which is an ordinance used to regulate developments which normally cannot be reviewed as subdivisions. Usually the planning board is authorized by the ordinance to review the projects that the ordinance regulates.

2. Adoption of Codes by Reference

Title 30-A § 3003 establishes certain legal requirements with which a municipality must comply if it wants to adopt a code (such as ICC or NFPA) by reference or incorporate certain standards by reference into an existing ordinance. A copy of that statute and a sample format to adopt a

code by reference appears in Appendix A. In order for such a code or standards to be enforceable, it is very important to comply with the provisions of this law.

Considerations Before Adopting a Code

Adopting the Maine Model Building Code is the only choice. This model code has been proven defensible technically and legally. It is important to remember, **adoption by reference must comply with legal rules**. The community should also carefully review the code that will become their regulation, prior to adoption. The community must decide if one code will meet it's needs. Perhaps the three codes mentioned in State Statute are needed to cover the projected activity in a community. In addition to filling in the blanks provided by the model code, the adopting community or agency must be aware that sections of a model code may be incompatible with other existing laws and regulations. Some changes will need to be made to the code language. This is the reason, model codes should not be adopted by reference in their entirety.

CHAPTER III. BUILDING PERMITS AND THE PERMITTING PROCESS

AUTHORITY TO ENFORCE THE BUILDING CODE AND ISSUE PERMITS

A building permit is a formal and legally issued authorization to construct the particular structure specified in the building application, with incorporation of any conditions attached by the issuing authority. The issuance of a building permit indicates that local government officials have approved plans and that the plans comply with adopted building codes and zoning laws. A permit allows for the enforcement of the code the jurisdiction has adopted. The CEO must follow the guidance of the local ordinance to determine what structures require the issuance of a permit. In most towns and cities, permits are commonly required for the following:

1. New buildings
2. Additions
3. Renovations
4. Demolitions
5. Prefabricated structures
6. Manufactured homes
7. Electrical installations
8. Plumbing installations
9. HVAC (heating, ventilation, AC) installations
10. Miscellaneous [pools, fences, etc.]
11. Temporary buildings
12. Parking lots

States and local governments derive the authority to adopt and enforce a building code from the Constitutional power to legislate for the protection of the public health, safety, and welfare. This power is drawn from articles 4, 10, and 14 of the United States Constitution. The following Maine Revised Statutes Annotated are pertinent:

MRSA Title 25, Chapter 313, Municipal Inspection of Buildings

- Section 2351, *Building Inspector Required*
- Section 2353, *Duty to Inspect Buildings Under Construction*
- Section 2354, *Inspection of Buildings Being Repaired*
- Section 2357, *No Occupancy Without Certificate; Appeal*
- Section 2360, *Authority to Enter Buildings; Remedy of Conditions; Appeals*

In the State of Maine, authorization given the municipality to issue building permits is provided by Maine State Law, as follows: Maine Revised Statutes Annotated (M.R.S.A.) Title 30-A, Section 4101 *Permits for buildings*, and Section 4103 *Permits*. Section 4101 *Permits for buildings*, Subchapter 1, *Regulation of Buildings* reads as follows:

"This Section applies to any municipal ordinance requiring a permit in connection with:

1. Construction, demolition and alteration. The construction, demolition, improvement or alteration of any building;
2. Building maintenance and facilities. The maintenance, repair, use, change of use, safety features, light, ventilation and sanitation facilities of any building;
3. Sanitation and parking facilities for mobile homes and travel trailers. The sanitation and parking facilities for mobile homes, travel trailers intended to be used for human habitation and travel trailer parking facilities;
4. Building equipment. The installation, alteration, maintenance, repair and use of all equipment in or connected to all buildings; and
5. Buildings used for public assembly. The operation of a building that is used occasionally or regularly for public assembly.
 - A. As used in this Subsection, "building used for public assembly" means a room or space in or on any structure which is used for the gathering of 100 or more persons for any purpose, and includes any connecting room or space on the same level, above or below, which has a common entrance."

M.R.S.A. Title 10, Chapter 1101: Maine Model Building Code
Sections 9701-9706

BUILDING PERMIT PROCESS

Most municipalities require land owners to obtain building permits for construction, certain home improvements and rehabilitation projects. These permits guarantee compliance with codes and ordinances concerning access, off-street parking, and setbacks as governed by land use zoning laws; fire, building, plumbing, and electrical codes; and with state and federal laws, including regulations regarding access to buildings by the handicapped.

It is important to note that each jurisdiction can design an application form for its building permit. Several samples are provided in Appendix A. The process begins with submission of an application containing documents required by the Town. The following documents should be included for the permit review:

1. Construction drawings: architectural; structural including a complete cross section of building, foundation plan, floor plans, elevations, framing and details if necessary; plumbing; electrical; and mechanical plans.
2. Plot plan, showing proposed building and any existing structures on site with all distances between structures and the distances to property lines clearly marked.

3. Specifications, if necessary. Specifications are written instructions discussing aspects of the construction that are not shown on the plans.
4. If site plan review or other review is necessary, multiple copies of the site plan are required as prescribed in Ordinance or Law. Plans should include location of buildings, driveways, parking areas, screening, lighting, utilities, landscaping and other details, as specified in the Site Plan Ordinance.
5. Documentation of the applicant's Right, Title, and or other Legal Interest in the property.
6. Location of the proposed project.
7. Address of the applicant
8. Telephone number of a contact person.
9. Description of existing and proposed uses of the property in question.

After reviewing the application the CEO-Building Inspector issues a permit with conditions, denies the permit with written reasons, refers the application, or requests additional materials for review. Once acted upon, a copy of the permit with conditions should be given to the applicant. The original and all application documents should remain with the reviewing authority. All plans should be drawn to scale to verify the correct legal description of the property and all proposed work to be done. The applicant also pays fees for the application at this time.

Please note that the following discussion is a proposal, by the State Planning Office, of procedure for review and permitting at the local level. Whatever authority, duties, and/or procedures are provided for in the local ordinance currently must be recognized and adhered to or amended. Discussion of legal requirements or issues related to aspects of this procedure are credited to Maine Municipal Association and are enclosed in brackets throughout the discussion.

As CEO, coordinate the review and permitting process.

The code enforcement officer should serve as the coordinator in the review and permitting process. Regardless of whether a local ordinance specifies an individual, the Planning Board, or another review committee to authorize a particular land use, whatever individual or board is appointed as the CEO should make the determination of the applicability of specific ordinance standards and take action regarding a permit application. **To make the entire process as effective and efficient as possible, this individual or board (referred to below as the CEO) should make initial judgments about the applicability of the requirements of ordinances to a specific proposal.** This allows the code officer to route the application to those who should review and comment upon it.

Clearly understand the intent and specifications of local ordinances.

The CEO must be able to identify in an ordinance clear direction regarding the intent of the ordinance and from this determine what information is needed about a project to fairly assess compliance with the ordinance. Permit application forms should require that an applicant put in writing all of the information that is specified in an ordinance, as well as, those items that make review discussions as easy and as clear as possible. Site plans with accurate measurements are a must.

Confirm that you are legally authorized to issue permits.

It is important that **all code enforcement officers make sure that at the beginning of each new term they are sworn to enforce the specific ordinances for which they are to be responsible; and check each of these ordinances for specific language which gives the code officer the authority to issue permits**, as opposed to another local official or board.

Exchange and review necessary information with applicant.

In addition to local administration, the CEO should be able to identify the possibility of State and Federal jurisdictions that may govern the proposed project **early in the process**. Proceeding narrowly with only local regulations in mind can create problems. Even though the local CEO is not responsible for State or Federal requirements or permits, he or she must work closely with the applicant and the project. The applicant needs to be advised early in the process as to the applicability of floodplain management regulations, building codes, plumbing rules, site location, NRPA, federal wetlands laws, DOT entrance permits, and any other laws that might apply to the proposed project. **It is therefore, crucial that the CEO gain from the potential applicant, a thorough understanding of the proposal.** A statement such as, "I just want to add a deck to the camp", is not sufficient information for the CEO to advise the applicant of the review process. A good exchange of information between an applicant and the CEO at the initial meeting can prevent misunderstandings later in the review process. There should be a general discussion of the application form(s) and a few "what, where, and how" questions.

Being helpful with correct information for the applicant is equally important to obtaining information. A checklist of possible application material and or review procedures is a useful tool. Those items needed before an application is deemed completed can be established at this initial meeting. Even though applicability of laws under other jurisdictions can not be used to delay otherwise complete applications for local permits, early knowledge of this potential allows the process to proceed smoothly.

Determine avenue of review.

An avenue of review should be established based on the type of permit desired. If local review by a Site Review Board, Planning Board, and/or Fire Prevention Specialist is necessary, the CEO

should make reports of his or her site visit available prior to the meeting with a board or officer regarding the project. Applicable reports from other municipal offices such as police, fire, and public works helps the reviewing board to assess the impact of the development and, thus, allows a board to make a more informed decision.

Remember that the purpose of permit issuance is to determine compliance with pre established standards in an ordinance. Pre established review procedures make the review efficient, effective, and fair. The standards and review procedures must, therefore, be clear and understandable.

Reference a checklist for review and legal procedure before issuing decision.

1. Confirm your authority specified by ordinance.
2. Confirm that the applicant submitted adequate evidence of his/her legal standing to apply for a permit.
3. Assure that all preliminary requirements, such as fee payment, have been met.
4. Having reviewed ordinance standards, assure yourself that the applicant successfully met the burden of proof for *each* of these standards.
5. Review all issues raised in the review process and assure yourself that all have been satisfactorily resolved and that any conditions attached to the approval of the permit are clearly stated in writing on the permit itself and on the face of any plan which will be recorded.
6. Reviewing the ordinance again, assure yourself that any conditions imposed to achieve compliance by the applicant do not exceed the authority granted to the CEO by the ordinance and are related to the applicable standards of review.
7. Determine whether there is sufficient evidence to support a decision to approve the application by comparing the information in the record to the requirements of the ordinance/statute. [Neither personal nor community opinion about a project can be allowed to interfere with an assessment of the facts. Any opinions expressed about an application must relate to the **review standards** of the ordinance/statute in order to be considered by the CEO in making a decision. The decision must be based solely on whether the applicant has met his/her burden of proof and complied with the provisions of the ordinance or statute. If the application and supporting evidence does not meet the burden of proof, further evidence could be sought or the permit denied. The CEO may base a decision on non-expert testimony in the record if the CEO finds that testimony more credible than expert testimony presented on the same issue.]

Issue a decision on the application within the required time period.

[Some ordinances and statutes state that the CEO must issue a decision on a permit application within a certain number of days. One statute provides that if a building inspector fails "to issue a written notice of his or her decision, directed to the applicant, within 30 days from the date of filing of the application," the applicant must consider the request denied (30-A M.R.S.A. § 4103). If a statute or ordinance does not contain this kind of "automatic denial" provision, and the CEO fails to make a decision within a reasonable time, the applicant would either have to persuade the municipal officers to convince the CEO to take action, or seek a Superior Court order pursuant to Civil Rule 80B.]

[Under some ordinance provisions, the clock does not begin to tick on a decision-making deadline until the CEO has determined that an application is "complete." "Completeness" normally does not involve a substantive review of the application to determine whether it satisfies all of the performance standards of the ordinance. It is more of a judgment based either on a specific checklist of submission requirements included in the ordinance or the CEO's finding that some information has been submitted related to each ordinance requirement, without judging whether it is adequate.]

[Prompt action by the CEO on an application should make citizens more willing to comply with permit requirements. In addition, if the CEO neglects the application for too long, the applicant is apt to believe that the CEO approved the permit and that it is all right to conduct the proposed activity. The CEO's unnecessary delay can result in many unintentional violations.]

When a decision is made, support the action in writing.

After an application has been granted or denied, the code officer issues an approval (permit) for construction and/or other development or a letter of denial. An approval may be unconditional where the original application meets the specific standards of an ordinance(s) as proposed. Another form of approval is the conditional approval which may be issued when the original proposal includes a special exception to the zoning ordinance and will be approved only if specific conditions noted in the ordinance(s) are met. [These conditions or any reasons for denial must be clearly identifiable and supported with fact.]

A written record of any decision must be retained. When a permit is issued based on conditional approval, the applicant should be warned it contains conditions. The written permit should contain specific language which clearly defines any conditions upon which approval is granted. Sometimes specific reference to an authorized site plan is appropriate. Some site inspectors and construction personnel are often not involved in the entire review process. The development permit should be written as explicitly as practicable so that everyone involved understands the terms of the permit issued. This will help to ensure enforceability. Conditions of approval must be reasonably related to the requirements of the ordinance or other law governing review of the project.

Figure 1 outlines the basic steps involved in the permit application process.

*Building permit application at
CEO Office*



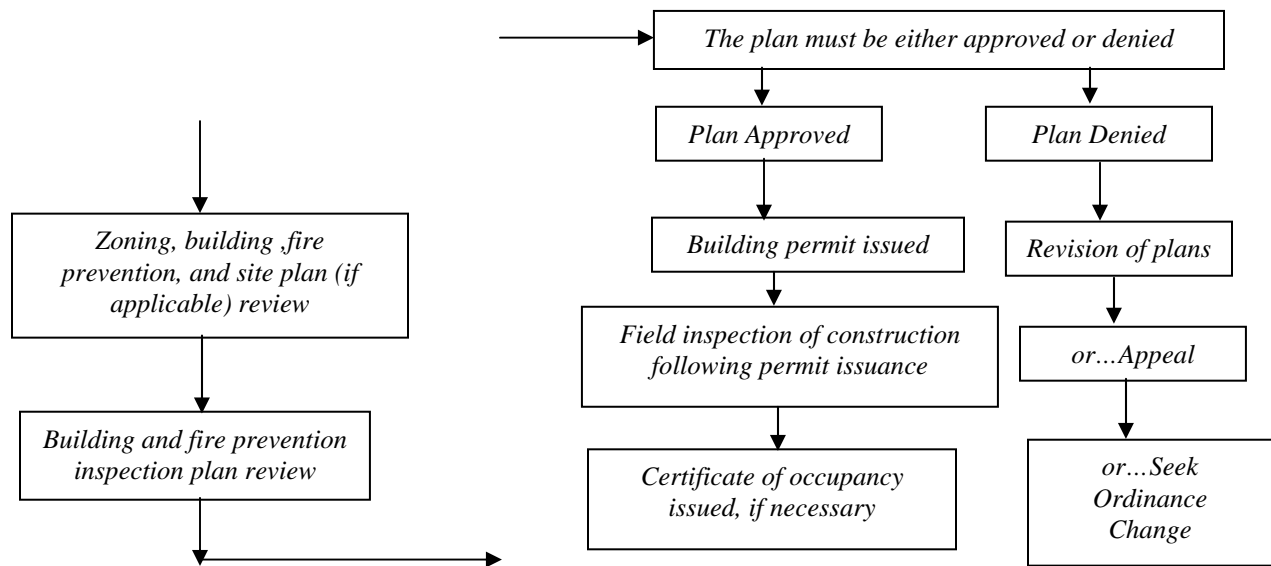


FIGURE 1. The basic steps of the permit application process

ZONING REVIEW, CONDITIONAL USES, AND VARIANCES

Zoning issues can be a particularly problematic part of the overall review process. For that reason, further discussion of it is warranted here. However, this discussion is very brief as compared to what should be studied by a code officer likely to be involved with these issues. Additional information related to plan review and appeals can be found in other training manuals; *Legal Issues and Basic Enforcement Techniques*, and *Zoning and Land Use Regulations*. These are available from the State Planning Office CEO program.

When a proposal requires review under the Zoning ordinance, one of the following actions will result:

1. Unconditional approval. The original application may be approved under the zoning regulations.
2. Conditional approval. The proposal includes a "special exception" to the zoning ordinance and will be approved only if specific conditions noted in the zoning ordinance are met. Such a proposal requires approval by the proper review board.

For example, the specific conditions which could be found in a zoning ordinance might read:

Standards: Upon a showing that a proposed use is a conditional use under this article, a conditional use permit shall be granted unless the board determines that:

- a. There are unique or distinctive characteristics or effects associated with the proposed conditional use;

- b. There will be an adverse impact upon the health, safety or welfare of the public or the surrounding area; and
 - c. Such impact differs substantially from the impact which would normally occur from such a use in that zone.
3. Denial. The application for a building permit will be denied if it does not comply with zoning regulations. If denied, the applicant may still be allowed to proceed after following one of the procedures described below:

A. Variance. If the proposal does not meet the zoning standards, a variance may be requested. The variance is an authorization by the Board of Appeals given to a property owner to use his property in a manner forbidden by the zoning ordinance. Specific criteria must be satisfied, including proof of undue hardship, in order to obtain approval from the proper review board. Several kinds of variances are available, as follows:

1. space and bulk
2. dwelling unit conversion
3. use

To satisfy proof of undue hardship the property owner must provide evidence, according to M.R.S.A. Title 30-A Section 4353, that:

- the land in question cannot yield a reasonable return unless a variance is granted;
- the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
- the granting of a variance will not alter the essential character of the locality; and
- the hardship is not the result of action taken by the applicant or a prior owner.

Figure 2, on the following page outlines the zoning variance process.

Codes are always subject to debate and thus, situations arise where a member of the public is entitled to a hearing before a qualified board to determine the validity of an action of the code official in the interpretation of a land use ordinance, building code, or other regulation. If a decision by the CEO is made under a local ordinance, the ordinance should provide for an appeal of the CEO's decision to a local board of appeals. Whatever the structure of a municipality's review boards, it is recommended that there be a procedure defined by local ordinance, by which an applicant can appeal the decision a CEO has made. Title 25 M.R.S.A. § 2356 and Title 30-A M.R.S.A. § 4103 authorize the municipal officers to hear appeals from a building inspector's decisions under a building code or the building inspection statutes. Under "home rule", however, a municipal ordinance could delegate this authority to the appeals board.

Generally speaking, when an appeal involves an enforcement decision by a CEO rather than an administrative decision, the board of appeals will have no jurisdiction.

- B. Administrative/Interpretation appeal. An interpretation of the zoning ordinance by a municipal official may be appealed to the Zoning Board of Appeals. To apply for an

appeal, the applicant must submit copies of the following, depending upon the type of appeal:

- cover letter explaining the project, and answers in the affirmative to the questions on the back of the release form.
- plot plan showing building, parking, loading bays, and all dimensions.
- floor plans existing and proposed with labeled rooms and sizes.
- photos of property.

The owner or legal representative must sign the release form and pay an appeal fee. The time required to process an appeal is three to six weeks from the date of application to the hearing date. Property owners located near the proposed project are notified of the appeal hearing. The applicant or his representative attends the appeals board hearing and presents information relevant to the appeal.

- C. Zone text change. Any addition or deletion to the zoning ordinance language may be proposed.
- D. Zone map change. A change in the zoning map line boundaries may be proposed. Actual changes must be made through appropriate legislative processes.

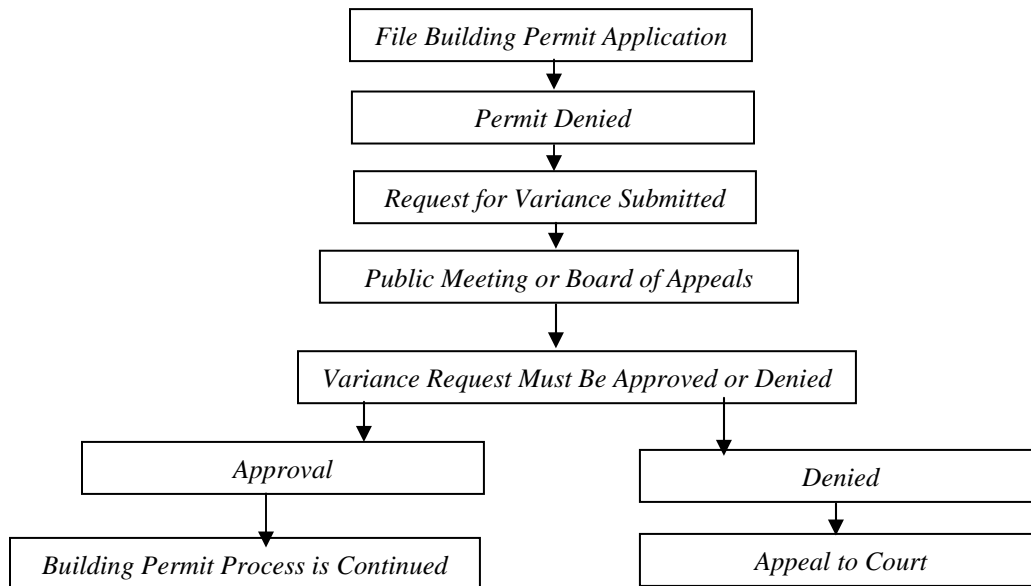


FIGURE 2. Outline of the Zoning Variance Process

SITE PLAN REVIEW

Assuming a site plan review is required, it is important that the applicant address the site review standards of the Site Plan Ordinance. Among the issues that the site plan must address are:

- vehicular and pedestrian circulation safety
- traffic congestion
- sanitary waste and storm water disposal
- landscaping
- drainage
- lighting
- fire safety access

Any required conditional use permits, variances, or zone changes must be arranged prior to site plan review. Applicants must submit copies of detailed plans as described in the Site Plan Ordinance. The CEO's office provides specific information concerning requirements. The site plan review process is summarized below in Figure 3.

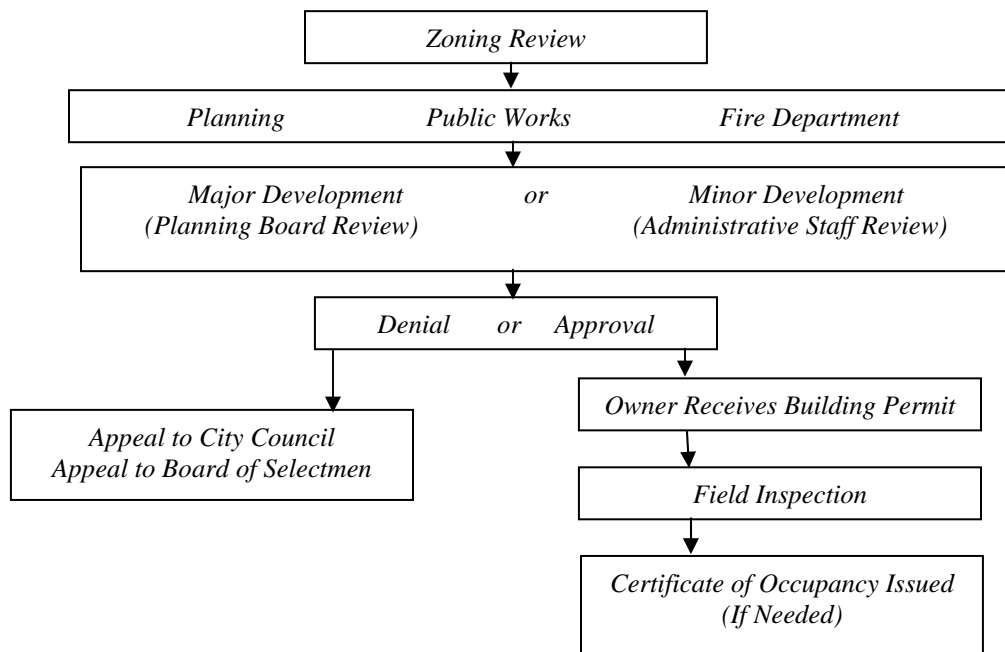


FIGURE 3. Summary of the site plan review

CHAPTER IV. INTRODUCTION TO THE INTERNATIONAL CODE COUNCIL BUILDING CODES

The Maine State Legislature passed a Law in 2004 that requires municipalities that adopt building codes to adopt the 2003 International Building Code (IBC), the 2003 International Residential Code (IRC), and the 2003 International Existing Building Code (IEBC). The Law (Title 10 M.R.S.A. §§ 9701-9706) does **not mandate** adoption of a building code at the local level. However, if a municipality chooses to adopt a code after July 30, 2004 they are **required** to adopt the IBC, IRC, and/or IEBC. Although State Law does not require a municipality to adopt a building code, it does require municipalities with a population over 2,000 to appoint an inspector of buildings (Title 25 M.R.S.A. § 2351). This implies that some building code must be adopted at or prior to the time an inspector is appointed. There are many State Laws that require certain procedures and prescribe standards that relate to the construction of structures within the State.

ORGANIZATION OF THE CODE AND ITS USE

The International Code Council (ICC) International Building Code (IBC), 2003 printing, contains table of contents and 35 chapters. Each Chapter deals with one subject. For example, Chapter 1 covers Administration; Chapter 2, Definitions; and Chapter 35, lists reference standards which contain helpful information.

To interpret the IBC correctly, a reader must review the definition of terms found in Chapter 2 of the Code. Here, a *building* is defined as "any structure used or intended for supporting or sheltering any use or occupancy". The Code defines a *structure* as "that which is built or constructed". These definitions are very similar, but careful consideration leads to the conclusion that a building is a structure, but a structure may not be a building.

Successful use of the code also requires that the reader be able to follow the structure of the text. Requirements regarding a subject may be found in greater and greater detail as the reader follows the information path to its conclusion. An example will be used here for instructional purposes. Each chapter of the IBC covers a particular subject and is divided into sections. Each section discusses an aspect of the chapter subject. Each section is then broken down into subsections and the subsection into subdivisions:

1. Chapter
2. Section
3. Subsection
4. Subdivision

For EXAMPLE, if the reader were looking for code requirements on nosing on stairs, he/she should begin to look in either the table of contents or the index. Either would direct them to Chapter 10, *Means of Egress*. This chapter contains the provisions that control the design,

construction, and arrangement of building elements required to provide a reasonably safe means of egress from all structures.

If the reader begins with the Table of Contents:

1. Find in the Table of Contents "*Chapter 10 Means of Egress, Section 1009 Stairways and Handrails*". The section number is composed of four digits, a decimal point, and a zero after the decimal.

In our example,

- the first two numbers, 10, indicate the Chapter;
- the following two numbers, 09, refer the reader to the 9th section of *Chapter 10*;
- the decimal designates the end of the section reference;
- a zero is used only to identify the section title as a header. The information which follows relates to Stairways and the associated requirements. All stairways must comply with the provisions of this section.

Remember, the section deals with a particular subject and each section may be broken down into subsections. The subsection contains more specific information that relates to the section.

For EXAMPLE, assume the reader follows the reference path to 1009.3:

- the 3 following the decimal point references a specific subsection of Section 1009.0 *Stairways and Handrails*.
- this subsection is labeled 1009.3 *Stair treads and risers*. Information here refers to treads and risers, but does not provide specific requirements associated with nosing.
- a subdivision labeled 1009.3.2 *Profile* prescribes the conditions and dimensions of stair nosings.

Now, the entire subsection number reads 1009.3.2 This means the reader is looking at Chapter 10 on Means of Egress, Section 1009.0 on Stairways and Handrails, Subsection 1009.3 on stair treads and risers, and Subdivision 1009.3.2 on profile.

Thus, the reader has located a code requirement pertaining to these four points:

Means of Egress (Chapter 10)
Stairway and Handrails (Section 1009.0)
Stair treads and risers (Subsection 1009.3)
Profile (Subdivision 1009.3.2)

In summary, the first four digits will identify the Chapter and Section. The first decimal point separates this information from the Subsection number. The Subdivision number follows the second decimal point. Thus, the reference 1009.3.2 is found in:

Chapter 10

Section 09

Subsection 3

Subdivision 2

If the reader begins with the index, the section heading "stairway construction" is listed followed by several subsections and their reference numbers; in this case 1009.3.2.

CHAPTER V. CONSIDERATIONS WHEN REVIEWING A PLAN UNDER THE INTERNATIONAL BUILDING CODE/2003

CONSTRUCTION DOCUMENTS

The review of construction documents requires a check list for essential elements. For plans submitted under the IBC, 2003, the following is suggested:

- Does the applicant need a building permit; Chapter 1, Section 105.
- The scope of the project will determine which of the following apply.

Do the construction documents...

- require a registered design professional seal; Chapter 1, Section 106.1.
- designate the type of construction and the fire resistance rating of all structural elements; Chapter 7, Section 703.0.
- designate the fire protection systems; Chapter 9, Section 901.0.
- show all elements of the means of egress; Chapter 10, Section 1003.0.
- show accommodations for interior environments (lighting, ventilation, and mechanical systems); Chapter 12.
- illustrate the type of roofs and roof coverings; Chapter 15, Section 1503.0.
- show size, section, and relative locations of all structural members including floor levels, column centers and all offsets fully dimensioned with design loads; Chapter 16, Section 1603.0.
- provide specific information necessary to establish quality, where the quality of materials is essential for conformance to the code; Chapter 17, Section 1703.0.
- include a report describing the soil; Chapter 18, Section 1804.
- detail all size, grade, type, and location of reinforcement anchors and wall ties, reinforcing bars to be welded, welding procedure, size and location of all structural elements, provision for dimensional changes resulting from elastic deformation, creep, shrinkage, temperature and moisture; Chapter 21, section 2103.
- detail location and capacity of all lighting facilities, electrically operated equipment, and electrical circuits for all service equipment of the building a structure; Chapter 27, Section 2702.0
- show all mechanical equipment; Chapter 28, Section 2801.0.

- illustrate the entire plumbing system; State of Maine Internal Plumbing Code.
- show sufficient detail and indicate the location of mechanical rooms and equipment for elevators and conveying systems; Chapter 30, Section 3003.0.
- provide detail for signs; Chapter 31, Section 3107.0.
- show all sidewalk sheds, temporary vehicular passageways, trestles, foot bridges, guard fences, and other devices required the construction operation; Chapter 33, Section 3302.0.

USE GROUP

To review a plan, the first thing that must be considered after receiving the permit application documents, is the building's proposed use and occupancy. Use group or occupancy is based upon the concept of fire hazard, i.e., determined potential for fire. There are five factors that are used in determining this hazard in buildings. These are:

1. How the building will be used.
2. The concentration of people in the building.
3. The amount of fuel in the building.
4. The potential for fire ignition.
5. The amount or arrangement of material, equipment, etc.

Chapter 3 of the ICC, International Building Code is entitled, *Use or Occupancy Classification*. The code states that, "Structures or portions of structures shall be classified with respect to occupancy in one or more of the Use Groups listed below. Where a structure is proposed for a purpose which is not specifically provided for in this code, such structures shall be classified in the use group which the occupancy most nearly resembles" (Chapter 3, Section 302.0 *Classification* and Subsection 302.1, *General*).

	Classification	Section	Use Group
1.	Assembly	303.0	A-1,A-2,A-3,A-4 and A-5
2.	Business	304.0	B
3.	Educational	305.0	E
4.	Factory/Industrial	306.0	F-1 and F-2
5.	High Hazard	307.0	H-1,H-2,H-3,H-4 and H-5
6.	Institutional	308.0	I-1,I-2, I-3 and I-4
7.	Mercantile	309.0	M
8.	Residential	310.0	R-1, R-2, R-3 as applicable in Section 101.2, R-4
9.	Storage	311.0	S-1 and S-2
10	Utility/Misc.	312.0	U

The ten use group classifications, when established, were based upon the five fire hazard factors above.

MIXED USE GROUPS:

Mixed use groups apply to one building occupied by two or more uses. The section of the code that defines mixed use groups is Chapter 3 Sections 302.3 and 3410.6.16.

See table 302.3.2 fire resistance rating requirements for fire separation assemblies between fire areas.

HEIGHT AND AREA

The second thing to do in the review is to determine the size of the proposed building. The height and area of the building together with the proposed use determines the type of construction required.

”The height and area for buildings of different construction types shall not exceed the limits in Table 503 except as modified hereafter. Each part of a building included within the exterior walls or the exterior walls and fire walls where provided shall be permitted to be a separate building”.

Table 503, Allowable Height and Building Areas, of the IBC has been reproduced as Table 1 below. The far left column lists use groups. Types of construction are listed across the top from left to right. For each use group and construction type, there is height and area limitations are recorded. To understand *Table 503*, the reader must know the code definition of height and area:

Building height: The vertical distance from grade plane to the average height of the highest roof surface.

Building Area: The area included within surrounding exterior walls (or exterior walls and fire walls) exclusive of vent shafts and courts. Areas of the building not provided with surrounding walls shall be included in the building area if such areas are included within the horizontal projection of the roof or floor above.

To absorb the theory of height and area, follow the example below.

EXAMPLE: Reading across Use Group B, *Business*, the height and area will decrease as the construction type decreases or becomes less restricted.

Reference *Table 503* and look at *Use Group I-2 Institutional/Incapacitated*, follow this line to far right under *Combustible/Type 5/Unprotected 5B* where it reads, not permitted. This means that the code doesn't allow an I-2 Use Group to be built of 5B Type construction. If you look at the prior type of construction (just to the left), TYPE 5A Protected, you would be able to construct an I-2 Use Group one story in height (or 50') with 9,500 sq. ft. of area.

GENERAL BUILDING HEIGHTS AND AREAS

**TABLE 503
ALLOWABLE HEIGHT AND BUILDING AREAS**
Height limitations shown as stories and feet above grade planes.
Area limitations as determined by the definition of "Area, building," per floor.

GROUP	Hgt(S) Hgt(feet)	TYPE OF CONSTRUCTION								
		TYPE I		TYPE II		TYPE III		TYPE IV	TYPE V	
		A	B	A	B	A	B	HT	A	B
		UL	160	65	55	65	55	65	50	40
A-1	S A	UL UL	5 UL	3 15,500	2 8,500	3 14,000	2 8,500	3 15,000	2 11,500	1 5,500
A-2	S A	UL UL	11 UL	3 15,500	2 9,500	3 14,000	2 9,500	3 15,000	2 11,500	1 6,000
A-3	S A	UL UL	11 UL	3 15,500	2 9,500	3 14,000	2 9,500	3 15,000	2 11,500	1 6,000
A-4	S A	UL UL	11 UL	3 15,500	2 9,500	3 14,000	2 9,500	3 15,000	2 11,500	1 6,000
A-5	S A	UL UL	UL UL	UL UL	UL UL	UL UL	UL UL	UL UL	UL UL	UL UL
B	S A	UL UL	11 UL	5 37,500	4 23,000	5 28,500	4 19,000	5 36,000	3 18,000	2 9,000
E	S A	UL UL	5 UL	3 26,500	2 14,500	3 23,500	2 14,500	3 25,500	1 18,500	1 9,500
F-1	S A	UL UL	11 UL	4 25,000	2 15,500	3 19,000	2 12,000	4 33,500	2 14,000	1 8,500
F-2	S A	UL UL	11 UL	5 37,500	3 23,000	4 28,500	3 18,000	5 50,500	3 21,000	2 13,000
H-1	S A	1 21,000	1 16,500	1 11,000	1 7,000	1 9,500	1 7,000	1 10,500	1 7,500	NP NP
H-2	S A	UL 21,000	3 16,500	2 11,000	1 7,000	2 9,500	1 7,000	2 10,500	1 7,500	1 3,000
H-3	S A	UL UL	6 60,000	4 26,500	2 14,000	4 17,500	2 13,000	4 25,500	2 10,000	1 5,000
H-4	S A	UL UL	7 UL	5 37,500	3 17,500	5 28,500	3 17,500	5 36,000	3 18,000	2 6,500
H-5	S A	3 UL	3 UL	3 37,500	3 23,000	3 28,500	3 19,000	3 36,000	3 18,000	2 9,000
I-1	S A	UL UL	9 55,000	4 19,000	3 10,000	4 16,500	3 10,000	4 18,000	3 10,500	2 4,500
I-2	S A	UL UL	4 UL	2 15,000	1 11,000	1 12,000	NP NP	1 12,000	1 9,500	NP NP
I-3	S A	UL UL	4 UL	2 15,000	1 10,000	2 10,500	1 7,500	2 12,000	2 7,500	1 5,000
I-4	S A	UL UL	5 60,500	3 26,500	2 13,000	3 23,500	2 13,000	3 25,500	1 18,500	1 9,000
M	S A	UL UL	11 UL	4 21,500	4 12,500	4 18,500	4 12,500	4 20,500	3 14,000	1 9,000
R-1	S A	UL UL	11 UL	4 24,000	4 16,000	4 24,000	4 16,000	4 20,500	3 12,000	2 7,000
R-2 ^a	S A	UL UL	11 UL	4 24,000	4 16,000	4 24,000	4 16,000	4 20,500	3 12,000	2 7,000
R-3 ^a	S A	UL UL	11 UL	4 UL	4 UL	4 UL	4 UL	4 UL	3 UL	3 UL
R-4	S A	UL UL	11 UL	4 24,000	4 16,000	4 24,000	4 16,000	4 20,500	3 12,000	2 7,000
S-1	S A	UL UL	11 48,000	4 26,000	3 17,500	3 26,000	3 17,500	4 25,500	3 14,000	1 9,000
S-2 ^{b, c}	S A	UL UL	11 79,000	5 39,000	4 26,000	4 39,000	4 26,000	5 38,500	4 21,000	2 13,500
U ^c	S A	UL UL	5 35,500	4 19,000	2 8,500	3 14,000	2 8,500	4 18,000	2 9,000	1 5,500

For SI: 1 foot = 304.8 mm, 1 square foot = 0.0929 m².
 UL = Unlimited, NP = Not permitted.
 a. As applicable in Section 101.2.
 b. For open parking structures, see Section 406.3.
 c. For private garages, see Section 406.1.

TYPE OF CONSTRUCTION

Once the proposed building has been placed in a Use Group and review of the height and area of the building has been completed, one must determine the Type of construction. The Type of construction classification is different from Use Group because Use Group focuses on the *potential fire hazard* of a building or structure and the *proposed occupancy*. The Type of construction refers to the building's ability to *resist* that hazard. The two factors that are used to define types of construction are:

1. The materials that make up the building or structure.
2. The fire resistance of the building or structure as a whole or the assemblies within its use.

The two terms that should be defined here are *fire resistance* and *fire resistance rating*.

Fire resistance: That property of materials or their assemblies that prevents or retards the passage of excessive heat, hot gases or flames under conditions of Use.

Fire resistance rating: The period of time a building element, component or assembly maintains the ability to confine a fire, continues to perform a given structural function, or both, as determined by the tests, or the methods based on tests, prescribed in Section 703.

The IBC states in Chapter 6, *Type of Construction*, Section 602.0 *Construction classification*, subsection 602.1 *General*: "Buildings and structures erected or to be erected, altered or extended in *height* and *area* shall be classified as one of the five construction types defined in Sections 602.2 through 602.5. The building elements shall have a fire-resistance rating not less than that specified in Table 601 and exterior walls shall have a fire-resistance rating not less than that specified in Table 602."

SITING

The location of a building or structure on a lot is not only a zoning requirement, but is also a building code requirement. Chapter 7, Section 705.0, subsection 705.1 and Chapter 7, Section 705.2. explains exterior walls requirements. The code states that all exterior walls shall comply with the applicable provision of the building code and with the fire resistance rating requirements in Section 705.4 and Table 602 of the Code. Remember that the siting requirements in the building code deal with hazard prevention. One must also apply any applicable zoning regulations.

FIRE PERFORMANCE

To determine code compliance with detailed requirements for fire resistance one must review Chapter 7 of the Code. Additionally, to determine the type of fire protection system necessary, one must review Chapter 9 of the code.

INTERIOR ENVIRONMENT DESIGN

The requirements that regulate interior environment design can be found in Chapter 4, *Special Detailed Requirements Based on Use and Occupancy* and under Occupancy in Chapter 10, *Means of Egress*; Chapter 11, *Accessibility*; Chapter 12, *Interior Environment*.

Means of egress is a very important part of any review and not to be overlooked. If there is a fire in a building how do people escape? What escape routes are available? Where are the exits located? These vital questions regarding life safety are covered in Chapter 10 of the Code. Chapter 10 includes the requirements for means of egress for all Use Groups. Some basic terms a CEO should know for the purpose of reviewing a building plan with regard to means of egress are:

Means of egress: "A continuous and unobstructed path of vertical and horizontal egress travel from any occupied portion of a building or structure to a public way. A means of egress consists of three separate and distinct parts: the exit access, the exit and the exit discharge".

Exit: "That portion of a *means of egress* system which is separated from other spaces of a building or structure by fire-resistance-rated construction and opening protectives as required for exits to provide a protected path of egress travel between the *exit discharge*. Exits include exterior exit doors at ground level, exit enclosures, exit passageways, exterior exit ramps and horizontal exits".

Exit access: "That portion of a *means of egress* system that leads from any occupied portion of a building or structure to an exit."

Exit discharge: "That portion of a means of egress system between the termination of an exit and a public way".

Exit, horizontal: "A path of egress travel from one building to an area in another building on approximately the same level, or a path of egress travel through or around a wall or partition to an area on approximately the same level in the same building, which affords safety from fire and smoke from the area of incidence and areas communicating therewith."

Since the IBC is based upon performance objectives, it is essential that the reader understand the fundamental rules of the means of egress regulation. First, a *means of egress* must be properly sized to accommodate the occupant load. Second, *means of egress* facilities must be properly spaced and identified. Third, each *means of egress* must be properly protected from fire so that the occupants can use it for a given period of time.

EXTERIOR ENVELOPE

The exterior envelope (exterior wall coverings) requirements are found in Chapters 14. Chapter 15 of the Code covers roofs and roof structures.

STRUCTURAL PERFORMANCE

To determine if the building or structure meets the code requirements, one must review Chapter 16, *Structured Design*; Chapter 18, *Soils and Foundations*; Chapter 17, *Structural Test and Special Inspections*; Chapters 19 through 26, *Concrete, Aluminum, Masonry, Steel, Wood, Glass and Glazing, Gypsum Board and Plaster*, and *Plastic*.

BUILDING SERVICE SYSTEM

This is the final step in a plan review. This will cover the building's or structure's various building service systems, i.e., electric wiring, plumbing, elevators, and conveying systems.

Following through each of the above areas of review, will allow for a complete review of all parts of model code.

PERMIT REVIEW USING IRC

Compliance review using the International Residential Code (IRC) does not involve the initial steps described above because the use is predetermined. The IRC deals only with residential uses of One and Two Family dwellings and certain limited multifamily units.

When adopting the IRC, the community assigns certain design criteria into the code. The values for these design criteria are provided by geographic location and other considerations.

During the compliance review process using the IRC remember that that code has both *specification* and *performance* elements.

“R501.2 Requirement. Floor construction shall be capable of accommodating all loads according to Section R 301 and of transmitting the resulting loads to supporting structural elements”

In addition there is the more specific direction found in table R502.3.1(1)

CHAPTER VI.

CONSTRUCTION INSPECTION AND PRELIMINARY ENFORCEMENT PROCEDURES

The IBC under Chapter 1, *Administration*, Section 109.0 Inspection, Subsection 109.2 *Preliminary Inspection*, Subsection 109.3 *Required Inspection*, and Subdivision 109.3.10 *Final Inspection*, review inspection procedure. Maine State Statute, Chapter 313, Sections 2351 - 2361 also cover required inspections.

The CEO is charged with certain responsibilities subject to the limitations of authority granted him/her. Among these is the inspection of permitted construction. The inspection of buildings is to be distinguished from the continuous supervision of a Clerk of the Works or the supervisory services of an architect or engineer. The CEO's responsibility and authority is limited to securing a construction which complies with the minimum requirements of the building code to ensure public safety, given the dangers which may be incident to the building and its uses.

Inspection procedures may be further prescribed by other municipal Ordinance and policy. The results of every inspection visit must be documented. All such documentation is public record.

ON SITE INSPECTIONS

Conducting inspections is an important part of any effective code enforcement program. Inspections help prevent ordinance violations and costly construction errors. Before heading out to conduct inspections, the CEO should focus on his/her role here as part of a larger process. The purpose of the inspection is to ensure compliance with pre-established standards or codes, and also ensure that any conditions which became part of a permitted use are met. A building inspector is not expected to provide architectural or engineering services, nor is it the role of a CEO to secure the best possible work, raise the standard of construction, or establish the best practice. A CEO may not insist upon more than is required. No code provides this authority. But, the CEO should be capable of judging alternative methods which do meet requirements. The code enforcement officer does become an extension of the owner or his representative during construction, and a source of specialized information.

When planning to inspect a particular site, it is necessary to have the plans that were approved through plan review and returned to the applicant. The CEO should insist on having these plans for reference before making any inspection. They constitute the basis for the approval or rejection of the work. Arrive with a good checklist, familiarize yourself with the plans for the project, noting especially any changes required during review, be familiar with applicable code requirements, be familiar with approved materials and construction methods (including their limitations), and make accurate notes detailing observed conditions. Remember that any routine inspection could yield a violation and potential enforcement action. Be prepared for any outcome.

The kind of inspections, and the number of each kind, required for any particular building or project will vary according to the building, its construction, and extent. For example, in a one-story building with a ground supported slab, only one slab inspection may be necessary, but several slab inspections would be required for a multi-story building. If a local ordinance does not provide otherwise, the CEO should schedule inspections for typical residential construction as follows:

- 1) at the time the foundation is installed, to check such things as setback, soils, and location dimensions;
- 2) at the time of "closing in," to check the plumbing and electrical wiring; and
- 3) at completion of the project, upon notification by the owner either by phone, letter, or application for a certificate of occupancy.

The following checklist of items may be considered general in application to each site inspected. These are items which should be observed or checked for in making the several inspections required for any building. Not all of the items will apply to every project. Examples of inspection checklists can be found in Appendix A.

1. Foundation inspection: Commonly made after basement areas are excavated and forms are erected with any required reinforcing steel in place, but prior to the pouring of concrete. At this inspection, the CEO should check:

- a. permit card, posted
- b. approved plan on job
- c. survey stakes exposed
- d. location against approved plot plan
- e. bearing soil conditions
- f. forms against approved plans for:
 - width
 - depth
 - number and location of column footings
 - reinforcing steel size and location
 - subsoil drain tiles
 - anything else shown on the plans that should be in place prior to pouring concrete.

2. Framing inspection: Framing and masonry inspection is commonly made after the roof, masonry, all framing, fire stopping, and bracing is in place and all electrical, pipe, and chimney work is completed. Items to check on this second inspection include:

- a. permit card, posted
- b. approved plans on job

- c. foundation against approved plans
- d. damp-proofing
- e. room sizes and arrangements, windows, door size and their location against approved plans
- f. all framing members against details and notes shown on the plans and code requirements
- g. roof trusses for:
 - size and location of members
 - lumber grade
 - truss plates and other connectors
 - proper bearing
- h. roof sheathing, soffit, roofing materials, flashing, and ventilation
- i. wall sheathing and nailing
- j. nailing of door jambs and window frames
- k. sub-flooring for proper thickness, grade, and nailing
- l. header and trimmer size, bearing, and nailing
- m. studs spacing, doubling and corner details
- n. fire-stopping
- o. ceiling and floor joists for proper size, grade bearing, and nailing
- p. steel beam size and bearing
- q. grouting under sill on foundation wall
- r. headroom on stairways
- s. fill and reinforcement for concrete floor slab areas in garage, basement, etc.
- t. heating, ventilation, and air conditioning openings
- u. framing around chimneys for proper clearance
- v. bearing of partitions on joists and rafters.

3. Other inspections: In addition to the called-for inspections above, the CEO may make or require other inspections to ascertain compliance with the building code.

4. Final inspection: Commonly made after building is completed and ready for occupancy. The following is a list of items for this review:

- a. permit card, posted
- b. all aspects of the building's interior and exterior for compliance with approved plans and all code requirements.
- c. installation and operability of all fixtures and equipment shown on approved plans.
- d. interior trim and finish for conformity to the approved plan and acceptable workmanship
- e. fireplace damper and clean outs
- f. exterior materials and installation workmanship
- g. roofing, flashing, gutters, and conductors, siding, brick veneer, caulk weather stripping, painting, and concrete flat wood
- h. finish grade
- i. final approval by electrical, plumbing, or mechanical inspectors.

If all is in order, State Law requires a Certificate of Occupancy be issued by the Building Inspector. Find examples of this Certificate in Appendix A.

PRELIMINARY ENFORCEMENT ACTION

The code officer should know that he/she is right before challenging a contractor or landowner. Upon detecting a violation of an ordinance or a State law enforced locally, the CEO should notify the person responsible and attempt to obtain voluntary cooperation in correcting the violation. It is good policy to make every effort to seek compliance with a positive attitude. If the person who actually performed the illegal activity is not the landowner, the CEO should also notify the landowner, since some types of corrective action which the CEO might want to order could only be done by the owner or with the owner's permission (ex., remove a building, reseed a clear-cut area). Be careful when requiring corrections of non-compliant work.

The CEO should consider following the procedures outlined below, as well as any special procedures which may be spelled out in the ordinance or statute which the CEO is enforcing. The CEO should be aware that the procedures described here represent a very limited piece of the "enforcement pie". The code officer would be well advised to review the CEO training program's manual *Legal Issues and Basic Enforcement Techniques*, before proceeding with any enforcement action. There are all sorts of possible scenarios from oral discussions to full fledged court action. The code officer should always remember that the goal is to achieve compliance with the codes and regulations.

1. Oral Notice

Give oral notice to the person conducting the illegal activity, explaining the nature of the violation and the steps the person should take to correct it. If possible, offer several solutions, allowing the architect or builder to select the one that he/she thinks is best.

2. "Stop Work" Notice

If the person conducting the activity is unavailable, the CEO should post a "stop work" notice in a conspicuous place on the property on which the violation exists (see sample in Appendix B).

3. Written Notice

A 1992 Maine Supreme Court decision, *Town of Freeport v. Greenlaw*, 602 A.2d 1156 (Me. 1992), outlines the essential elements of a notice of violation. A legal note from the June 1992 *Maine Townsman* discussing this case is included in Appendix B. Before using the sample violation notices in Appendix B be sure to make any additions required by *Greenlaw* in light of the specific appeals, enforcement, and penalty sections of the ordinance being violated. Many Ordinances prescribe a notification procedure, a code enforcement officer must, of course, follow these local requirements as well.

a. First Notice. The CEO should also send a written notice to the violator and landowner by certified mail, return receipt requested, referencing the oral notice and describing the

property in question, the nature of the violation, the specific ordinance section being violated, corrective measures which the violator should take, a deadline for taking those measures, information about the right to appeal, if any, and the penalty for failure to comply with the CEO's request.

b. Second Notice. After sending the first letter, the CEO should inspect the property again. If the person still has not corrected the violation, the CEO should send a second certified letter, return receipt requested. This letter should state: (1) that the CEO gave previous notice of the violation and the date of that notice, (2) the nature of the violation and the ordinance section, (3) that the CEO has inspected the property again and the violation still exists, (4) that certain corrective measures should be taken by a specific date, (5) this should be in the form of an order, (6) that if the violation continues after that date, the CEO will recommend that the municipal officers refer the violation to legal action, (7) state the possible penalties that could result from the legal action, and (8) the right of appeal information.

c. Third Notice. If the second letter does not result in an abatement of the violation, the CEO should send a third letter by certified mail, return receipt requested, informing the violator that: (1) the CEO conducted another inspection, (2) the violation still exists even though the CEO has given the violator previous written notice, and (3) the CEO is recommending that the case be referred for legal action.

If the CEO has the authority to file a complaint in District Court under Rule 80K, then the letter may state that the CEO is preparing to file a complaint. If the municipal officers make the final decision about whether to go to court, the letter should state that the CEO is recommending that the municipality prosecute the violation. The letter should also state the date, time and place when the municipal officers will be meeting to make their decision, and should inform the violator that he or she has a right to attend. Once the municipal officers have made their decision, the CEO should send a copy to the violator.

The CEO should keep copies of all correspondence concerning the violation and should also be sure to retain the postal receipts from certified letters. If the notices which the CEO sends by certified mail are refused by the person to whom they are addressed, the CEO may want to hand-deliver them or ask a local law enforcement officer or a sheriff's deputy to do it. If the notices are hand-delivered, then the CEO should keep on file a "return" prepared by the person making the delivery as proof that the notice was received.

The number of notices sent to a violator, their contents, and the method of delivery generally is not specified by the ordinance or statute being enforced. The procedure outlined above is a recommended approach, but the CEO should modify it where necessary to suit his or her workload and budget or where the facts of a particular case require it.

4. Additional Inspections. Once the case has been referred to court, the CEO should continue to monitor the property periodically until the day of the hearing. This will enable the CEO to testify from personal knowledge that the violation still exists.

5. State or Federal Law Violations. If the CEO becomes aware of a violation of a State or federal law which is not enforced at the local level, the CEO should report it to the appropriate State or federal agency.

CHAPTER VII. THE BUILDING CODE AND THE CEO AS PART OF THE MUNICIPAL ORGANIZATION

Building problems of today are not that different than those of the past. But today, due to rapid population growth, and the concentration of population in small areas, it is necessary to construct larger buildings and to concentrate more buildings on less land area. This requires updating technical information and the establishment of improved building regulations.

Various departments of municipal governments oversaw the implementation of building regulations in the past, but in most cases this led to disaster. Different departments have different ideas or concepts about construction, in accordance with their priorities. This causes rivalries and the public interest suffers, in the long run. Most government bodies now realize that the basic building trades, such as plumbing, and electrical, as well as zoning implementation, are necessarily compatible and should be managed together within one office. In larger cities, this is commonly the Building Dept., or Inspections Dept.; the Code Enforcement Office in smaller communities.

THE CEO AS A BUILDING OFFICIAL

Building regulations affect the future of a community, safety of every citizen and thus, the building inspections official has a significant role in every community. Understanding the authority, responsibilities, and limitations placed upon the CEO will lead to better service. The first prerequisite for a good CEO or a building inspector is recognition of the function of the building codes and who enforces them. The CEO, as a building official, is not expected to provide architectural or engineering services. The officer is a professional inspector who assures construction projects meet minimum building standards. The code requires only the minimum standard necessary to secure safety. The CEO must remember that it is not his/her function to secure the best possible work, raise the standard of construction, or establish the best practice. The building code doesn't provide this authority. The officer becomes an extension of the owner or his representative during construction, and a source of specialized information.

RECOMMENDED PRACTICES

There is perhaps no other civic government role in which there is closer contact with the public, under more adverse conditions, than that of a CEO. The CEO, is frequently the subject of public scrutiny related to municipal government. One of the most important responsibilities of the CEO, whether he/she deals with the people over the counter, sits behind a desk and reviews plans, or inspects the construction of a building in the field, is *public relations*. Number one on the list of recommendations is to establish a good relationship with members of the public. This means the CEO must:

- present a neat appearance;
- be observant and alert;
- be courteous;
- be prompt;
- be willing to explain;
- be thorough, but cooperative;
- be well informed and qualified.

There must be complete teamwork within the office of the CEO. No member should judge work by his/her own standards. Everyone is striving for the same result, i.e., a building that is safe for the purpose for which it is to be used. It should be planned and constructed in accordance with the regulations applicable thereto.

Therefore, the CEO must be fully informed of the conditions that have been approved by the plan review board. It is his/her responsibility to see that these conditions are actually carried out on site, in conformity with the applicable requirements of the code. He/she *must not* insist upon more than is required, but he/she must be capable of judging alternative methods which meet requirements.

The Code Enforcement Officer's work requires the following:

- providing him/herself a good checklist;
- familiarization with the plans for each project, noting especially, any changes required by the plan review board;
- familiarization with the code requirements;
- familiarization with approved materials and construction methods, including limitations on a use for compliance with the code;
- maintenance of accurate records detailing observed conditions and orders given.

Attention to detail in writing inspection reports is important. The report may serve as the basis for determination of compliance, if court action ensues. However, it is the CEO's job to secure compliance with the requirements rather than attempt to punish offenders. Efforts should be directed toward this end, since the assessment of a penalty against any offender is no substitute for preventing safety hazards. In citing a violation of deviation from the code, the inspectors should:

- know that he is right before making a decision;
- consider all possible contributing conditions;
- discuss the matter with job supervisory personnel;
- explain fully and where possible, offer an alternative;
- never issue orders to a subordinate rather than the supervisor responsible for the work on site.

The CEO must be careful when requiring corrections of non-compliant work. The requirements applicable must be stated clearly and factually. When making suggestions for corrective measures, the CEO must make clear to the applicant that they are *suggestions* and *not* mandates. It is desirable, if possible, to offer several solutions, allowing the architect or builder to select the one they think is best.

It is good policy, in the enforcement of building codes and regulations, to first issue a warning of violation, and attempt to secure compliance without a "get tough" attitude. When this approach is clearly unsuccessful, the due process of the law should be invoked. Records prove that the courts are much more willing to sustain the prosecution of violators, when it is proven that every attempt was made to secure compliance before resorting to prosecution.

THE STRUCTURE OF A CEO'S OFFICE AND EQUIPMENT

The CEO's office, whether it is a one man operation or a multi-personnel department, must be structured. An organizational chart would not be necessary in a small office, but in larger departments it would be essential so that an observer could understand the complete operation.

Each member of the office should have a clearly written description of his or her duties describing expectations, such as personal appearance, manners, reports and letter writing, record keeping, and public relations. The office should have a minimum of two people, the CEO and either a clerk or secretary. One of these two should be present at the municipal office during open office hours. As the population of a municipality increases, so should the staff. A rule of thumb is 1 CEO per 10,000 population as a minimum.

Some of the basic pieces of equipment the CEO should have are:

- typewriter
- calculator
- file cabinets
- desks
- table for plan review
- 100' tape
- 25' tape
- pop level
- architectural and engineering scale
- vehicle
- copy of building code
- copy of the training manual, *Legal Issues and Basic Enforcement Techniques for Municipal Code Enforcement Officers*

CEO OFFICE FORMS, RECORDS, AND REPORTS

Records are an important part of today's inspection department. Records are used to trace documents of the present and past. Most records are public, but others are not. It is important that a distinction be made between the two. A building permit should be considered a permanent, legal document. Consult the manual, *Legal Issues and Basic Enforcement Techniques*, for a discussion of laws governing record keeping and citizen's "right to know". The following is a list of records which are public and must be available for public review.

1. Building permit application
2. Site plan review sheet
3. Check list against zoning ordinance
4. Plan review check list
5. Check list for field inspector
6. Sample copy of form letter
7. Sample copy of building permit report
8. Stop work order
9. Certificate of occupancy
10. Existing condition check list

Most municipalities require an annual report which should include the following:

1. letter of transmittal
2. description of office (brief summary of departments)
3. statistical data (number of permits issued, inspections made)
4. special project (special problems encountered)
5. goal and objectives (plans for short and long range goals)
6. on-going progress
7. personnel chart
8. charts and graphs (of revenue)
9. summary
10. field inspection report

A CEO WORKS WITH BOARDS AND COMMITTEES

The CEO serves as a staff person for the municipality's many boards and committees. Codes, such as building and land use ordinances, for example are subject to debate and thus situations arise where a member of the public is entitled to a hearing before a qualified board to determine the validity of an action of the building official in the interpretation of the land use ordinance or building code. For review of an interpretation of a Land Use ordinance, the CEO would advise the applicant to consult or make an appeal of the decision to the Zoning Board of Appeals. For interpretation of a decision regarding a building code application, there may be a Board of Standards and Review. Whatever the structure of a municipality's review boards, there should be a procedure by which an applicant can appeal the decision a CEO has made based upon his

interpretation of the applicable codes. Upon receipt of an appeal request, the CEO should prepare a written statement to be sent to the board or committee in advance of the hearing. The statement should present an objective review of the initial decision including the facts which served as the basis for the decision. The CEO will be responsible for serving various boards in this capacity.

Chapter VIII: Municipal Code Enforcement Evaluation by ISO

What is ISO? ISO stands for Insurance Service Office, Inc. (www.iso.com) This Office is a data collection and return service for the insurance industry. As we have already learned, insurance companies are a driving force in the development of building codes. Throughout history, insurance companies have been concerned about how buildings and other structures are built; and rightfully so. In most cases, insurance companies pay for the reconstruction of buildings and structures damaged or destroyed. During the 1980s, there were a number of very significant natural disasters in the United States. Hurricane Andrew, the Midwest floods, and others devastated the country to the extent of 43 billion dollars. The insurance industry, after investigating, found that good codes were most important, but codes themselves, were not enough. They, therefore, set out to evaluate the effectiveness of code enforcement against disaster loss.

The ISO is continually engaged in an evaluation process, nationwide, which reviews each municipality's code and their capacity to enforce the standards of the code in order to assign each municipality a grade for effectiveness at preventing disaster loss. The grading system ISO uses is the Building Code Effectiveness Grading Schedule (BCEGS). This system was developed by the Insurance Institute, the three organizations which developed and maintain model codes used in the United States, and 1500 building code officials. ISO initiated this process in 1995 in States with high exposure to wind (hurricane) hazards. This process began in Maine late in 1996. Today, insurers are receiving ISO's reports through Public Protection Classifications (PPC), about fire suppression, BCEGS just adds to the data.

The evaluation results in an assignment of a BCEGS grade ranging from 1 (best) to 10 (no recognized protection) to each municipality. This is done after an ISO representative reviews the codes and enforcement policies of a municipality during a community visit. The visit may be 4 hours to a day, depending upon the municipality's level of preparation. A municipality should complete the paper work and review the material sent by ISO in advance of the visit. Questions should also be asked of the representative in advance of the visit.

BCEGS will encourage each municipality to implement a building code which includes standards to protect against hazards. The analysis of code enforcement effort effectiveness will help municipalities be more effective in the enforcement of their adopted codes. These efforts should result in safer buildings and structures, less loss of life and property and therefore, lower insurance rates.

During the evaluation process of BCEGS, the following items will be reviewed to determine a municipality's effectiveness with code enforcement:

1. Background data: potential or history of any natural hazards occurrence (location of floodplains or history of fire loss).
2. Permits and the findings of inspections.

3. The building code and other codes that work in conjunction with the building code.
4. Certification and training record of the individual who reviews the plans of the building and structures that are filed with the building permit application.
5. Actual inspections by accompanying the code official on field inspections.

After the ISO has completed a municipal review, a report will notify the municipality of the grade assigned, within about 3 months. The process of BCEGS will be ongoing; a review of each municipality will be made every 5 years. Information regarding a municipality's review including the assigned grade, will be available to insurers through Commercial Risk Services, Inc. (CRS), a subsidiary of ISO.

Appendix A

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- 8 Residential Permit Applications
- 9 Accessibility Regulations in Maine and Checklists for Access
- 19 Maine Municipal Association Letter – Obligations/authority of local officials with respect to Life Safety Code 101
- 21 Title 30-A M.R.S.A. §§ 3002, 3303, 3305 and 3306 – Enactment Procedures
- 23 Maine Townsman, “Legal Notes,” April 1989 – Ordinance Enactment
- 27 Inspection Checklist (Sample)
- 29 Certificate of Occupancy



**RESIDENTIAL
BUILDING PERMIT
APPLICATION**

PROJECT LOCATION _____
(road / street)

PROPERTY OWNER _____
(please print)

PROPERTY OWNER'S ADDRESS _____
(number) (road / street)

_____ (state) _____ (zip code) _____ (phone) _____ (date)

SIGNATURE: _____

Name: _____

Location: _____

Map: _____

Lot: _____

Permit #: _____

\$	TOTAL COST
----	------------

THIS APPLICATION MUST BE ACCOMPANIED BY:

- A SITE PLAN (DIMENSIONED)
- FLOOR PLAN (DIMENSIONED)
- A MATERIALS LIST
- SUBSURFACE WASTEWATER DESIGN (HHE-220)

2003 INTERNATIONAL RESIDENTIAL CODE

TO BE COMPLETED BY CITY STAFF

TYPE OF IMPROVEMENT (check one)	
<input type="checkbox"/>	NEW BUILDING
<input type="checkbox"/>	ADDITION
<input type="checkbox"/>	ALTERATION
<input type="checkbox"/>	REPAIR, REPLACE
<input type="checkbox"/>	MOVING
<input type="checkbox"/>	FOUNDATION
PROPOSED USE (check one)	
<input type="checkbox"/>	ONE FAMILY HOME
<input type="checkbox"/>	TWO FAMILY HOME
TYPE OF FRAME (check one)	
<input type="checkbox"/>	WOOD FRAME
<input type="checkbox"/>	STRUCTURAL STEEL
<input type="checkbox"/>	CONCRETE
<input type="checkbox"/>	OTHER(Specify)
TYPE OF HEATING FUEL (check one)	
<input type="checkbox"/>	COAL / WOOD
<input type="checkbox"/>	ELECTRIC
<input type="checkbox"/>	GAS
<input type="checkbox"/>	OIL
<input type="checkbox"/>	OTHER(Specify)
TYPE OF SEWAGE DISPOSAL (check one)	
<input type="checkbox"/>	PUBLIC SYSTEM
<input type="checkbox"/>	PRIVATE SYSTEM
TYPE OF WATER SUPPLY (check one)	
<input type="checkbox"/>	PUBLIC SYSTEM
<input type="checkbox"/>	PRIVATE SYSTEM
DIMENSIONS	
	NUMBER OF STORIES
	UNFINISHED BASEMENT (sq. ft.)
	FINISHED BASEMENT (sq. ft.)
	FINISHED LIVING SPACE (sq. ft.)
	# OF BEDROOMS
	# OF FULL BATHS
	# OF 1/2 BATHS

ZONING DATA		
	MAP	
	LOT	
	ZONING DISTRICT	
	FRONT SETBACK	
	SIDE / REAR SETBACKS	
CONSTRUCTION DATA		
	SPRINKLED	
	HANDICAPPED	
	IN 100 YEAR FLOOD ZONE	
	PERMIT STATUS	
	ZONING CLASS	
	USE GROUP	
	CONSTRUCTION TYPE	
	IMPROVEMENT TYPE	
FEES		
	UNFINISHED AREAS	\$.05 p/sq. ft.
	NEW CONSTRUCTION	\$.12 p/sq. ft.
	RENOVATION	\$.07 p/sq. ft.
	ACCESSORY	\$.05 p/sq. ft.
	LATE	DOUBLED
	REVIEW FEE	\$ 15.00
	TOTAL FEE	
APPROVALS		(Date)
	SANITARY DISTRICT	
	WATER DISTRICT	
	CITY ENGINEER	
	CEO / LPI	

BUILDING PERMIT APPLICATION

APPLICANT _____ MAP _____ LOT _____
 MAILING ADDRESS _____ DEED - BOOK _____ PAGE _____
 _____ PHONE (HOME) _____
 PROPERTY LOCATION _____ (WORK) _____
 PROPERTY OWNER _____

THIS APPLICATION IS FOR A: PLEASE CHECK [] THOSE WHICH APPLY
 NEW RESIDENCE **OR**
 [] STICK BUILT [] ACCESSORY STRUCTURE (I.E. - GARAGE, GAZEBO, STORAGE SHED)
 [] MODULAR [] ADDITION/EXPANSTION (I.E. - NEW ROOM ON BUILDING, DECK)
 [] DUPLEX [] OTHER _____
 [] MOBILE HOME - YEAR _____ MAKE _____ SIZE _____

 LOT DESCRIPTION:
 _____ ACRES X 43,560 SQUARE FEET = TOTAL SQUARE FEET OF LAND (A) _____
 PRESENT SQUARE FEET OF ALL BUILDINGS _____
 SQUARE FEET OF PROPOSED STRUCTURE + _____
 TOTAL SQUARE FEET (PRESENT AND PROPOSED BUILDINGS): (B) = _____
 PERCENT OF LOT COVERAGE: (B DIVIDED BY A) _____

PROJECT DESCRIPTION:

TOTAL HEIGHT OF STRUCTURE: _____ NOT TO EXCEED 35 FEET

ON THE REVERSE OF THIS APPLICATION, YOU MUST SKETCH YOUR PLANS.

Any approval of this application will be based on information provided by the applicant regarding ownership of the property and the boundary locations. The applicant has the burden of ensuring legal right to use the property and that setbacks are measured from the legal boundary lines of the lot. The applicant/contractor shall therefore comply with those local laws pertaining to Chapter 2 of the Land Development Code, LAND USE ORDINANCE, particularly Sections 5.A and 5.B regarding dimensional setback requirements, Section 5.F concerning erosion & sedimentation control, Chapter 4, Phosphorus Control Ordinance, and also all other applicable Federal, State, and Local regulations. The applicant hereby certifies that all information contained in this application is true and correct.

DATE: _____ SIGNATURE: _____

THE FOLLOWING IS A LIST OF OTHER INFORMATION THAT YOU **MUST** FURNISH. IF YOU DON'T KNOW THE SETBACKS AND/OR DIMENSIONS, **YOU MUST GO OUT AND MEASURE** BEFORE COMPLETING THIS APPLICATION!

ROAD SETBACK _____ ROAD FRONTAGE _____
SIDE SETBACKS _____ & _____ WATER FRONTAGE _____
REAR SETBACK _____ WATER SETBACK _____

PLEASE SKETCH YOUR LOT WITH ALL DIMENSIONS, SHOWING ANY BUILDINGS AS THEY APPEAR ON THE LOT, ALONG WITH PROPOSED ADDITIONS, DECKS, ACCESSORY BUILDINGS, OR GARAGES. IN ADDITION TO THE ABOVE LIST, PLEASE SHOW WHERE ANY OF THE FOLLOWING ARE LOCATED ON THE PROPERTY: WELL & SEPTIC, ANY WETLANDS, RIGHTS-OF-WAY, DRIVEWAYS, NORTH ARROW, AND ANYTHING ELSE WHICH MIGHT ASSIST THE CODE OFFICER IN DETERMINING WHERE YOUR NEW BUILDING/ADDTION WILL BE LOCATED ON YOUR PROPERTY.

FOR CEO USE ONLY:

WAS A PLUMBING PERMIT ISSUED? _____
IP# _____ FEE _____ ***** EP# _____ FEE _____

City Use Only: _____	Date Received _____	Permit Fee _____
Receipt # _____	Use Group _____	Construction Type _____
Date Permit Issued _____	Permit # _____	

**City of Lewiston
Application for Building/Demolition/Use Permit**

Part I Applicant Information

Subject Property Address: _____

Applicant's Name /Address: _____ Tel. No. _____

Contr's Name(s)/Address: _____ Tel. No. _____

Owner's Name(s) /Address: _____ Tel. No. _____

Mail permit or denial to applicant ___ Owner ___ Construction plans attached yes ___ no ___ Site plan attached yes ___ no ___

Part II Description of Work - Please check the appropriate boxes and provide all requested information..

___ New Building, Structure, or Addition (does not include mobile homes). Please provide brief description to include square footage, number of stories, height, type of construction, total project value, etc.

Value \$ _____

___ Alterations and Renovations. Please provide brief description to include square footage of area to be altered/renovated, total project value, etc.

Value \$ _____

___ Swimming Pool. Above Ground ___ Depth ___ : In Ground ___ Dimensions ___ Value \$ _____

___ Fence. Height of fence in a required yard adjacent to a street ___, height of fence in a required side or rear yard _____ total length of fence _____, type of fence _____ Value \$ _____

___ Underground Fuel Tanks. Number to be installed ___, size(s) ___, ___, ___, fuel type _____ number to be removed ___, size(s) ___, ___, ___, fuel type _____

___ Demolition: Square Footage ___, # of stories ___, # of units ___, distance from closest public street or sidewalk ___, are there any asbestos contained materials yes ___ no ___, if yes, name of abatement contractor _____ Note: You must file a building demolition form (BDF) with the Maine Department of Environmental Protection - Asbestos/Lead Unit, 17 State House Station, Augusta, Maine 04333-0017 Tel. (207) 287-7826

___ Driveway. Length _____ Width _____ Value \$ _____

___ Parking Lot. Number of Stalls _____ Value \$ _____

___ Mobile Home. Move a mobile home from _____ to _____
 Make _____, Model Name _____, Color _____, Value \$ _____
 Year Manufactured _____ Serial # _____ Size _____ # of Bedrooms _____ # of Baths _____
 Date to be moved/installed _____ Taxes paid to date: yes ___ no ___ Tax approval _____



**COMMERCIAL
BUILDING PERMIT
APPLICATION**

PROJECT LOCATION _____
(road / street)

OWNER/LEASEE _____
(please print)

OWNER/LEASEE'S ADDRESS _____
(number) (road / street)

_____ (state) _____ (zip code) _____ (phone) _____ (date)

SIGNATURE: _____

Name: _____

Location: _____

Map: _____

Lot: _____

Permit #: _____

\$	TOTAL COST
----	------------

**THIS APPLICATION MUST BE ACCOMPANIED BY:
FOUR (4) SETS OF STAMPED (A/E) PLANS**

TYPE OF IMPROVEMENT (check one)	
<input type="checkbox"/>	NEW BUILDING
<input type="checkbox"/>	ADDITION
<input type="checkbox"/>	ALTERATION
<input type="checkbox"/>	REPAIR, REPLACE
<input type="checkbox"/>	MOVING
<input type="checkbox"/>	FOUNDATION
PROPOSED USE (check one)	
<input type="checkbox"/>	ASSEMBLY (50 or more)
<input type="checkbox"/>	BUSINESS
<input type="checkbox"/>	EDUCATIONAL (K - 12)
<input type="checkbox"/>	FACTORY
<input type="checkbox"/>	INSTITUTIONAL (Health Care/ Detention)
<input type="checkbox"/>	MERCANTILE (Retail)
<input type="checkbox"/>	STORAGE (Warehouse/Parking)
<input type="checkbox"/>	OTHER (tower etc.) SPECIFY:
TYPE OF FRAME (check one)	
<input type="checkbox"/>	WOOD FRAME
<input type="checkbox"/>	STRUCTURAL STEEL
<input type="checkbox"/>	CONCRETE
<input type="checkbox"/>	OTHER SPECIFY:
TYPE OF HEATING FUEL	
<input type="checkbox"/>	SPECIFY:
TYPE OF SEWAGE DISPOSAL (check one)	
<input type="checkbox"/>	PUBLIC SYSTEM
<input type="checkbox"/>	PRIVATE SYSTEM
TYPE OF WATER SUPPLY (check one)	
<input type="checkbox"/>	PUBLIC SYSTEM
<input type="checkbox"/>	PRIVATE SYSTEM
DIMENSIONS	
	NUMBER OF STORIES
	TOTAL GROUND FLOOR AREA (sq. ft.)
	TOTAL UPPER OF STORY AREAS (sq. ft.)
	TOTAL IMPERVIOUS SURFACES (sq. ft.)
	TOTAL # OF PARKING SPACES PROVIDED

2003 INTERNATIONAL BUILDING CODE

TO BE COMPLETED BY CITY STAFF

ZONING DATA		
	MAP	
	LOT	
	ZONING DISTRICT	
	FRONT SETBACK	
	SIDE / REAR SETBACKS	
CONSTRUCTION DATA		
	SPRINKLED	
	HANDICAPPED	
	IN 100 YEAR FLOOD ZONE	
	PERMIT STATUS	
	ZONING CLASS	
	USE GROUP	
	CONSTRUCTION TYPE	
	IMPROVEMENT TYPE	
FEES		
	UNFINISHED AREAS	\$.05 p/sq. ft.
	NEW CONSTRUCTION	\$.18 p/sq. ft.
	RENOVATION	\$.13 p/sq. ft.
	ACCESSORY&PARKING	\$.05 p/sq. ft.
	LATE	DOUBLED
	REVIEW FEE	\$ 30.
	TOTAL FEE	
APPROVALS		(Date)
	SANITARY DISTRICT	
	WATER DISTRICT	
	CITY ENGINEER	
	CEO / LPI	

CITY OF AUGUSTA - RESIDENTIAL PERMIT APPLICATIONS

Application for Permit; Plan Required:

- a. **site plan** required. All applications for permits shall be accompanied by a site plan of suitable scale showing:
 - i. The actual shape, size, and location of the lot to be built upon and the names of the landowner of record as well as the names of the abutting property owners.
 - ii. A survey prepared by a Maine registered land surveyor and tied to the Maine Coordinate System *is recommended for all residential uses.*
 - iii. The size (specific dimensions), shape, height, and location (with setbacks noted) of any buildings to be erected, altered, or removed from the lot.
 - iv. The location of street entrances to, exits from and driveways on the premises.
 - v. Abutting rights-of-way and right-of-way widths.
 - vi. The location of existing and/or proposed sewage disposal facilities.
 - vii. The location of existing and/or proposed water supply facilities.
- b. The application shall include any other information that may be reasonably required by the Code Enforcement Officer to determine whether the provisions of this ordinance will be met by the proposed development (*floor plan drawn to scale*).
- c. Every application shall be signed by the applicant or his authorized agent certifying that the information in the application is complete and correct. When an agent is acting on behalf of the applicant, including signing the application, a letter from the applicant authorizing the agent to act on his/her behalf shall accompany the application.
- d. Every application shall include information or material required by the BOCA Code available for reference in the City of Augusta City Services Department.
 - i. *footing design/materials*
 - ii. *foundation design/materials*
 - iii. *concrete floor design/materials*
 - iv. *anchor bolt connections*
 - v. *column design/materials*
 - vi. *beam design/materials*
 - vii. *floor system design/materials, including floor loads*
 - viii. *exterior wall system design/materials, including wind and hurricane bracing*
 - ix. *interior wall system design/materials*
 - x. *roof system design/materials, including roof loads*
 - xi. *location of and intended use of rooms/spaces (floor plan must be dimensioned)*
 - xii. *window type/sizes*
 - xiii. *door type/sizes*
 - xiv. *interior stair/handrail details*
 - xv. *exterior porch systems, including guard systems and exterior stair/handrail details*
 - xvi. *type/location of smoke detectors*
 - xvii. *type/location of ground fault protection devices*
 - xviii. *type/location of interior plumbing fixtures*
 - xix. *type/location of heating appliances*
- e. If the application conforms to the provisions of the various codes and ordinances in effect within the State of Maine and City of Augusta the Code Enforcement Officer will issue a permit upon payment of the required fee. If the Code Enforcement Officer refuses to issue a permit, he or she shall state to the applicant in writing the cause of such refusal. The issuance or refusal of a permit shall be made within ten (10) working days of the submission of a complete application to the Department of City Services.
- f. If the property is to be provided with a potable water system and is not served by a public sewer, a completed application for a subsurface waste water disposal system, prepared by a licensed Site Evaluator shall accompany the application.

Accessibility Regulations in Maine

With a total of eleven different laws and regulations governing accessibility in building projects now in effect in Maine, it is important for code officials to recognize the regulations and understand the compliance requirements even if there is no local responsibility for enforcement or compliance. A basic understanding of state-wide accessibility requirements will go a long way in providing direction and advice to Maine citizens involved in project development.

This section of Chapter 1 reviews and summarizes the various accessibility regulations that code enforcement officials will encounter in the State of Maine. Requirements vary, however, depending upon the funding source and the type of project proposed. Responsibility for enforcement, and referral recommendations to state and/or federal agencies are important information to know and provide to inquiring consumers. A chart outlining the various regulations, enforcement liability, types of facilities covered, funding stipulations, and required standards for design is provided on page 5 at the end of this chapter for ease of understanding and reference.

1. Title 25 MRSA Public Buildings, Chapter 331 -- Construction for Physically Disabled: Now superseded by MHRA, Title 5, 4594-D. The original Maine law, passed in 1969, applied to 'public' buildings constructed with state funds.
2. Americans with Disabilities Act -- The most strict of access regulations because of its applicability to existing facilities. Prohibits discrimination on the basis of disability in the full and equal enjoyment of goods, services, facilities, and privileges of any public accommodation, public entity and in employment. Requires program accessibility in public services, reasonable accommodation and removal of barriers when access is readily-achievable; or alternative methods of providing services must be offered. Newly constructed and altered facilities must be readily accessible and in compliance with ADA Accessibility Guidelines [ADAAG] (see Chapter II & Appendix II for additional information and handouts on ADA regulations, Technical Assistance Manuals).
3. Maine Human Rights Act, Title 5, Subchapter V -- Prohibits discrimination in places of public accommodations and employment. Requires access permits through the Maine State Fire Marshal's Office for new buildings (any dollar value); renovated buildings (over \$100,000) must meet the standards of ADAAG*. A public accommodation is "any establishment which offers its goods, facilities, or services to the public or solicits or accepts patronage from the general public" (see Chapter III & Appendix III for additional information & a copy of the legislation).
4. Maine Human Rights Act, Title 5, Subchapter IV -- Prohibits discrimination in any housing transaction, rental, or sale. Also requires landlords to allow access modifications to the structure at the request of tenants. Structural accessibility applies to publicly funded renovated projects of 20 or more units; all new construction projects of four or more units on ground floor or floors served by an elevator [see FHAA], all public and common areas, and all doors into and within all premises. Additional requirements (10%) of units be fully accessible [see 4582] (see Chapter III & Appendix III for additional information & a copy of the legislation).
5. Fair Housing Act Amendments of 1988 -- Require all new units, regardless of funding sources, on ground floor or floors served by an elevator in multifamily housing of four (4) or more units to be accessible and adaptable.** Affects building permits after 1/13/90. Townhouses on two levels are not covered (see Appendix III for additional information).

6. Section 504 of the 1973 Rehabilitation Act -- Programs that receive federal financial assistance must be operated in a way that does not restrict services to persons with disabilities. Therefore, programs and towns with CDBG or other public funding need to have program facilities that are accessible according to UFAS*** (see Chapter IV & Appendix IV for additional information).

7. BOCA -- The '90, '93, '96, & '99 BOCA National Building Codes require accessibility to most building use groups (with exceptions) for consideration of physically disabled persons. (Section 512.0 in BOCA '90 and Chapters 11 in BOCA '93, '96, and '99). All four BOCA Codes reference current ANSI design guidelines in ANSI A117.1 for buildings, sites, and facilities required to be accessible by the scoping provisions of the applicable BOCA Section(s) or Chapter(s) (see Chapter V & Appendix V for additional information).

NOTE: The various BOCA Codes are not enforced statewide but some have been adopted by a number of local municipalities.

* ADAAG: ADA Accessibility Guidelines

** adaptable: ability to be added or altered at a future date

*** UFAS: Uniform Federal Accessibility Standards

8. NFPA-101 Life Safety Code-- The 101 Code establishes minimum requirements in new and existing buildings that will provide a reasonable degree of safety from fire in buildings and structures. Although 101 does not directly impact accessibility, because the Maine State Fire Marshal's Office has been appointed by the legislature to issue "barrier free permits" for eight building types following mandatory and voluntary plan review, by internal policy, the FMO has also been requiring life safety construction permits for those projects. Likewise, projects required to have life safety construction permits are also checked for access, if required (see Chapter VI & Appendix VI for additional information).

9. Maine State Plumbing Code -- Recommends minimum plumbing fixture counts for various building occupancies and that an "appropriate" number of restroom facilities be accessible. Any municipal, county, or state building constructed after April 1, 1977, normally used by the general public, shall have restrooms, and drinking fountains in accordance with current ANSI A-117 standards. Requirements include the installation of an accessible urinal.

10. Architectural Barriers Act -- The Architectural Barriers Act of 1968 (as amended) ensures that *buildings financed with federal funds* are designed and constructed to be accessible to physically handicapped persons. It applies to buildings; it does not include programmatic accessibility. UFAS is the accessible design standard employed under the Architectural Barriers Act. All portions of all buildings covered by the Act must meet UFAS. Other requirements imposed by specific federal agencies may also be applicable to the specific structure designed.

11. Sections 44 and 190 of the Internal Revenue Code -- Provides for tax credits of up to \$5000 per year and tax deductions up to \$15,000 per year (respectively) for qualified barrier-removal projects.

CHECKLIST FOR ACCESS

PROJECT TYPE: State, Municipal, or County Buildings

FUNDING

GENERAL NOTES: A = Private \$ - NFPA-101 Review & Permit Applies to All New & Altered Projects, Ch. 26 & 27
 B = State/Municipal
 C = Federal - BOCA References 1996 Edition; '99 Edition Similar

Cert. =
Certification

C.O. =
Certificate
of Occu-
pancy

	CONSTRUCTION TYPE	APPLICABLE REGULATIONS					ENFORCEMENT				COMMENTS
		ADA	MHRA	504	BOCA	ABA	O/B	ARCH	FMO	CEO	
A	New & Additions										
	Alterations										
	Existing										
B	New & Additions	Title 2 ADAAG	4594-F PP 37-42	UFAS 41.2 41.5	Chapter 11 CABO	X	MHRA B.F.	MHRA Plan Permit	MHRA Rev. & Cert.	Inspection & C.O. Permit	Elevator exemption does not apply (ADA)
	Alterations	or UFAS	4594-F PP 38-41	UFAS 4.1.6	or ICC/ANSI	X	X	Plan Cert.	Vol	X	Elevator exemption does not apply (ADA)
	Existing	Prog.	X	X	X	X	Prog.	X	X	X	UFAS: Also see 4.1.4 (5)
C	New & Additions	X	X	UFAS 4.1.2 4.1.5	X	UFAS 4.1.2 4.1.6	MHRA B.F. Permit	MHRA Plan Cert.	MHRA Rev. & Permit	Inspection & C.O.	
	Alterations	X	X	UFAS 4.1.6	X	UFAS 4.1.6	X	Plan Cert.	Vol	X	
	Existing	X	X	X	X	X	X	X	X	X	

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CHECKLIST FOR ACCESS

PROJECT TYPE: Housing Projects with 4 or more dwelling units

FUNDING

GENERAL NOTES: A = Private \$ - NFPA-101 Review & Permit Applies to All New & Altered Projects - Ch 18 & 19
 B = State/Municipal
 C = Federal - BOCA References 1996 Edition; '99 Edition Similar

CONSTRUCTION TYPE	APPLICABLE REGULATIONS				ENFORCEMENT				COMMENTS		
	ADA	MHRA	504	BOCA	ABA	O/B	ARCH	FMO	CEO	O/B = Owner or Builder	
A	New & Additions	X	4582-B PP 24-26	X	Chapter 11 CABO or ICC/ ANSI	X	Plans to CEO	Certification of plans	X	Inspection & C.O.	Does not apply to 1 & 2 family dwell. or townhouses
	Alterations	X	X	X	X	X	X	X	X	X	
	Existing	X	4582 & 4582A	X	X	X	4582 & 4582A	X	X	X	
B	New & Additions	X	4582-B PP 24-26	UFAS 4.14 (11)	Chapter 11 CABO or ICC/ ANSI	UFAS 4.1.4 (11)	Plans to CEO	Certification of plans	X	Inspection & C.O.	20 or more units must have 10% "accessible"
	Alterations	X	4582 & 4582A								X
	Existing	X	4582 & 4582A	X	X	X	4582 & 4582A	X	X	X	504 Regs apply to single & multi-family
C	New & Additions	X	4582B PP 24-26	UFAS 4.14 (11)	Chapter 11 CABO or ICC/ ANSI	UFAS 4.1.4 (11)	Plans to CEO	Certification of plans	X	Inspection & C.O.	Federally funded projects may pre-empt MHRA
	Alterations	X	4582 & 4582A								X
	Existing	X	4582 & 4582A	X	X	X	4582 & 4582A	X	X	X	

Cert. =
Certification

C.O. =
Certificate
of Occu-
pancy

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CHECKLIST FOR ACCESS

PROJECT TYPE: Schools

GENERAL NOTES: A = Private \$ - NFPA-101 Review & Permit Applies to All New & Altered Projects, Ch. 10 & 11
 B = State/Municipal
 C = Federal - BOCA References 1996 Edition; '99 Edition Similar

CONSTRUCTION TYPE	APPLICABLE REGULATIONS					ENFORCEMENT				COMMENTS	
	ADA	MHRA	504	BOCA	ABA	O/B	ARCH	FMO	CEO		
A	New & Additions	T.3 4.1.3 4.1.5	4594-F PP 37-42	X	Chapter 11 CABO or ICC/ ANSI	X	MHRA B.F. Permit	MHRA Plan Cert.	MHRA Rev. & Permit	MHRA Insp. & C.O.	
	Alterations	T.3 4.1.6	4594-F PP 38-41	X		X	Vol	Plan. Cert.	Vol	X	
	Existing	Barrier Remov.	Barrier Removal	X	X	X	Barrier Removal	X	X	X	
B	New & Additions	T.2 ADAAG	4594-F PP 37-42	UFAS 4.1.2 4.1.5	Chapter 11 CABO or ICC/ ANSI	X	MHRA B.F. Permit	MHRA Plan Cert.	MHRA Rev. & Permit	MHRA Insp. & C.O.	ADA elevator exemption does not apply
	Alterations	or UFAS	4594-F PP 38-41	UFAS 4.1.6		X	Vol	Plan Cert.	Vol	X	ADA elevator exemption does not apply
	Existing	Prog. Access	X	X	X	X	Prog. Access	X	X	X	UFAS: Also see 4.1.4 (6) Educational
C	New & Additions										
	Alterations										
	Existing										

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CHECKLIST FOR ACCESS

PROJECT TYPE: Health Care Facilities

GENERAL NOTES: A = Private \$ - NFPA-101 Review & Permit Applies to All New & Altered Projects, Ch. 12 & 13
 B = State/Municipal
 C = Federal - BOCA References 1996 Edition; '99 Edition Similar

FUNDING	CONSTRUCTION TYPE	APPLICABLE REGULATIONS					ENFORCEMENT				COMMENTS
		ADA	MHRA	504	BOCA	ABA	O/B	ARCH	FMO	CEO	
A	New & Additions	T.3 4.1.3 4.1.5	4594-F PP 37-42	X	Chapter 11 CABO	X	MHRA B.F. Permit	MHRA Plan Cert.	MHRA Rev. & Permit	MHRA Insp. & C.O.	ADA elevator exemption does not apply
	Alterations	T.3 4.1.6	4594-F PP 38-41	X	or ICC/ ANSI	X	Vol	Plan. Cert.	Vol	X	ADA elevator exemption does not apply
	Existing	Barrier Remov.	Barrier Removal	X	X	X	Barrier Removal	X	X	X	High priority for barrier removal
B	New & Additions	T.2 ADAAG	4594-F PP 37-42	UFAS 4.1.2 4.1.5	Chapter 11 CABO	X	MHRA B.F. Permit	MHRA Plan Cert.	MHRA Rev. & Permit	MHRA Insp. & C.O.	ADA elevator exemption does not apply
	Alterations	or UFAS	4594-F PP 38-41	UFAS 4.1.6	or ICC/ ANSI	X	Vol	Plan Cert.	Vol	X	ADA elevator exemption does not apply
	Existing	Prog. Access	X	X	X	X	Prog. Access	X	X	X	UFAS: Also see 4.1.4 (9) Institutional
C	New & Additions										
	Alterations										
	Existing										

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CHECKLIST FOR ACCESS

PROJECT TYPE: Public Assembly

GENERAL NOTES: A = Private \$ - NFPA-101 Review & Permit Applies to All New & Altered Projects, Ch. 8 & 9
 B = State/Municipal
 C = Federal - BOCA References 1996 Edition; '99 Edition Similar

CONSTRUCTION TYPE	APPLICABLE REGULATIONS					ENFORCEMENT				COMMENTS	
	ADA	MHRA	504	BOCA	ABA	O/B	ARCH	FMO	CEO	O/B = Owner or Builder	
A	New & Additions	T.3 4.1.3 4.1.5	4594-F PP 37-42	<input checked="" type="checkbox"/>	Chapter 11 CABO or ICC/ ANSI	<input checked="" type="checkbox"/>	MHRA B.F. Permit	MHRA Plan Cert.	MHRA Rev. & Permit	Check Plans for O.K.	Also see ADAAG 4.1.3 (19) and 4.33
	Alterations	T.3 4.1.6	4594-F PP 38-41	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Vol	Plan. Cert.	Vol	<input checked="" type="checkbox"/>	BOCA allows some areas to not be access; serv. provided on acc. level
	Existing	Barrier Remov.	Barrier Removal	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Barrier Removal	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
B	New & Additions	T.2 ADAAG	4594-F PP 37-42	UFAS 4.1.2 4.1.5	Chapter 11 CABO or ICC/ ANSI	<input checked="" type="checkbox"/>	MHRA B.F. Permit	MHRA Plan Cert.	MHRA Rev. & Permit	Check Plans for O.K.	ADA elevator exemption does not apply (T.2)
	Alterations	or UFAS	4594-F PP 38-41	UFAS 4.1.6	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Vol	Plan Cert.	Vol	<input checked="" type="checkbox"/>	
	Existing	Prog. Access	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Prog. Access	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	UFAS: Also see 4.1.4 (4) Places of Assembly
C	New & Additions										
	Alterations										
	Existing										

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CHECKLIST FOR ACCESS

PROJECT TYPE: Hotels, Motels & Inns

GENERAL NOTES: A = Private \$ - NFPA-101 Review & Permit Applies to All New & Altered Projects, Ch. 16 & 17
 B = State/Municipal
 C = Federal - BOCA References 1996 Edition; '99 Edition Similar

CONSTRUCTION TYPE	APPLICABLE REGULATIONS					ENFORCEMENT				COMMENTS	
	ADA	MHRA	504	BOCA	ABA	O/B	ARCH	FMO	CEO	O/B = Owner or Builder	
A	New & Additions	T.3 4.1.3 4.1.5	4594-F PP 37-42	X	Chapter 11 CABO or ICC/ ANSI	X	MHRA B.F. Permit	MHRA Plan Cert.	MHRA Rev. & Permit	Insp. & C.O.	Also see ADAAG 9.0 Transient Lodging
	Alterations	T.3 4.1.6	4594-F PP 38-41	X	X	X	Vol	Plan Cert.	Vol	X	Lodging with 5 rooms or less exempt
	Existing	Barrier Remov.	Barrier Removal	X	X	X	Barrier Removal	X	X	X	
B	New & Additions										
	Alterations										
	Existing										
C	New & Additions										
	Alterations										
	Existing										

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CHECKLIST FOR ACCESS

PROJECT TYPE: Restaurants

FUNDING

GENERAL NOTES: A = Private \$ - NFPA-101 Review & Permit Applies to All New & Altered Projects, Ch. 8 & 9
 B = State/Municipal
 C = Federal - BOCA References 1996 Edition; '99 Edition Similar

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CONSTRUCTION TYPE	APPLICABLE REGULATIONS					ENFORCEMENT				COMMENTS
	ADA	MHRA	504	BOCA	ABA	O/B	ARCH	FMO	CEO	
A New & Additions	T.3 4.1.3 4.1.5	4594-F PP 37-42	X	Chapter 11 CABO	X	MHRA B.F. Permit	MHRA Plan Cert.	MHRA Rev. & Permit	Insp. & C.O.	Also see ADAAG 5.0 Restaurants
Alterations	T.3 4.1.6	4594-F PP 38-41	X	or ICC/ ANSI	X	Vol	Plan Cert.	Vol	X	Platforms need not be access- ible if same decor & unrestr. use. BOCA allows for wc seating
Existing	Barrier	Barrier	X	X	X	Barrier	X	X	X	
B New & Additions										
Alterations										
Existing										
C New & Additions										
Alterations										
Existing										

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NOTES:

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CHECKLIST FOR ACCESS

PROJECT TYPE: Business Occupancies

GENERAL NOTES: A = Private \$ - NFPA-101 Review & Permit Applies to All New & Altered Projects, Ch. 26 & 27
 B = State/Municipal
 C = Federal - BOCA References 1996 Edition; '99 Edition Similar

CONSTRUCTION TYPE	APPLICABLE REGULATIONS					ENFORCEMENT				COMMENTS	
	ADA	MHRA	504	BOCA	ABA	O/B	ARCH	FMO	CEO		
A	New & Additions	T.3 4.1.3 4.1.5	4594-F PP 37-42	X	Chapter 11 CABO or ICC/ ANSI	X	MHRA B.F. Permit	MHRA Plan Cert.	MHRA Rev. & Permit	Check Plans for O.K.	Also see ADAAG 7.0 Business & Mercantile
	Alterations	T.3 4.1.6	4594-F PP 38-41	X		X	Vol	Plan Cert.	Vol	X	Large mercantile business such as shopping centers are not covered
	Existing	Barrier Remov.	Barrier Removal	X	X	X	Barrier Removal	X	X	X	
B	New & Additions										
	Alterations										
	Existing										
C	New & Additions										
	Alterations										
	Existing										

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MAINE MUNICIPAL ASSOCIATION

Legal Services
60 Community Drive
Augusta, Maine 04330-9486

Telephone (207) 623-841

LIAM W. LIVENGOOD
REBECCA WARREN SEEL
RICHARD P. FLEWELLING
ELLERBE P. COLE
JOSEPH J. WATHEN

August 5, 1995

Mr. Roger Timmons
Code Enforcement Officer
Town of Windham
8 School Road
Windham, Maine 04062-4899

Re: Obligations/authority of local officials with respect to
Life Safety Code 101

Dear Mr. Timmons:

You have asked me to explore what obligation, if any, local officials (fire chief, fire inspector, fire ward, building inspector, code enforcement officer) have for the enforcement of NFPA Life Safety Code 101, in municipalities that have not themselves adopted that Code. I believe you have also asked me whether, in such municipalities, any local official has the authority (though not the obligation) to inspect according to the Code, and to go to court to enforce it, if needed.

To answer the first question: I find no state statute or rule that imposes an obligation upon any local official to enforce NFPA Life Safety Code #101 in any municipality. Any municipality that has adopted it has probably made its own provisions for enforcement of it.

As to the second question, Section 2361 of Title 25 (which appears in chapter 313 of that Title) provides that duly appointed fire chiefs (a court might, if it concluded this was simple error, construe this to include elected fire chiefs as well) or their designees, municipal building inspectors, and code enforcement officers "may" bring a civil action in the name of the municipality to enforce any of the state laws, duly promulgated state rules, or local ordinances enacted pursuant to chapters 313 to 321 of Title 25. I construe "may" to mean that the statute awards the discretion but does not impose the obligation to enforce the listed laws, rules, and ordinances.

I know of no law that itself promulgates LSC #101, and we are presuming, for the sake of discussion here, the non-existence of any local ordinance adopting LSC #101. Therefore, I must consider whether there it has been duly promulgated as a state rule.

Section 2396 of Title 25 implicitly authorizes the commissioner of Public Safety to promulgate rules and regulations

Mr. Roger Timmons
August 5, 1995
Page two

"directed toward and concerned with protection of the public in the...areas [of]...[t]he adequacy of means of egress, in the case of fire, from factories, asylums, churches, schools, halls, theaters, amphitheaters, dormitories, apartment or rooming houses, hotels, motels and all other places in which numbers of persons work, live or congregate from time to time for any purpose which comes within the scope of the current edition of the National Fire Protection Association No. 101, Life Safety Code." (There may be other laws that expressly or implicitly authorize promulgation of LSC #101, but I have not found others.)

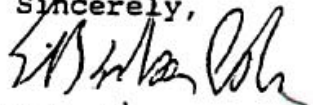
I suppose this constitutes authority to the Commissioner to promulgate the Code as the rule governing places "in which people...congregate from time to time for any purpose which comes within the scope of" the Code.

I understand that the Commissioner has indeed adopted or promulgated NFPA LSC #101. Thus, to the extent that the Code identifies or points to the kinds of places it applies to, then its requirements respecting "the adequacy of means of egress" can be enforced against such places by a civil action pursuant to the discretionary authority granted by Section 2361. (I do not know whether the Code addresses matters in addition to adequacy of means of egress.)

The only point on which I am uncertain is whether a local official who seeks to enforce it has the authority to inspect premises before initiating an enforcement proceeding. It is arguably silly to conclude that one can enforce (pursuant to Section 2361) but cannot inspect. I suppose the way to test this is to apply to the District Court for an administrative inspection warrant and see if the Court will issue one. Section 4452 of Title 30-A may be available in aid of this argument. But whatever the answer to that question, Section 2361 of Title 25 seems clear authority to initiate a civil action. I would recommend further consultation with legal counsel before conducting an inspection.

I hope this is a helpful discussion. As you can see, I have considerably shortened an earlier, working draft, which I must now ask you please to disregard. Please call or write if you have further questions.

Sincerely,



Ellerbe P. Cole
Staff Attorney

PC:epc

§3002. Enactment procedure

Unless otherwise provided by charter or law, a municipality must enact ordinances by the following procedure

1. Posted. The proposed ordinance must be attested and posted in the manner provided for town meetings. If a proposed ordinance or comprehensive plan exceeds 10 pages in length, it is sufficient to satisfy this posting requirement that the warrant and the warrant article related to the adoption of the ordinance or plan includes a statement that copies of the text of the ordinance or plan and map, if any, are available from the town clerk.

2. Certification. The municipal officers shall certify one copy of the proposed ordinance to the municipal clerk at least 7 days before the day of meeting. The clerk shall keep that copy as a public record and shall make copies available for distribution to the voters from the time of certification. Copies shall be made available at the town meeting.

A. No ordinance of any municipality subject to this subsection may be held invalid due to the municipality's failure to comply with this subsection unless the plaintiff is prejudiced or harmed by that failure.

3. Question. The subject matter of the proposed ordinance shall be reduced to the question: "Shall an ordinance entitled ' ' be enacted?" and shall be submitted to the town meeting for action either as an article in the warrant or a question on a secret ballot.

4. Application. Subsections 1, 2 and 3 do not apply to ordinances which may be enacted by the municipal officers.

§3003. Adoption of codes by reference

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Code" means any published compilation of regulations or enforceable standards which has been prepared by any association or organization that is nationally recognized for establishing standards in the areas set out below, or any department or agency of the Federal Government or the State, and includes:

- (1) Building codes;
- (2) Plumbing codes;
- (3) Electrical wiring codes;
- (4) Health or sanitation codes;
- (5) Fire prevention codes;
- (6) Inflammable liquids codes; and
- (7) Any other code which embraces regulations pertinent to a subject which is a proper municipal legislative matter.

B. "Published" means printed or otherwise reproduced.

2. Adoption and amendment of codes by reference. Any ordinance adopted or repealed by a municipality under its home rule authority may incorporate by reference any code or portions of any code, or any amendment of such a code, properly identified as to date and source, without setting forth the provisions of the code in full.

A. At least one copy of the code, portion or amendment that is incorporated or adopted by reference must be filed in the office of the municipal clerk and kept there available for public use, inspection and examination. The required copy of the codes, portion or amendment or public record must be filed with the municipal clerk for 30 days before the adoption of the ordinance that incorporates the code, portion or amendment by reference.

B. If such a code, portion or amendment is promulgated by a metropolitan or regional agency, the adopting municipality must be within the territorial boundaries of the agency.

C. The filing requirements for ordinances adopted under Title 38, sections 435 to 447, are deemed to be met if the codes were on file in the clerk's office by July 1, 1974.

3. Posting and publication of adopting ordinance. This section does not relieve any municipality of the requirement of posting or publishing in full the ordinance which adopts a code, portion or amendment by reference. All provisions applicable to that

publication shall be fully and completely carried out as if no code, portion or amendment were incorporated in the ordinance.

4. Adoption of penalty clauses. Any ordinance adopting a code, portion or amendment by reference shall state the penalty for violating the code, portion or amendment separately. No part of any such penalty may be incorporated by reference.

§3005. Ordinances available

Every ordinance of a municipality shall be on file with the municipal clerk and shall be accessible to any member of the public. Copies shall be made available to any member of the public, at reasonable cost, at the expense of the person making the request. Notice that the ordinances are available shall be posted.

§3006. Proof of ordinances

The submission to any court or administrative tribunal of a municipal ordinance, bylaw, order or resolve of the legislative body or municipal officers of a municipality, when the ordinance, bylaw, order or resolve has been certified over the signature of the municipal clerk, is prima facie proof of the validity of that ordinance, bylaw, order or resolve. [1987, c. 737, Pt. A, Â§2 (new); Pt. C, Â§106 (new); 1989, c. 6 (amd); c. 9, Â§2 (amd); c. 104, Pt. C, Â§Â§8, 10 (amd) .]

Ordinance Enactment

(from *Maine Townsman*, "Legal Notes," April 1989)

Please Note: Despite this article's original publication date, it remains a valid resource on the relevant subject matter. Recent cases and statutory changes have been changed to reflect current law. (10/03). Purple text represents changes that have been made to the legal note.

Question: What is the correct procedure for our town to follow in enacting an ordinance? We do not have a charter specifying how this is to be done.

Answer: Although special enactment procedures may be required for particular kinds of ordinances, for any other kind of ordinance to be enacted 30-A MRSA § 3002 (formerly 30 MRSA § 2153) specifies the steps that must be followed. Most ordinances will be subject to that statute for enactment procedure. For such ordinances to be lawfully enacted 3002 requires that:

- 1) **Posted.** The proposed ordinance must be attested and posted in the manner provided for town meetings.
- 2) **Certification.** One copy of the proposed ordinance must be certified by the municipal officers to the municipal clerk at least 7 days prior to the day of election to be preserved as a public record and copies must be made available for distribution to the voters by the municipal clerk at and after certification as well as at the time of the town meeting.
- 3) **Question.** The subject matter of the proposed ordinance must be reduced to the question "Shall an ordinance entitled _____ be enacted?", and that question must be submitted to the town meeting for action either as an article in the warrant or a question on a secret ballot.
- 4) **Application.** This section shall not apply to ordinances which are enacted by the municipal officers, such as traffic, general assistance or cable TV ordinances.

Under this procedure, the order of events would be as follows:

Certification

After the ordinance is drafted in its final form, the municipal officers must certify a copy of the proposed ordinance to the municipal clerk to be preserved in the town records as a public record. The certification must be made before the warrant is posted.

Attestation

From the certified copy, the municipal clerk is then able to make attested copies that will be posted along with the town meeting warrant. The clerk, in attesting copies of the ordinance for posting, should use substantially the following language:

Attest: A true copy of an ordinance entitled "The Subdivision Review Ordinance of the Town of Blankton," as certified to me by the municipal officers of Blankton on the ___ day of March, 1989.

Signature _____

Town Clerk of Blankton

Distribution

From the certified copy, the clerk is also able to generate copies of the proposed ordinance for distribution to the general public. The law requires that copies be left in the clerk's office for distribution to the voters and that copies be present at the town meeting for voter use. All of the copies of ordinances referred to here, including the certified and attested copies, may be reproduced by any standard process that the town officials decide to use. In many instances, this is accomplished by offset printing, mimeographing, photo copying, or similar means.

Posting

The town meeting warrant should be issued with the usual necessary articles. The article relating to the ordinance should be placed in the warrant, as is any other article. This is required whether the vote will be by referendum ballot or at open town meeting. The article should be phrased in the nature of a question with the precise wording called for in Subsection 3. For example: "Article 32. Shall an ordinance entitled 'The Subdivision Review Ordinance of the Town of Blankton' be enacted?"

The law requires this specific wording, and so towns may not use the historic wording "To see if the town will vote...", or any other words of that nature **[But see *Crosby v. Inhabitants of Town of Ogunquit*, 468A.2d 996 (Me. 1983) which held that substantial compliance with the statutory wording was sufficient.]** Again, the exact title of the ordinance must be used, not some descriptive phrase. Therefore, it is important for Selectmen to ensure, before certifying a draft ordinance to the Clerk, that it has a title or name.

In addition to the posting procedure required of all town meeting warrants, this statute requires that a copy of the complete text of the proposed ordinance, as attested, be posted right along with, next to, and at the same time as the warrant for the town meeting at which the proposed ordinance will be considered. **[If, however, the proposed ordinance or comprehensive plan exceeds ten pages in length, the warrant and warrant article relating to adoption of the item need only state that copies of the text of the same are available from the town clerk. 30-A MRSA § 3002(1)]** While the attestation is done by the municipal clerk, the posting is accomplished by the person posting the warrant and ordinance. The return of the person who posts the warrant should contain at the end and before his or her signature words substantially as follows: "And I have this day posted one copy of an ordinance entitled 'The Subdivision Review Ordinance of the Town of Blankton,' attested by the municipal clerk, with the warrant(s) at said places."

The same time limits on posting apply to this procedure that apply to the town meeting.

A permissible alternative is for the ordinance itself to be incorporated into the warrant article and printed and attested as part of the warrant. Some communities prefer this approach, particularly where the text of the ordinance is short.

Secret Ballot

The question may be submitted to the voters on a secret ballot in those towns that use this procedure. If this is desired, it must be done under the provisions of 30-A MRSA § 2528 (formerly 30 MRSA § 2061). The question may be initiated by a petition to the municipal officers signed by a number of voters equal to at least ten percent of the number of votes cast in town at the last gubernatorial election or by an order of the municipal officers without a petition. The petition or order must be filed with the town clerk on or before the 35th **[Now the 45th day, see 30-A M.R.S.A. § 2528.]** day prior to the referendum election. A hearing must be held by the municipal officers on the proposed article and ordinance at least 10 days before the day of voting and at least seven days' notice must be given of the time and place of the hearing and the text of the proposed article. The return of the person posting the notice should be similar to the type of return used in connection with posting a warrant.

Public Hearing

If an ordinance is not going to be voted on by a preprinted secret ballot under 30-A MRSA § 2528, then there generally is no statutory requirement that a separate public hearing be held prior to a vote on the ordinance at open town meeting. This is because the open town meeting discussion serves as a hearing. However, at least one prior public hearing is advisable to pinpoint problem areas, since no changes in the proposed ordinance can be made from the floor at the open town meeting (see below).

Where an ordinance is one which will be voted on under 30-A MRSA § 2528 (secret ballot process), if the comments made at the public hearing result in substantive revisions to the proposed ordinance, another public hearing on the new draft of the ordinance must be held prior to the secret ballot vote in order to be in strict compliance with Section 2528. *Town of Hampton v. Brust*, 446 A.2d 458 (N.H., 1982). The hearing on the revised ordinance must be scheduled to meet the deadlines set out in the statute. Therefore, when dealing with a complicated ordinance or an ordinance of major importance, Selectmen would be well advised to hold an initial hearing well in advance (e.g., 60 days) of Town meeting.

Regarding zoning and shoreland zoning ordinances, there is a requirement in 30-A MRSA § 4352 that the public be given an opportunity to have input in the preparation of the ordinance or any amendments. This "opportunity" usually takes the form of a public hearing conducted by the planning board. Section 4352 [Section 4352(9) requires notice and a public hearing on a proposed zoning or shoreland zoning ordinance or amendment regardless of whether the ordinance was or is being prepared pursuant to the Growth Management Act.] should be followed by communities which are not yet subject to the provisions of the new growth management law found at 30-A MRSA §4301 *et seq.*

Town Meeting

Finally, it is the opinion of the MMA Legal Services Staff that an ordinance may not be amended on the floor of town meeting. This opinion is based in part on a reading of the statutes and in part on relevant case law.

The statutory requirement for providing prior notice to the voters of the town in the town warrant is governed by 30-A MRSA §2523 (2) which states:

"It (the town meeting warrant) shall state in distinct articles the business to be acted upon at the meeting. No other business may be acted upon."

The underlying reason for the requirement is that the voters are to be notified, with reasonable certainty, of the subject matter to be acted upon. Once the voters are so apprised of the nature of the business to be considered, the body may generally act with some latitude in disposing of that business. *Belfast & MLR Co. v. Inhabitants of Brooks*, 60 Me. 568 (1872), *Inhabitants of Argyle v. Eastern Trust & Banking Co.*, 125 Me. 370 (1926), *Bucksport v. Bangor RR*, 68 Me. 81 (1878).

It is, however, quite clear from the statute that no other business or subject matter may be acted upon except as stated in the article, and the precision with which an article is stated may limit the latitude which the voters may exercise. *Austin & Blaisdell v. Inhabitants of York*, 57 Me. 304 (1869).

In the *Austin* case, the court determined that a town was severely limited in its ability to deal with a money article specifying a particular sum because the warrant article called "for (the town's) action, yea or nay, upon a single distinct proposition", as opposed to an article which is general in description. Similarly, when a town acts to adopt an ordinance, it is not presented with an article general in its description. The statutory question to be posed to the voters is "Shall an ordinance entitled _____ be enacted?" Such a "single, distinct proposition" demands a "yes" or "no" answer.

INSPECTION CHECKLIST

(SAMPLE)

Preconstruction Inspection

- Setbacks/Site considerations
- Plan accuracy
- Overhead utilities
- Public infrastructure features
- Erosion control

Foundation Inspections

- Setbacks
- Soil Conditions
- Steel
- Dimensional Requirements
- Anchor Bolt Location
- Final Grade Elevations
- Vapor Barrier
- Radon Features (if applicable)
- Dampproofing
- Foundation Drainage

Rough/Close In Inspections

- Framing
 - Member size/spacing/materials
 - Adequacy of materials (thickness of plywood, etc.)
 - Fasteners (number/size)
 - Clearances to hot surfaces
- Electrical
 - Proper circuit layout
 - Wire size
 - Installation methods
 - Support
 - Raceways
 - Stapling
 - Physical protection
- Plumbing
 - Pipe size
 - Layout
 - Cleanouts
 - Pitch
 - Air/water test
 - Support
 - Access panels
- Heat
 - Listed equipment
 - Safety features
 - Fuel tank location and piping
 - Venting

Certificate of Occupancy

- Masonry
 - Fireplace construction
 - Woodstove hookups
- Egress
 - Stair geometry
 - Handrails/guardrails
- Fire cutoff between house & garage
- Smoke detectors
- Cover plates on electrical connections
- GFIs
- Electrical panel marked
- Proper grounding of system and equipment
- Water supply
- Sewerage system working
- Heat operational
- Stove attached to wall
- Garage door opener safety devices
- Exterior weather surfaces/flashing
- Driveway/street interface
- Grading
- Leave septic and woodstove house as applicable

Septic System Inspections

- Original soil conditions/scarification
- Layout/horizontal dimensions
- Elevations of piping
- D-Box watertight and level
- Piping materials (holes down)
- Physical characteristics of fill/stone
- Septic tank location (hatch ties)
- Electrical if applicable
- Fabric/hay layer materials and application
- Drainage swales if applicable
- Steel over covers
- Return visit for vegetation check

CERTIFICATE OF OCCUPANCY

(SAMPLE)

Map Number _____ Lot Number _____ Zoning District _____ Certificate Number _____

It shall be unlawful to use or occupy or permit the use or occupancy of any premises, or both, or part thereof hereafter created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure until a Certificate of Occupancy shall have been issued therefore by the Code Enforcement Officer and endorsed to the effect that the proposed use of the building or land conforms with the requirements of the Code of ___(Town)_____ and the plumbing is approved as required in the State of Maine Plumbing Code.

Owner's Name: _____

Postal Address: _____

Location of Structure: _____

Subdivision Name: _____ Lot Number: _____

Structure to be used as: _____

Building Permit Number: _____

Other Local Approvals: _____

State Approvals: _____

Contractor: _____

This certifies that inspections, as required statutes, regulations, and ordinances, have been made on this property and structure(s).

The construction is at the completion stage and the proposed use of the building or land conforms with the applicable statutes, regulations, and ordinances.

Signed: _____

Code Enforcement Officer

Date Certificate of Occupancy issued: _____

Comments: _____

Signature: (a minimum of one required): Developer: _____

Contractor: _____

Owner: _____

Appendix B

Page

31	Notice of Code Violation – MMA Legal Note
32	Notice of Violation/Order for Corrective Action
33	Statement of Evidence of Violation
34	Notice of Violation, Letter 1
35	Notice of Violation, Letter 2
36	Notice of Violation, Letter 3
37	Legal Notice – Stop Work
38	Salesmanship – The Art of Gaining Code Compliance
44	Sample Permit Wording, Maine Townsman “Legal Notes”

Notice of Code Violations

(from *Maine Townsman*, "Legal Notes," June 1992)

Notice of Code Violations

Municipal code enforcement officers should be aware of a recent Maine Supreme Judicial Court decision, *Town of Freeport v. Greenlaw*, 602 A.2d 1156 (Me. 1992). The case offers some guidance on the content required for a notice of a code violation in order to satisfy constitutional due process requirements.

In the *Greenlaw* case, the Freeport CEO sent a letter to the landowner informing him about the approval process for a proposed deck. In that same letter, he also noted that some picnic tables on the property were in violation of the town's ordinance and must be removed immediately. The ordinance sections being violated were not cited. The last line of the letter instructed the owner to "(p)lease remove the tables and seats upon receipt of this letter." The owner failed to remove the tables and failed to appeal the CEO's request to the board of appeals, even though such an appeal was authorized by the ordinance. The owner apparently believed that the tables were a legally protected nonconforming use but never raised this issue until the town prosecuted him for a zoning violation. The town argued to the Superior Court that it was too late for the landowner to raise this defense to the CEO's enforcement order and the court agreed.

On appeal, the Maine Supreme Court found that the landowner was entitled to raise the grandfathering issue despite his failure to appeal to the board of appeals. The court held that the CEO's letter did not constitute an "order" which could have been appealed to the zoning board because it was worded merely as a request and was not detailed enough to satisfy minimum due process requirements. In the words of the court: "Minimally, to be effective in triggering the running of an appeal period, an order to refrain from taking or continuing certain action because it violates a zoning ordinance should refer to the provisions of the ordinance allegedly being violated, inform the violator of the right to dispute the order and how that right is exercised by appeal and specify the consequences of the failure to appeal."

CEOs should compare the content of their violation notices with the holding in *Greenlaw* and make any necessary changes to avoid the problems faced by the town of Freeport in its enforcement action. (By *R. W. S.*).

NOTICE OF VIOLATION/ORDER FOR CORRECTIVE ACTION

TO: _____

ADDRESS: _____

MAP _____ LOT _____

You are hereby notified that you are in violation of: _____

DATE VIOLATION OBSERVED: _____, _____.

DESCRIPTION OF VIOLATION:

You are hereby ordered to take the following corrective action or measures no later than:

_____, _____.

Failure to comply with this Order may result in court action against you and you may be required to pay a fine. Title 30-A M.R.S.A. Subsection 4452 establishes a fine of \$100 - \$2,500 for each violation of the Ordinance. (A separate fine will be assessed for each day a violation continues.) The town will seek an order for corrective action, a substantial fine, plus its attorneys' fees and costs in such an action.

As permitted by Section 17 of (Town/City Name) Zoning Ordinance, an appeal of this enforcement action may be taken to the Zoning Board of Appeals within thirty (30) days of the date of this order, by submitting to the Clerk of the Zoning Board of Appeals a written statement and application of the relief requested and why it should be granted. Failure to exercise this administrative procedure will jeopardize your right to appeal.

Please contact the Code Enforcement Officer at the Town/City Hall or by phone (000-0000) if you have any questions concerning this violation and to make arrangements to bring your property into compliance. You must notify the Code Enforcement Officer when corrective action is taken so that a compliance check may be made.

DATE

CODE ENFORCEMENT OFFICER

(SAMPLE) STATEMENT OF EVIDENCE OF VIOLATION

Alleged Violation

Where did the violation take place? _____

Date(s) violation took place: From _____ to _____.

Owner or occupant of the premises where the violation took place: _____

Name and address of person(s) who did the work: _____

Describe the violation: _____

CEO's personal observation of violation: _____

Witnesses to violation:

Previous notification to violator:

(a) oral Yes ___ date(s) _____
No ___

(b) written Yes _____ date(s) _____ Copy Yes ___
No _____ No _____

Other available evidence: Checks ___
Receipts ___
Contracts ___
Photographs ___
Receipt from registered mail ___
Other ___

SAMPLE: Notice of Violation, Letter 1

April 1, 2007

Town of Smalltown
Office of Code Enforcement
Smalltown, ME 01234
Tel: (207) 123-4567

Mr. John Doe
Green Street
Smalltown, ME 01234

Dear Mr. Doe:

On April 1, 2007, I notified you verbally that you were in violation of Section X of the Smalltown Building Standards Ordinance for failing to apply for a permit prior to construction on your property on Green Street.

The Town of Smalltown seeks your voluntary compliance with the Building Standards Ordinance. Enclosed are application forms for the required permit. Please complete these forms and submit them to this office by April 14, 2007. I will be happy to assist you if you have any questions.

If I do not receive your application by April 14, 2007, I will be forced to order you to remove the illegal structure, pursuant to section XX(X)(X) of the Building Standards Ordinance.

Section XX(X)(X) of the Building Standards Ordinance states that any person who violates any provision of the ordinance is guilty of a civil violation and is subject to a fine of up to \$2,500 for each offense. In order to minimize the amount of the fine which a court could award against you if you the Selectmen decided to collect a fine, I encourage you to contact me about this as soon as possible.

Sincerely,

Joseph Jones
Code Enforcement Officer

JJ:akd
Enclosure

SAMPLE: Notice of Violation, Letter 2

April 15, 2007

Town of Smalltown
Office of Code Enforcement
Smalltown, ME 01234
Tel: (207) 123-4567

Mr. John Doe
Green Street
Smalltown, ME 01234

Dear Mr. Doe:

You have received prior notice on April 1, 2007 of activities conducted by you in violation of Section X of the Smalltown Building Standards Ordinance. The notice requested your voluntary compliance with Section X of the Building Standards Ordinance by asking that you submit an application to this office for a permit by April 14, 2007.

Because you have failed to submit an application by April 14, 2007 as requested, I hereby order you to remove the structure which you illegally placed on your property on Green Street, pursuant to Section XX(X)(X) of the Building Standards Ordinance. If you have not removed the illegal structure within 10 days of receiving this notice, I will be forced to recommend that the Board of Selectmen initiate legal proceedings against you.

I would like to remind you that Section XX(X)(X) of the Building Standards Ordinance states that any person who continues to violate any provisions of the ordinance after receiving notice of the violation is guilty of a civil violation and subject to a fine of up to \$2,500 for each violation. If the Town is forced to take you to court and wins, the judge may order you to pay all of the Town's attorneys' fees and court costs, in addition to fining you and ordering you to remove your building.

Clearly, it is in your best interest to resolve this matter out of court. Please contact me immediately to discuss your intentions regarding this violation.

Sincerely,

Joseph Jones
Code Enforcement Officer

JJ:akd

(Note: If the ordinance provides for a CEO's enforcement order to be appealed to the local appeals board, this violation letter should describe the appeals procedure and the effect of failing to appeal. In addition to a violation letter, it is recommended that a standard Notice of Violation form be used. See sample Notice of Violation/Order for Corrective Action form.)

SAMPLE: Notice of Violation, Letter 3

April 27, 2007

Town of Smalltown
Office of Code Enforcement

Smalltown, ME 01234

Tel: (207) 123-4567

Mr. John Doe
Green Street
Smalltown, ME 01234

Dear Mr. Doe:

This to notify you that the board of Selectmen has voted to initiate legal proceedings against you to enforce the provisions of the Smalltown Building Standards Ordinance, pursuant to section XX(X)(X). The Board was forced to take this action as a result of your failure to comply with my previous requests for voluntary compliance with the provisions of the Shoreland Zoning Ordinance, dated April 1, 2007 and April 15, 2007.

If you wish to enter a consent agreement with the Town to resolve this matter out of court, please contact me immediately.

Sincerely,

Joseph Jones
Code Enforcement Officer

JJ:akd

LEGAL NOTICE

DATE: _____

WHEREAS,

violations of	{	Article _____, Section _____ of the Zoning Ordinance	}	have been
		Article _____, Section _____ of the Building Code		
		Article _____, Section _____ of the _____ Code		found on
		M.R.S.A. _____, Chapter _____		

These premises, IT IS HEREBY ORDERED in accordance with the above Code that all persons cease, desist from, and

STOP WORK

AT ONCE PERTAINING TO CONSTRUCTION, ALTERATIONS OR REPAIRS ON THESE PREMISES KNOWN AS

ALL PERSONS ACTING CONTRARY TO THIS ORDER OR REMOVING OR MUTILATING THIS NOTICE ARE LIABLE TO ARREST UNLESS SUCH ACTION IS AUTHORIZED BY THE DEPARTMENT

BUILDING OFFICIAL

SALESMANSHIP

The Art of Gaining Code Compliance

By Martin G. Collins, Deputy Commissioner of the Building Inspectors Dept. For Milwaukee, WI

**Reprinted from “The Building Official and Code Administrator”,
July/August 1991 Issue**

An Inspector’s Salesmanship

The best inspector is one who can tell someone to go to hell in such a way that they just know they’re going to enjoy a very warm trip to a lovely paradise for eternity. Code inspection is in the business of changing people’s behavior and altering their priorities. Code Enforcement is the art of persuading someone to do something about a situation in which the owners would rather do nothing. This is particularly true when it comes to spending more money than initially thought. The best inspectors are able to convince owners of the correctness of the inspector’s position without having to resort to legal action, except in rare cases. There are a variety of techniques that inspectors use to achieve this result. While legal action lurks in the background as a compliance tool, there are many arguments that can be used to motivate people to make the necessary changes in their buildings and to convince them, in fact, that it’s really in their best interest to do what the code requires.

Salesmanship

Salesman ship is an art and a method of convincing someone of the correctness of another’s position. Sales is a well-developed art form that has much written about it. The classic example is the automobile salesperson, who uses a variety of techniques, both verbal and non-verbal to get a customer to purchase the product. The best automobile salespeople are those who not only get customers to purchase the products, but make them feel good about the purchase.

While this article is primarily about the verbal techniques used, most successful sales people do not look solely to the verbal techniques, but rather rely more heavily on nonverbal methods. There are many subtleties used by salespeople; the most obvious of which is visual image. The best salespeople are well dressed so as to appear confident. An appropriately dressed inspector can project the same subtle message – “I know what I am talking about; I am an expert.” There are several subtleties that sales people use, such as calling someone by their name and getting them to say yes in a number of situations to questions that seem somewhat unrelated to the actual purchase.

What follows is a list of potential arguments that can be used in different settings by an inspector to convince the owner to comply with the code. Not all arguments are applicable in all situations, but when used, they require the skill of the inspector to apply them properly. Obviously, the most successful inspectors begin with the least hostile approaches before moving to the heavier handed arguments. The arguments and techniques were compiled for this article with the guidance and contribution of many staff members. A fundamental skill needed to implement these techniques is the ability to be a good listener. Listening gives the inspector clues as to which sales techniques should not be applied. Turning the owner’s concerns and commitments around and feeding them back may make it easier to reach a point of agreement, as well as enhance the inspector’s role as a problem solver and not just a police officer. A little sympathetic acknowledgement of the owner’s woes never hurts.

Argument #1: “Appeal to reason”.

This is the most basic argument. Most codes are based on some fundamental rationale, and explaining why the code exists can often be sufficient. There will be times when the code requires “magic number” compliance. Situations like this can include stair riser height and handrail distance. The magic number situation can be explained on the basis that there is a need for uniformity in such items so that people can react of custom. For example, the stair riser image involving uneven stair risers is an easy one to visualize.

“I go into a building with the attitude that I’m costing the people money they can’t afford,” said Mike Krowski, Plumbing Inspector in Milwaukee’s Building Inspections Department. Sometimes, he added, the rejected work has been working fine for a long period of time. “ I try to give a reason why it’s wrong, and what could happen if (it is)

not corrected”, said Krowski, who tries to keep a smile on his face, as well as listen to the owner’s problems. “I try to put myself in their position, and together we work out a solution to their problems.” Said Krowski.

Argument #2: “A stitch in time, saves time.”

If it is fixed now, more costly damage will be averted later. This argument can be particularly applied to any water-related item, such as gutters, tuckpointing, defective siding, roof repair, exterior paint, plumbing leaks, etc.

Argument #3: “You probably think that it will raise your taxes, but it won’t.”

Most repair items, especially paint, do not affect one’s property tax assessment, except to the extent that they indirectly affect the sales of comparable properties in the area. However, many people mistakenly believe that common repair items will affect their taxes. While permits on new installations, substantial rehabilitation and remodeling such as kitchens or bathrooms do trigger reassessment inspections, the local tax commissioner’s office in Milwaukee, Wisconsin, indicates that maintenance repair items rarely trigger such reviews. This argument is usually helpful only as a counter when the owner raises the issue, thus requiring the inspector to respond rather than initiate.

Argument #4: “Appeal to the fear of lawyers.”

This argument is particularly relevant on safety-related issues. If someone is injured in a building, particularly rental units, one course of action taken by most lawyers is to check the department’s files. If a compliance notice was sent stating that the condition existed before the accident and the owner knew about it but didn’t repair the problem, it would spell big trouble. This is not fiction. Lawyers do routinely check building inspection files in cases involving property damage. This is especially true for steps, porches, guardrails, handrails, smoke detectors and any other similar hazards. Some insurance investigators also check records in an attempt to find a way not to pay a claim, among other things.

Argument #5: “Appeal to the sense of guilt.”

This is particularly important in homeowner situations, although the argument may be applied in some rental situations as well. One example is: “If someone (e.g. a small child) was injured because of this violation, wouldn’t you feel terrible if you knew about it and didn’t repair it.” The end image of a potential injury to small children is especially appealing and, unfortunately, too often true.

Argument #6: “It’s a lot more dangerous than you think.”

(An appeal to safety concern.) This is an argument appealing that there is greater danger in some code violations than is readily apparent. One example includes the use of gasoline or the storage of gasoline-powered equipment located indoors. It can be pointed out that there is usually an open flame at the hot water heater, gasoline is heavier than air, and an average basement is in the shape of a short cannon barrel. Some inspectors will reply: “I’ll be you didn’t know that a gallon of gasoline has the explosive power of 32 sticks of dynamite.” The safety argument can also be used for missing balusters and handrails, where a child could slip through or fall. Reportedly, the bulk of injuries in homes are caused by falls; most of which can be prevented by handrails and their use.

Argument #7: “This weekend would be a good time to start.”

This is not so much an argument as a technique used to focus the owner’s thinking on a specific time and date for working on code violation repairs. If appropriate, it can be pointed out that the forecast is for good weather. This tends to bring the abstract code violation compliance concept to the forefront in terms of a specific time and place. Sometimes people need an initial push in making repairs to their homes. In this way, inertia is likely the strongest force to overcome.

Argument #8: “It’s better that you put the money into the house than into a court fine.”

This is a heavier approach and hopefully one that would not be used during the initial stages of an argument. This makes the concept of a court fine sound inevitable and no one likes to fight the inevitable or to choose the inevitable course when it can be avoided.

Argument #9: “If you don’t believe me that the court treats these things seriously, ask Mr. A. at Y address.”

This is a companion argument to number eight. Some inspectors cite examples of court cases where fines were levied. It is important to be accurate regarding names and addresses because this is where one’s credibility can be measured by the owner. For example, a newspaper clipping about court cases can be helpful.

Argument #10: “Good guy/bad guy.”

This is a classic technique used in sales and appears in different forms in various sales arenas. In the car sales approach, the sales person plays tag team with the manager, sometimes letting the manager make the actual closing. For inspections, argument can proceed like this: “Work with me on this. My supervisor is a real _____ and wants me to send the case to court, but I think that if I can show him that you are making progress, he will go along with me on an extension of time for compliance.” A variation on this technique is to reverse roles, with the supervisor being the good guy. The trick is to agree on it in advance. Caveat: Not everyone agrees with this tactic. Some point out that this may make inspectors appear divided, so in this case, the appropriate use of the extension policy can solve the problem.

Argument #11: “The false gift.”

This is an argument appealing to everyone’s sense of need to obtain a little something extra for nothing. In the inspection arena, the following argument holds: “I’m supposed to give you only 30 days to get this done, but if you give me your word on this, I can give you 60 days.” The reality is that you may have the ability as an inspector to give as many as 90 days. The feeling that the owner receives is that he or she obtained something extra, and what the inspector received was a verbal assurance that the owner will keep his word.

While people’s willingness to keep their word and the amount of their credibility varies from person to person, getting someone to say yes or acknowledging a commitment is also a technique used in sales. An adjacent argument is to combine this with the good guy/bad guy approach. For example, “I am putting my neck on the line for you on this one. The easiest thing for me to do would be to just put the case in for court action, but I think that we can find a way to work this out and avoid court.”

Argument #12: “Avoid the reinspection fee.”

This argument is only useful in jurisdictions where there is a reinspection fee. This appeals to an owner’s willingness to avoid additional costs. The concept of hitting one in one’s pocketbook or appealing to one’s pocketbook is a most effective way to gain compliance. To illustrate the effectiveness of this approach, Anaheim, California instituted a reinspection fee granting one free inspection. As a result, the city projected a revenue increase of \$42,000 annually, but found that they collected less than half of that because people complied substantially earlier to avoid the fee.

Argument #13: “This is real and it isn’t going to disappear.”

Some owner’s believe that if they simply ignore the compliance notice, inspectors will become frustrated, tired, and eventually leave and not return. If this occurs, it may be useful to explain that the problems are real, there is a system already in place for grinding these cases all the way to the municipal court and the problems are not going to disappear. Also, the compliance notices are all computerized and the computer doesn’t forget.

Argument #14: “We’re not just picking on you.”

The appeal of the concept of equal protection runs strong and deep in this country. As any inspector with experience will attest, one of the first tactics of an owner with a history of code violations is: “Why aren’t you

dealing with all those other houses that have violations?” There are a variety of ways to address this subject. One is to state that inspectors work on a complaint basis, meaning if owners want to make a complaint, inspectors would be glad to respond to them. Secondly, if, in fact, there are code violations in other areas, if owners want to save inspectors some time they can go around and make a list of all the problems and give the list to inspectors who will add it to their list of inspections. Inspectors, however, will work on the more serious violations first. If the situation is appropriate, the response of “I will make a note of your concerns and check them out as soon as my workload permits” may be more applicable.

The worse response in this situation is “we will pick on whomever we want.” In a democratic form of government, this is an argument that will cement the owner’s position quickly, making inspectors an enemy rather than an ally. It is useful to make reference to current court actions or recent compliance on other similar violations in the immediate area.

Argument #15: “What you are asking me to do is to violate the law.”

This is an argument that is useful when an owner essentially asks an inspector to ignore the situation or to write off compliance at less than an appropriate point. It is useful to point out that if the inspector did ignore the situation, he or she can be seriously reprimanded or fired, and the building owner could be referred to the district attorney’s office. The follow up response is again, the appeal to the inevitability: “Why make this process more difficult and more complicated? Let’s work on the solutions rather than work on digging yourself a deeper hole.”

Argument #16: “Appeal to the desire to clear one’s record.”

Some owner’s believe that it is very important not to have code violation convictions or, in some cases, not even to have code violations on their record. A typical response for this situation can be: “If you clear this up and get it corrected by “X” date, you will have a clear record with the department on this building; so if you ever have a problem in the future, your reputation for cooperation will work to your advantage.”

Argument #17: “How would you like to live next to a place like this.”

“If you neighbor’s house looked like yours did, how would you feel?” is an argument appealing to one’s sense of community and sometimes to one’s sense of neighborhood peer pressure. This argument can take a variety of forms, but generally it appeals to one’s sense of pride and self worth.

Argument #18: “Don’t make me have to notify your insurance carrier.”

This is an argument that is particularly applicable for commercial property with major inventory. If an owner refuses compliance and there is a fire hazard involved, insurance carriers look askance at such behavior. An owner may find the image of a building with no insurance coverage to be far more intimidating than the inspectors’ threat of a court fine.

Argument #19: “The good repair clause.”

Every mortgage contains a paragraph known as the good repair clause, which enables the mortgage company to enter and make repairs if the property is not maintained in good condition. Sometimes, there is the right to assign rents directly to the mortgage company to fund such repairs. In reality, the clause is rarely used by mortgage companies; however, it should be pointed out to the owner and that can be enough of a motivator.

There have been some situations where the neighbors have already used this approach by determining the mortgage holder of the rental property, and presenting their concerns to them via letter or, in some cases, protest marches. For rental property, owners who are actively buying and selling real estate, the relationship with their banker is extremely important. Sometimes, the mere threat of becoming involved in that type of relationship and making it known to the lender that the owner may be less than totally responsible in making code violation repairs can be a good motivator.

Argument #20: “Responding to I can’t paint the house because I just got laid off.”

Inspectors pointed out to Collins that they heard this argument more than once, but have successfully countered it by pointing out that this is the best time that they would have to complete the painting job. Inspectors sold the owners on the approach that they should buy the paint a bucket at a time, if necessary, and do the work while laid off from their jobs.

Argument #21: “If you don’t make the repairs, the tenant can either abate rent or withhold rent.”

Some owners are not aware of city rent withholding and state rent abatement laws. Providing the owner with a copy of the department’s rent withholding brochure may motivate them if they believe further action taken may affect their flow of income from the property.

Argument #22: “I may have to send out a condemnation inspector.”

Obviously, this argument applies only in very limited circumstances, but may produce repairs if the owner believes that there is a realistic chance of losing the entire building. In more extreme situations, this may backfire depending on the owner’s tax situation. Demolition accelerates depreciation into one year. Depending on the need for passive or active tax losses, the owner may find it more desirable to have demolition occur. Reportedly, the reason has produced enough heat as to cause the ignition of a fire and the burning of some buildings.

Argument #23: “This one is so bad, I might have to placard it (order it vacated).”

Again, this argument has two sides – the threat of losing income and such threat can be viewed as an advantage by the owner wanting to evict certain tenants.

Argument #24: “Better tenant selection can help you avoid problems.”

Some owner’s problems are caused by poor tenants. While there are a certain percentage of tenants who are very destructive, an inspector’s ability to point out sources of better tenants can assist the owner and, at the very least, undercut the argument. Some community groups can assist in this matter.

Argument #25: “If the mayor can paint, so can you.”

This is an argument that only became effective several years ago. Milwaukee has a very positive, national reputation for fair and equal treatment. The fact that the Mayor’s house was selected during the course of a geographic worst case first survey and was issued the same order to paint as any other citizen can be very helpful to an inspector. Owners stating that they shouldn’t be made to paint because it is a free society and they can do whatever the hell they want with their buildings might be persuaded if an inspector points out that even the Mayor is not above the law and thus required to paint his house.

There are a series of general principles that can be applied when negotiating with an owner for compliance. Again, there are no universal truisms, only experience that the arguments can be applied in appropriate situations with effective results. Inspectors should make their positions clear without becoming hostile and avoid backing the owner into a corner. The latter is done by inspectors who believe that an immediate threat of legal action is the most effective, but, in reality, it often makes people “set their feet, become rigid and willing to fight the inspector based on general principles” – a situation that can usually be avoided. Again, it is better to direct owners into a position rather than back them into a corner. Generally, inspectors should remain civil and possibly even cheerful. The old adage: “You get more with honey than you do with vinegar” applies. Obviously, there will be some points where taking a harder stand will be required. This is especially true in dealing with the experienced professionals in the real estate business, who tend to be more immune to any types of sales approach.

Inspectors should try to point out alternatives to their current course of action, including how others have complied or how compliance can be effectively accomplished while holding costs down to a minimum. In some situations, inspectors should point out any funding options that are available. There are only a few government loan programs offering low interest rates but those that do exist are a likely approach.

“A good inspector should make positive rapport with an owner a top priority” according to Paul Schultz, construction inspector of Milwaukee’s Building Inspections Department. Schultz said an inspector can expect to find that an owner will be much more cooperative if he or she realizes that an inspector is primarily interested in compliance. While an inspector is acting as an advocate for the city, he or she is not unaware of the rights and welfare of an owner. The inspector should always make the field contact aware that a line of communication must be maintained. If an owner has an emergency, he or she should be able to call the inspector to make an adjustment. If the owner involved realizes that the inspector will be realistic about the problem, the owner, in most cases, will adopt a cooperative attitude.

As a token of good faith, the inspector should always leave a card with an owner for his or her use as a possible source of information or assistance in regard to the present code violation or any future difficulties that the owner may incur. A universal complaint from field contacts is that a person looking for information or help on the telephone is usually frustrated after being referred to numerous local agencies with no real resolution. If the inspector can make the field contact appreciate that if called he or she will solve the problem or help find a source to rectify the situation, the owner will likely be more cooperative in the future.

Generally, inspectors sell, not threaten. They should listen attentively to the owner’s position. People become less willing to cooperate if it appears that they are not being treated as an individual. Sometimes listening can tell inspectors that the owner, while saying one thing, has other concerns in his mind that need to be addressed. This is usually one of saving face, which is a very important element that cannot be overlooked. Face saving can usually be accomplished by small extensions or giving in on the small points while winning the war on all the major fronts.

Inspectors should not talk down to owners because they will become resentful, thus making the conversation counterproductive. Acting as a heavy authority figure will also work against inspectors in most situations. The golden rule of thumb – treat others the way you would want to be treated – applies. At least in the beginning, inspectors should give owners the benefit of the doubt and eventually inspectors will learn who does and does not deserve such benefits.

If appropriate, allow owners to vent their frustrations even if they are not relevant to the code violation. The mere venting of frustration can usually give inspectors a clue as to what is on the owners’ mind or why they refuse to comply. After an owner has vented his or her frustrations an agreement can often be reached. As any salesperson in the commercial sector can attest, it is far better and more effective to deal with a person on a face-to-face basis, rather than via mail. Telephone calls are the next best choice.

If an inspector is going to issue an order and he or she is dealing with an owner in person or through telephone contacts, the following technique can be applied: Tell the owner that a letter will be sent to him or her confirming what was mentioned. This will cushion the shock when the mail is opened and thus avoid having the owner feel as if the inspector snuck up on him or her. Finally, an appropriately dressed inspector can send the unspoken message of professionalism. Look in the mirror. Would you “buy” code enforcement from this person?

Maine Townsman “Legal Notes”

February 1997

SAMPLE PERMIT WORDING

From time to time, planning boards and code enforcement officers are asked to approve a permit application or plan for a project which appears to comply with all of the municipality’s ordinance dimensional requirements, including the required setback from side lot lines. An abutter raises a question about the project’s compliance with the sideline setback, claiming that he has a professional boundary survey which shows the property line in a different spot than that shown on the application. The abutter asks that the application be denied. The Maine Supreme Court has held that local boards and officials have no authority to resolve title problems such as this, absent a provision in the ordinance to the contrary. *Rockland Plaza Realty Corp. v. Laverdiere’s Enterprises Inc.*, 531 A.2d 1272 (Me. 1987). They must approve an application if there is substantial and credible evidence in the record to support a finding that the application complies with the ordinance. *Glasser v. Town of Northport*, 589 A.2d 1280 (Me. 1990). A permit application may only be denied for reasons related to the review criteria spelled out in the ordinance. *Portland Sand and Gravel, Inc. v. Town of Gray*, 663 A.2d 41 (ME. 1995). If an applicant cannot be persuaded to withdraw an application until a boundary dispute or similar title problem has been resolved, the board or official issuing the permit should incorporate language similar to the following in the permit:

“This permit is approved on the basis of information provided by the applicant in the record regarding his ownership of the property and boundary location. The applicant has the burden of ensuring that he has a legal right to use the property and that he is measuring required setbacks from the legal boundary lines of the lot. The approval of this permit in no way relieves the applicant of this burden. Nor does this permit approval constitute a resolution in favor of the applicant of any issues regarding the property boundaries, ownership or similar title issues. The permit holder would be well-advised to resolve any such title problems before expending money in reliance on this permit.”

If the board or code enforcement officer wants to ensure that an approved project will be developed exactly as depicted on the plan and other documents accompanying the application, language similar to the following should be included in the decision to approve the plan:

The board/CEO approves the development proposal submitted by the (applicant’s name) as described in his application dated (_____), including all depictions on the accompanying plan and other attachments. Except to the extent that the Board/CEO has expressly indicated in this decision that certain depictions may be revised by the applicant without further review and approval by the Board/CEO, any changes to the plan and attachments must receive prior approval by the Board/CEO including but not limited to changes in the proposed location of structures, roads, wells, and subsurface disposal systems or method of waste disposal.

(By R.W.S)

Note: The opinions printed above are written with the intent to provide general guidance as to the treatment of issues or problems similar to those state in the opinion. The reader is cautioned not to rely on the information contained therein as sole bases for handling individual affairs but he/she should obtain further counsel and information in solving his own specific problems.

APPENDIX C

Page

State Statutes:

46	25 MRSA, Chapter 313 §§ 2351 – 2361, Municipal Inspection of Buildings
48	25 MRSA, Chapter 317 §§ 2431 – 2465, Preventive Measures and Restrictions
56	25 MRSA, Chapter 331 §§ 2701 – 2704, Construction for Physically Disabled
60	5 MRSA, Chapter 337 SubCh 5 §§ 4591 – 4594F, Human Rights Act
71	25 MRSA, Chapter 255 §§ 2051 – 2056, Safety Glazing
72	10 MRSA, Chapter 219 §§ 1481 – 1484, Insulation Contractors
74	10 MRSA, Chapter 219 §§ 1486 – 1490, Home Construction Contracts
76	Maine Sales and Use Tax Law; Manufactured Housing
85	17 MRSA, Chapter 91 §§ 2851 – 2859, Nuisances – Dangerous Buildings
88	30-A MRSA, Chapter 185 §§ 4101 – 4221, Reg. of Construction and Improvements
99	30-A MRSA, Chapter 187 SubCh 5 §§ 4451, Enforcement of Land Use Regs
100	30-A MRSA, Chapter 187 SubCh 5 §§ 4452, Enforcement of Land Use Laws
103	Interpreting Grade Stamps on Lumber

Chapter 313: MUNICIPAL INSPECTION OF BUILDINGS

§2351. Inspector; compensation; jurisdiction; deputy

In every town and city of more than 2,000 inhabitants, and in every town of 2,000 inhabitants or less, if such a town so votes at a town meeting, and in each village corporation, if such a corporation so votes at the annual meeting thereof, the municipal officers shall annually in the month of April appoint an inspector of buildings, who must be a person skilled in the construction of buildings, and shall determine the inspector's compensation. The municipal officers shall define the limits within which the inspector of buildings has jurisdiction, which includes the thickly settled portion of each such city or of each village in each such city or town. Whenever the inspector of buildings becomes incapacitated, the municipal officers may appoint or authorize the inspector of buildings to appoint a deputy inspector of buildings who shall serve until removed by the municipal officers, but in no event beyond the term for which the inspector of buildings was appointed. The deputy inspector shall perform such duties as may be required of the deputy inspector by the inspector. The compensation of the deputy inspector is determined by the municipal officers.

§2352. Right to enter buildings

An inspector of buildings in the performance of his official duty may enter any building for the purpose of making the inspection required by chapters 313 to 321

§2353. Duty to inspect buildings under construction

The inspector of buildings shall inspect each new building during the process of construction, so far as may be necessary, to see that all proper safeguards against the catching or spreading of fire are used, that the chimneys and flues are made safe and that proper cutoffs are placed between the timbers in the walls and floorings where fire would be likely to spread, and may give such directions in writing to the owner or contractor, as he deems necessary, concerning the construction of such building so as to render the same safe from the catching and spreading of fire.

§2354. Inspection of buildings being repaired

Subject to Title 32, chapter 33, the inspector of buildings shall inspect all buildings while in process of being repaired and see that all reasonable safeguards are used against the catching and spreading of fire and that the chimneys and flues are made safe. The inspector may give directions in writing to the owner as necessary concerning such repairs to render the building safe from the catching and spreading of fire.

§2355. Inspection of chimneys, furnaces, boilers and the like (REPEALED)

§2356. Appeals

An appeal in writing may be taken from any order or direction of the inspector of buildings to the municipal officers, whose order thereon shall be final.

§2357. No occupancy without certificate; appeal

Subject to the provisions of Title 10, chapter 951, a new building may not be occupied until the inspector of buildings has given a certificate that the same has been built in accordance with section 2353, and so as to be safe from fire. If the owner permits it to be so occupied without such certificate, the owner must be penalized in accordance with Title 30-A, section 4452. In case the inspector of buildings for any cause declines to give that certificate and the builder has in the builder's own judgment complied with section 2353, an appeal may be taken to the municipal officers and, if on such appeal it is decided by them that the section has been complied with, the owner of the building is not liable to a fine for want of the certificate of the inspector.

§2358. Failure to comply with order of inspector

If the owner of any building neglects or refuses for more than 30 days to comply with any direction of the inspector of buildings concerning the repairs on any building as provided in section 2354, the owner shall be penalized in accordance with Title 30-A, section 4452.

§2359. Refusing admission to inspector

An owner or occupant of a building, who refuses to permit an inspector of buildings to enter the buildings or willfully obstructs the inspector in the inspection of such building as required by chapters 313 to 321, must be

penalized in accordance with Title 30-A, section 4452.

§2360. Authority to enter buildings; remedy of conditions appeals

The inspector of buildings, the fire inspector and the municipal officers of any city or town may at all reasonable hours, for the purpose of examination, enter into and upon all buildings and premises within their jurisdiction. Whenever any of said officers shall find in any building or upon any premises combustible material, inflammable conditions or heating fixtures or apparatus so situated or constructed as to be dangerous to the safety of such buildings or premises, they shall order the same to be removed or remedied, and such order shall be forthwith complied with by the owner or occupant of said buildings or premises. If the said owner or occupant shall deem himself aggrieved by such order when made by the inspector of buildings or the fire inspector, he may within 24 hours appeal to the municipal officers, and the cause of the complaint shall be at once investigated by the direction of the latter and, unless by their authority the order above named is revoked, such order shall remain in force and be forthwith complied with by said owner or occupant. The inspector of buildings, the fire inspector or the municipal officers shall make, or cause to be made, an immediate investigation as to the presence of combustible material or the existence of inflammable conditions in any building or upon any premises under their jurisdiction, upon complaint of any person having an interest in said buildings or premises or property adjacent thereto. Any owner or occupant of buildings or premises, failing to comply with the orders of the authorities above specified, shall be punished by a fine of not less than \$5 for each day's neglect.

§2361. Proceedings by municipality

1. Municipal enforcement. Duly appointed fire chiefs or their designees, municipal building inspectors and code enforcement officers may bring a civil action in the name of the municipality to enforce any of the state laws, duly promulgated state rules or local ordinances enacted pursuant to chapters 313 to 321; and

2. Notice. In any proceeding brought by or against the State which involves the validity of a municipal ordinance, the municipality shall be given notice of the proceeding and shall be entitled to be made a party to the proceeding and to be heard. In any proceeding brought by or against the municipality which involves the validity of statute, ordinance or regulation, the Attorney General shall be served and shall be made a party to the proceeding and be entitled to be heard. This section shall apply to enforcement of statutes, rules or ordinances enacted pursuant to chapters 313 to 321.

Chapter 317: PREVENTIVE MEASURES AND RESTRICTIONS

§2431. Restriction of certain occupations in maritime towns (REPEALED)

§2432. Removal or repair of defective stoves, boilers and the like

On complaint of any citizen that a stove, stovepipe, oven, furnace, boiler or appurtenance is defective, out of repair or so placed in any building as to endanger it or any other building, the Commissioner of Public Safety or municipal officers of any town of not more than 2,000 inhabitants, if satisfied that such complaint is well founded, shall give written notice to the owner or occupant of such building, and if the owner or occupant unnecessarily neglects for 3 days to remove or repair the same effectually, the owner or occupant forfeits not less than \$10 nor more than \$100.

§2433. Smoking restrictions (REPEALED)

§2434. Disposal of lighted matches, cigarettes, etc. (REPEALED)

§2435. Kindling fire with intent to injure another

Whoever with intent to injure another causes a fire to be kindled, whereby the property of any other person is injured or destroyed, commits a Class D crime.

§2436. Time and manner for kindling lawful fires (REPEALED)

§2436-A. Burning of debris (REPEALED)

§2437. Lumber drivers may kindle necessary fires (REPEALED)

§2438. Extinguishment of camp, cooking or other fires; fines (REPEALED)

§2439. Common law remedy preserved

The common law right to an action for damages done by fires is not taken away or diminished and it may be pursued notwithstanding the penalties set forth in chapters 313 to 321.

§2440. Penalties; recovery and appropriation

Penalties provided in sections 2432 and 2439 may be recovered by complaint, indictment or civil action, 1/2 to the municipality where the offense is committed and 1/2 to the State.

§2441. Explosives or inflammables; rules (REPEALED)

§2442. Recovery of damages for explosion

A person injured by the explosion of such articles in the possession of any person contrary to such regulations has an action for damages against such possessor, or against the owner, if cognizant of such neglect.

§2443. Search for explosives (REPEALED)

§2444. Transportation of explosives (REPEALED)

§2445. Standards for installing gas appliances (REPEALED)

§2446. Approval of certain appliances (REPEALED)

§2447. Approval of certain compounds

No individual, partnership or corporation may sell or offer for sale in this State any type of flame retardant or flame proofing compound, powder or liquid, or any fire extinguisher, or any compound, powder or liquid utilized for fire extinguishing purposes unless such product shall have the approved listing of any nationally recognized laboratory that meets the standards of the National Bureau of Standards, United States Department of Commerce.

The expense involved in ascertaining if such product shall be approved shall be paid by the individual, partnership or corporation selling or offering the same for sale.

Any violation of this section shall be punishable by a fine of not more than \$100 or by imprisonment for not more than 90 days, or by both.

§2447-A. Cellulose fiber insulation standards

1. Prohibition. No individual, partnership or corporation may sell or offer for sale in this State, in person, by mail or otherwise, any type of cellulose fiber insulation unless that product is either:

A. Certified by a nationally recognized testing laboratory as meeting ASTM E-84, Class I requirements; or B. Certified by the Department of Industrial Cooperation, University of Maine System, as meeting requirements comparable to ASTM E-84, Class I requirements.

No individual, partnership or corporation may sell or offer for sale in this State, in person, by mail or otherwise, any cellulose fiber insulation which does not conform to any rule established by the State Fire Marshal under subsection 2. The Department of Industrial Cooperation of the University of Maine System shall not be liable as a result of any damage or injury caused by or arising out of the installation or use of insulation certified by the department.

2. Rules. The State Fire Marshal shall, in accordance with the Maine Administrative Procedure Act, establish rules setting forth standards for cellulose fibre insulation which may be sold in this State. These rules shall be no less stringent than current federal specifications for Insulation Thermal: Cellulosic or Wood Fibre, and may exceed the federal standards if, in the judgment of the State Fire Marshal, the action is deemed necessary to protect the health and safety of the public. The State Fire Marshal may incorporate in those rules provisions for testing procedures different from those established by federal specifications where, in his judgment, these federal tests cannot conveniently be conducted in Maine or are not appropriate for Maine use.

3. Penalty. Any violation of this section shall be a Class E crime.

§2447-B. Foam plastic insulation standards

1. Prohibition. No individual, partnership or corporation shall install in this State any type of foam plastic insulation unless that product complies with and is installed in accordance with the following requirements.

A. Unless otherwise excepted in the following subparagraphs, all foam plastic or foam plastic cores of manufactured assemblies shall have a flame-spread rating of not more than 75 and a smoke-developed rating of not more than 450 when tested in the maximum thickness intended for use in accordance with ASTM E-84. For all such installations, the foam plastic shall be separated from habitable or occupiable spaces by an approved thermal barrier of 1/2 inch gypsum wallboard or equivalent thermal barrier material which will limit the average temperature rise of the unexposed surface to not more than 250° F. after 15 minutes of fire exposure complying with the ASTM E-119 standard time-temperature curve. Thermal barriers shall be installed in a manner that assures they will stay in place for a minimum of 15 minutes under the same test exposure conditions.

(1) Foam plastics may be used without the thermal barrier described in this paragraph when the foam plastic is protected by a minimum of one inch thickness of masonry or concrete.

(2) Foam plastics when tested in a thickness of 4 inches may be used in a thickness up to 10 inches when the building is equipped with an approved automatic fire suppression system.

For use in rooms within buildings, this requirement shall apply to both the room and that part of the building in which the room is located.

(3) Foam plastics having a maximum flame-spread rating of 75 may be used in thicknesses up to 4 inches in free-standing walk-in coolers or freezer units less than 400 square feet in floor area without a thermal barrier and without an automatic fire suppression system when the foam plastic is covered by a metal facing not less than 0.032 inch thick aluminum or No. 26 gauge steel. When protected by a thermal barrier, the foam plastic may be used in thicknesses up to 10 inches.

(4) Foam plastic insulation having a flame spread of 25 or less may be used in a thickness of not more than 4 inches without the thermal barrier when the foam plastic is covered by a metal facing not less than 0.032 inch thick aluminum or No. 26 gauge steel and the building is provided with an automatic fire suppression system.

(5) Foam plastic may be used in a roof covering assembly without the thermal barrier when the foam is separated from the interior of the building by plywood sheathing not less than 1/2 inch in thickness bonded with interior glue, with edges supported by blocking, tongue-and-groove joints or other approved type of edge support, or an equivalent material.

Foam plastic roof insulation that complies with Factory Mutual Standard 4450 or Underwriters Laboratories Subject 1256 need not meet the requirements of this paragraph.

For roofing applications, the smoke-developed rating shall not be limited.

(6) Foam plastics having a flame-spread rating of 75 or less may be used as a core material without a thermal barrier when the door is covered by a metal facing of not less than 0.032 inch thick aluminum or No. 26 gauge steel.

(7) Foam plastics may be used as a siding backer board with a maximum thickness of 1/2 inch, provided it is separated from the interior of the building by not less than 2 inches of mineral fiber insulation or equivalent, or when applied as residing over existing wall construction.

(8) Within an attic or crawl space where entry is made only for service of utilities, foam plastics shall be protected against ignition by 1 1/2 inch thick mineral fiber insulation, 1/4 inch thick plywood, particleboard, hardboard or gypsum wallboard, No. 26 gauge sheet steel or other approved material installed in such a manner that the foam plastic is not exposed.

B. Existing low hazard storage facilities with foam plastic insulation may be maintained without the required thermal barrier.

(1) Potato storage facilities constructed after the effective date of this paragraph shall provide an approved thermal barrier over foam plastic insulation for a minimum of 8' above the floor.

(2) The State Fire Marshal may permit in specific circumstances the use of foam plastic with a flame barrier when such use does not create a life safety hazard.

2. Alternate installations. Foam plastics may be used in applications other than as listed in this section, when specifically approved by the State Fire Marshal based on diversified tests such as the Factory Mutual Building Corner Test Procedure or the enclosed room test procedures described in Underwriters Laboratories Subject 723. These approvals shall also be based on tests conducted in accordance with ASTM E-84 and ASTM D1929. Testing shall be performed on the finished manufactured foam plastic assemblies and on the maximum thickness intended for use.

3. Penalty. Any violation of this section shall be a Class E crime.

§2448. Construction permit; when required

No property owner, agent or representative of the owner may construct, alter or change the use of any structure to become a public building without first obtaining from the Commissioner of Public Safety a permit therefor. A request for a permit shall be accompanied by a true copy of the plans and specifications for that construction, reconstruction or change of use. The commissioner shall issue a permit only if the plans comply with statutes and lawful regulations promulgated to reduce fire hazards. The term "public building" shall include any building or structure constructed, operated or maintained for use by the general public, which shall include, but not be limited to, all buildings or portions of buildings used for a schoolhouse, hospital, convalescent, nursing or boarding home to be licensed by the Department of Health and Human Services, Division of Licensing and Certification; theater or other place of public assembly, mercantile occupancy over 3,000 square feet, hotel, motel or business occupancy of 2 or more stories; or any building to be state owned or operated.

The term "true copy" means an accurate representation by dimensioned plans and specifications of the final construction documents.

§2449. Penalty

Whoever violates the provisions of section 2448 shall be guilty of a Class E crime.

§2450. Examinations by Department of Public Safety

The Commissioner of Public Safety shall adopt, in accordance with requirements of the Maine Administrative Procedure Act, a schedule of fees for the examination of all plans for construction, reconstruction or repairs submitted to the Department of Public Safety. The fee schedule for new construction or new use is 5¢ per square foot for occupied spaces and 2¢ per square foot for bulk storage occupancies, except that a fee for review of a plan for new construction by a public school may not exceed \$450. The fee schedule for reconstruction, repairs or renovations is based on the cost of the project and may not exceed \$450. The fees must be credited to a special revenue account to defray expenses in carrying out this section. Any balance of the fees may not lapse, but must be carried forward as a continuing account to be expended for the same purpose in the following fiscal years.

§2451. Doors of public buildings to open outwards (REPEALED)

§2452. Life safety and property protection

The Commissioner of Public Safety shall adopt and may amend, after notice in accordance with the Maine Administrative Procedure Act, reasonable rules governing the safety to life from fire in or around all buildings or other structures and mass outdoor gatherings, as defined in Title 22, section 1601, subsection 2, within the commissioner's jurisdiction. These rules do not apply to nursing homes having 3 or fewer patients. Automatic sprinkler systems may not be required in existing noncommercial places of assembly. Noncommercial places of assembly include those facilities used for such purposes as deliberation, worship, entertainment, amusement or awaiting transportation that have a capacity of 100 to 300 persons.

1. Effective date. The rules, and amendments to the rules, become effective when reviewed for form and legality by the Office of the Attorney General and a certified copy of them has been approved in writing by the Commissioner of Public Safety and filed with the Secretary of State.

2. Rights declared. Any person aggrieved by a rule or by an act of the commissioner in enforcing the rule may have that person's rights declared by bringing an action for declaratory judgment under Title 14, chapter 707, naming the commissioner as defendant.

3. Violation. A person who violates a rule issued by the commissioner under this section commits a Class E crime.

Existing buildings licensed pursuant to Title 22, Subtitle 6 having more than 6 boarders, with the exception of board and care facilities and children's homes, must comply with any rules for residential-custodial care facilities required by the Commissioner of Public Safety, except that such existing facilities of not more than 2 stories in height are not required to be fire resistive, protected or unprotected noncombustible, protected wood frame or heavy timber construction. Such existing facilities must be protected by a complete approved automatic sprinkler system and meet all other requirements of residential-custodial care facilities as required by the Commissioner of Public Safety.

Existing boarding care facilities licensed pursuant to Title 22, Subtitle 6 must comply with the applicable fire safety requirements of the Life Safety Code adopted by the Commissioner of Public Safety pursuant to Title 22, section 7856. Existing children's homes licensed pursuant to Title 22, Subtitle 6 must comply with the applicable fire safety requirements of the Life Safety Code of the National Fire Protection Association adopted by the Commissioner of Public Safety pursuant to Title 22, section 8103.

§2452-A. Use of candles

No regulation of the Commissioner of Public Safety shall prohibit the use of candles by any officials of religious or fraternal orders during the course of a religious or fraternal service, which service occurs on the property of said church or fraternal order, provided the said use of candles is properly supervised.

§2453. Fire escapes; appeals

Each story above the first story of a building used as a schoolhouse, orphan asylum, hospital for the mentally ill, reformatory, opera house, hall for public assemblies, hotel or tenement house occupied by more than 2 families, or store in which more than 10 persons are employed above the first story, must be provided with more than one way of egress, by stairways on the inside or fire escapes on the outside of such building. Such stairways and fire escapes must be so constructed, in such a number, or such size and in such location as to give reasonably safe, adequate and convenient means of exit, in view of the number of persons who may need to use such stairway or fire escape, must at all times be kept free from obstruction and must be accessible from each room in each story above the first story. Any apartment building of 3 stories or less in its entirety is permitted to have a single exit under the condition that the building is protected throughout by an approved automatic sprinkler system, meets the requirements of the applicable chapter of the National Fire Protection Association Life Safety Code 101 and every sleeping room has a 2nd means of escape. An individual, partnership or corporation may not offer for sale in this State, any type of fire escape device or fire alarm systems unless first securing approval of the Commissioner of Public Safety.

Any person or corporation aggrieved by any order of the commissioner issued under this section may appeal to the Superior Court by filing within 30 days from the effective date of such order a complaint and the court shall fix a time and place of hearing and cause notice of the time and place to be given to the commissioner and, after the hearing, the court may affirm or reverse in full or in part any such order of the commissioner and the decision of the court is final. If the commissioner in the interest of public safety, because the commissioner determines there is

immediate danger, forbids the use of such buildings for any public purpose until satisfactory compliance with the commissioner's order, such order becomes effective immediately and the filing of the complaint may not operate as a stay.

§2454. -- inspections (REPEALED)

§2455. Notice as to sufficiency of safeguards (REPEALED)

§2456. Failure to comply with orders for safeguards (REPEALED)

§2457. Certificate of sufficiency of safeguards; compensation for inspection; return (REPEALED)

§2458. Certificate to be posted in building (REPEALED)

§2459. Town officers' refusal to perform duties (REPEALED)

§2460. Fines (REPEALED)

§2461. Investigation by state factory inspector or Commissioner of Public Safety (REPEALED)

§2462. Plundering at fires as larceny (REPEALED)

§2463. Installation of sprinkler systems and smoke, heat or fire detection systems

All new hotels constructed after January 1, 1992 of any type construction having 2 stories or more above grade level, must be protected by a complete approved automatic sprinkler system.

All high-rise buildings constructed after January 1, 1992 of any type construction must be protected by a complete approved automatic sprinkler system.

All other hotels having 2 stories or more above grade level must be protected by a complete approved smoke, heat or fire detection system operated by electrical current or powered by batteries by July 1, 1981.

The Commissioner of Public Safety or the commissioner's designee shall inspect all systems installed pursuant to this section and shall approve all systems that comply with this section, except that when the hotel is located in a municipality that has a municipal fire department or incorporated volunteer fire department, that department is responsible for the inspection and approval of the system, unless the Commissioner of Public Safety agrees to undertake that responsibility.

The term "hotel" includes buildings or groups of buildings under the same management in which there are more than 15 sleeping rooms for hire, whether designated as a hotel, inn, club, motel, apartment hotel or by any other name.

The term "high-rise building" includes any building used for any commercial purpose that is 75 feet or more above grade level.

Any person or corporation violating this section is guilty of a Class E crime.

§2463-A. Installation of sprinkler systems in dormitories

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Automatic sprinkler system" means an automatic sprinkler system that at a minimum satisfies the requirements of Pamphlet 13 or 13R of the National Fire Protection Association or other requirements established by the State Fire Marshal.

B. "Department" means the Department of Public Safety.

C. "Dormitory" means a building or space in a building owned by a public educational institution in which:

- (1) At least 5 rooms are provided as sleeping accommodations for students of the public educational institution; or
- (2) Sleeping accommodations are provided for 15 or more students of the public educational institution.

D. "Public educational institution" means the University of Maine System, the Maine Community College System, the Maine Maritime Academy or the Maine School of Science and Mathematics.

2. Approved automatic sprinkler system. A dormitory of a public educational institution must be equipped with an automatic sprinkler system in accordance with this subsection.

A. A dormitory constructed by a public educational institution or a building converted into a dormitory by a public educational institution after the effective date of this paragraph must be equipped with a complete automatic sprinkler system before the department approves the dormitory for occupancy.

B. Dormitories of a public educational institution that exist on and are used as dormitories after January 1, 2001 must be equipped as follows:

(1) By January 1, 2007, at least 1/3 of the total square footage of those dormitories must be equipped with an automatic sprinkler system;

(2) By January 1, 2010, at least 2/3 of the total square footage of those dormitories must be equipped with an automatic sprinkler system; and

(3) By January 1, 2013, all of those dormitories must be equipped with a complete automatic sprinkler system.

3. Report. Beginning in 2003 and every 2 years thereafter, the State Fire Marshal shall report to the joint standing committee of the Legislature having jurisdiction over criminal justice matters concerning compliance with subsection 2. The report must be submitted by February 15th of the year the report is due.

§2464. Smoke detectors

1. Definition. "Smoke detector" means a device that, when activated by the presence of smoke, provides an alarm suitable to warn the occupants within the individual dwelling unit in which it is attached and that has been listed for use by a nationally recognized independent testing laboratory.

2. Smoke detectors required. The owner shall install, or cause to be installed, not less than one approved smoke detector upon or near the ceiling in areas within, or giving access to, bedrooms in:

A. Any single-family dwelling, the construction of which is completed after the effective date of this section;

B. Each apartment in any building of multifamily occupancy, other than any occupied by the owner of the building;

C. Any addition to or restoration of an existing single-family dwelling which adds at least one bedroom to the dwelling unit and the construction of which is completed after the effective date of this paragraph; and

D. Any conversion of a building to a single-family dwelling after the effective date of this paragraph.

3. Multiapartment buildings. In multiapartment buildings more than 3 stories in height, approved smoke detectors must also be installed in each corridor and hallway on each floor.

4. Regulations.

4-A. Rules. The Commissioner of Public Safety or the commissioner's designee, in accordance with the Maine Administrative Procedure Act, shall adopt rules pertaining to smoke detectors. The rules adopted must include, but not be limited to, standards for approved smoke detectors and all requirements of use, maintenance and installation. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

5. Penalties. A person who violates this section is guilty of a civil violation and is subject to a forfeiture of not more than \$500 for each violation. The court may waive any penalty or cost against any violator upon satisfactory proof that the violation was corrected within 10 days of the issuance of a complaint.

6. Liability. Nothing in this section gives rise to any action against an owner required to comply with subsection 2, paragraph B, if the owner has conducted an inspection of the required smoke detectors immediately after installation and has reinspected the smoke detectors prior to occupancy by each new tenant, unless the owner has been given at least 24-hours' actual notice of a defect or failure of the smoke detector to operate properly and has failed to take action to correct the defect or failure.

7. Noninterference. A person may not knowingly interfere with or make inoperative any smoke detector required by this section, except that the owner or the agent of an owner of a building may temporarily disconnect a detector in a dwelling unit or common area only for construction or rehabilitation activities when such activities are likely to activate the detector or make it inactive. The detector must be immediately reconnected at the cessation of

construction or rehabilitation activities each day, regardless of the intent to return to construction or rehabilitation activities on succeeding days.

8. Smoke alarms for persons with disabilities. Upon the request of a deaf or hard-of-hearing occupant, the owner of the dwelling unit shall provide an approved smoke alarm suitable to warn the occupant within the dwelling unit. If the owner does not provide a suitable smoke alarm, the occupant may purchase, install and maintain a suitable smoke detector, or arrange for proper installation and maintenance of a suitable smoke detector, and may deduct the actual costs from the rent for the dwelling unit. An occupant or tenant may not be charged, evicted or penalized in any way for failure to pay the actual cost deducted from the rent for the dwelling unit.

§2465. Adoption of rules

1. Adoption of rules.

1-A. Routine technical rules. The Commissioner of Public Safety shall adopt rules pertaining to the construction, installation, maintenance and inspection of chimneys, fireplaces, vents and solid fuel burning appliances. Rules adopted pursuant to this subsection may include rules pertaining to maintenance and inspections, except as provided in subsection 1-B. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

1-B. Major substantive rules. The Commissioner of Public Safety may adopt rules requiring maintenance and inspection of chimneys, fireplaces, vents and solid fuel burning appliances upon the sale or transfer of property. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

2. Prohibitions. A person may not for compensation construct, install or maintain any vent or solid fuel burning appliance unless that vent or appliance is constructed, installed or maintained in accordance with this section or the rules adopted pursuant to this section. Construction and installation of chimneys and fireplaces are also governed by Title 32, chapter 33.

3. Enforcement. Subject to Title 32, chapter 33, the Commissioner of Public Safety or the commissioner's designees, state oil and solid fuel compliance officers, duly appointed fire chiefs or their designees and municipal building inspectors and code enforcement officers may enforce the requirements of this section, the rules adopted pursuant to this section and Title 32, section 2313-A.

4. Prior installation. Any chimney, fireplace, vent or solid fuel burning appliance constructed or installed prior to July 13, 1982 may be continued in use subject to the provisions of section 2432.

5. Home rule. Subject to Title 32, chapter 33, any municipality may adopt ordinance requirements for the materials, installation, construction, maintenance or inspection of chimneys, fireplaces, vents or solid fuel burning appliances that exceed the requirements of this section and the rules adopted pursuant to this section.

5-A. Safety information. A new factory-built fireplace, fireplace stove or solid fuel burning room heater may not be sold in retail trade, unless the seller provides the buyer, on or before the sale, with an installation instruction manual or, in the case where such a manual is not available, with a publication of the Department of Economic and Community Development containing recommended clearances in accordance with the rules adopted pursuant to this section.

6. Penalty. The following penalties apply.

A. A person who, for compensation, constructs or installs vents or solid fuel burning appliances in violation of the standards and then permits such violation to remain uncorrected after 30 days' notice from an official empowered to enforce this section commits a civil violation for which a fine of not more than \$500 for each violation may be adjudged. The court may waive any penalty or cost against a violator upon satisfactory proof that the violation was corrected within 30 days of the issuance of a complaint. Construction and installation of chimneys and fireplaces are governed by Title 32, chapter 33.

B. A person who fails to provide a purchaser with an instruction manual or the authorized publication of the Department of Economic and Community Development, as described in subsection 5-A, commits a civil violation for which a fine of not less than \$200 and not more than \$500 may be adjudged.

C. A person who violates paragraph B after having previously violated paragraph B commits a civil violation for

which a fine of not less than \$500 and not more than \$800 for each offense may be adjudged.

D. A person who violates a rule adopted pursuant to this section commits a civil violation for which a fine of not less than \$200 and not more than \$500 may be adjudged, except that this paragraph does not apply to a rule requiring an annual chimney inspection for a single-family home

In addition to the penalties provided in this subsection, a violation of this chapter constitutes a violation of Title 5, chapter 10.

Chapter 331: CONSTRUCTION FOR PHYSICALLY DISABLED

TITLE 25 M.R.S.A. §§ 2701 - 2704

§2701. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings.

1. Administrative authority. "Administrative authority" means the state, county or municipal official responsible for the administration and enforcement of this chapter.

2. Building. "Building" means:

A. A structure to which the public customarily has access and utilizes, and which is constructed, in whole or in part, with funds of the State or its political subdivisions; or

B. A structure or facility specifically intended:

(1) As a place where 5 persons or more will be employed; or

(2) As public housing, and which is constructed, in whole or in part, with either state or federal funds.

3. Physical disability. "Physical disability" means an impairment which confines an individual to a wheelchair; causes an individual to walk with difficulty; affects the sight or hearing to the extent that an individual functioning in public areas is insecure or exposed to danger; cause faulty coordination; or reduces mobility, flexibility, coordination and perceptiveness to the extent that special facilities are needed to provide for the safety of that individual.

4. Public housing. "Public housing" means a building included under subsection 2 which includes a minimum of 10 family units.

5. Standards of construction. "Standards of construction" means the most recent standards set forth by the American National Standards Institute in the publication "Specifications for Making Buildings and Facilities Accessible to and Usable by the Physically Handicapped," except as otherwise exempted or provided by the National Fire Protection Association's Life Safety Code 101 or as amended by rule of the Director of Public Improvements.

6. 1981 standards of construction.

§2702. Standards of construction

All buildings affected by this chapter which are constructed, remodeled or enlarged before January 1, 1982, shall be in substantial compliance with standards of construction, including the following.

1. Grading. There shall be grading so that the ground shall attain a level with at least one primary entrance.

2. Public walk. There shall be at least one public walk to a primary entrance, which shall:

A. Be at least 48 inches wide;

B. Have a gradient not greater than 5%; and

C. Be of continuing common surface, not interrupted by steps or abrupt changes in level.

3. Ramp. Where a ramp with gradient greater than 5% is necessary or desired, it shall:

A. Not have a slope greater than one foot rise in 12 feet, or 8.33% or 4' 40'; and

B. Have handrails on at least one side and preferably on 2 sides that are 32 inches in height from the surface of the ramp.

4. Doors. Doors at the primary entrance or entrances at grade levels shall have a clear opening of no less than 32 inches when open and shall be operable by a single effort. The floor on the inside and outside of each doorway shall extend at least one foot beyond each side of the door and be level for a distance of at least 5 feet from the closed portion of the door in the direction the door swings. If doors at a primary entrance are in a series, they shall have a space between them of not less than 84 inches measured from their closed positions and each shall open so that swings do not conflict. Thresholds shall have beveled edges.

Doors that are not intended for normal use, and that are dangerous if a blind person were to enter or exit by them, shall be made identifiable to touch by knurling the handle or knob.

5. Floors. Floors shall be maintained to assure nonslip surfaces, and on any given story shall be of a common level throughout or be connected by a ramp in accordance with subsection 3.

6. Elevators. Elevators, when provided in planning, shall be accessible to and usable by physically disabled individuals at all levels used by the general public. They shall allow for wheelchair traffic and shall have control buttons with identifying features for the blind.

Any building on 2 or more levels, constructed after April 1, 1977, having regular occupancy of 100 or more persons, and to which the public-at-large or a substantial group normally has access, shall have at least one elevator usable by physically disabled individuals which shall meet the following requirements.

A. The elevator cab shall have a clear area of not less than 25 square feet with a minimum of 56 inches clear in any one direction.

B. The door shall have a clear opening of not less than 32 inches.

C. No floor or control button shall be located higher than 48 inches above the elevator floor and shall have tactile identification braille beside the buttons for the blind.

D. The elevator shall be adjusted or controlled so that the floor of the elevator, when stopped, conforms to building floor levels with a 1/2 inch tolerance.

E. The period of time between the opening and closing of the elevator door shall not be less than 8 seconds.

Any building on 2 levels and with less than 2 stories, constructed after April 1, 1977, having regular occupancy of 100 or more persons and to which the public-at-large or a substantial group normally has access, shall have either an elevator which shall meet the requirements included in this subsection, or a ramp which shall meet the requirements included in subsection 3.

7. Stairs. Stairs that might require use by physically disabled persons shall have handrails 32 inches high as measured from the tread at the face of the riser. At least one handrail shall extend at least 18 inches beyond the top step and the bottom step, and such extension shall be on the side of a continuing wall. Steps of stairs shall not have abrupt, square nosing, and should, wherever possible, have risers not to exceed 7 inches.

8. Restrooms and bathrooms. In accordance with the nature of a building, an appropriate number of restroom facilities shall be accessible and usable by physically disabled individuals. Furthermore, in any building designed and constructed specifically for public housing, the bathroom facilities and all accompanying fixtures shall be arranged to permit access and use by a person in a wheelchair in the following manner:

A. In public housing of 10 to 20 units, at least one unit shall have such bathroom facilities and accompanying fixtures; and

B. Notwithstanding the provisions in paragraph A, for every increment of 20 living units in public housing, at least one unit shall have such bathroom facilities and accompanying fixtures.

Such units shall be constructed on a single level and entrance to the bathroom shall be no less than 32 inches in width. In any municipal, county or state building constructed after April 1, 1977, normally used by the general public, restrooms shall be subject to the following provisions.

A. There shall be at least one toilet stall that meets the following specifications:

(1) It shall have a door which has a clear opening of at least 32 inches and swings out or slides;

(2) It shall have a minimum width of 4 feet and a minimum depth of 5 feet;

(3) It shall have a water closet with a seat 20 inches from the floor; and

(4) It shall have handrails installed on both sides of the stall not less than 42 inches long and 33 inches above and parallel to the floor. At least 24 inches of the handrail shall be located in front of the water closet. Each handrail shall be 1 1/2 inches in outside diameter, have a 1 1/2-inch clearance between rail and wall, and be securely fastened to support 250 pounds.

B. There shall be at least one washbowl with a narrow apron and with 29 inches clearance to the bottom of the apron when mounted.

C. When mirrors and shelves are provided, at least one mirror and one shelf shall be located above the washbowl at

a height not to exceed 40 inches above the floor, measured from the top of shelf and bottom of mirror.

D. There shall be at least one wall-mounted urinal in the men's toilet room, the basin opening of which shall be 19 inches from the floor.

E. When towel and other dispensers are provided, at least one of each shall not exceed a height of 48 inches.

9. Drinking fountains. In accordance with the nature and use of a building, an appropriate number of drinking fountains shall be accessible to and usable by the physically disabled. The drinking fountains or coolers shall be:

A. Wall-mounted and hand-operated to serve both able-bodied and physically disabled persons; and

B. Mounted with spouts and controls at the front with the edge of the water basin not more than 36 inches from the floor.

10. Telephone. Wherever public telephones are installed, at least one shall be accessible to persons confined to wheelchairs. It shall be so placed that the height of the dial, handset and coin slot do not exceed 56 inches from the floor.

11. Warning signals. Warning signals for emergencies should provide audible and visual signals simultaneously for the benefit of those persons with either hearing or sight disabilities.

12.

§2702-A. 1981 standards of construction

1. Amendments to standards. Prior and subsequent to adopting any amendments to the standards, the director shall consult with physically handicapped people and their representatives and with persons regulated by this law and their representatives, to obtain their advice on the advisability, form and effect of any amendments to the standards.

2. Application. All construction, remodeling and enlarging begun after January 1, 1988, of buildings subject to this chapter shall comply with the standards of construction.

3. Construction of new public housing. Notwithstanding subsection 2, all newly constructed public housing containing 20 or more units for which construction begins after October 1, 1988, shall meet the following standards.

A. No less than 10% of the ground level units may be accessible to and useable by physically handicapped persons.

B. A minimum of 10% of the upper story units connected by an elevator, as provided in section 2702, subsection 6, shall be accessible to and useable by handicapped persons.

§2703. Administration authority

The responsibility for administering and enforcing this chapter shall be as follows:

1. State. Where state funds are used, including for space in buildings rented or leased by the State pursuant to agreements concluded with effective dates of January 1, 1982, or later, the Director of Public Improvements; except in respect to elementary and secondary school buildings, it shall be the Commissioner of Education;

2. Counties and municipalities. Where funds for counties and municipalities are used, except school buildings, the governing bodies thereof;

3. New buildings. New buildings constructed after October 7, 1967 shall meet all provisions of this chapter;

4. Reconstructed buildings. Plans to reconstruct, remodel or enlarge an existing building, when the estimated total cost exceeds \$100,000, shall be subject to this chapter, when, in the opinion of the administrative authority, the proposed reconstruction, remodeling or enlargement will substantially affect that portion of said building normally accessible to the public. Only one entrance for disabled persons is required and that may be the one that can be constructed most economically.

5. Enforcement; inspection. The state, county or municipal authority who reviews plans for any building covered under this chapter shall:

A. Not approve the construction or the opening of such a building if plans or the construction are not in compliance with this chapter; and

B. Require on-site inspections which are deemed necessary to assure compliance with the specific standards of construction set forth in this chapter.

§2703-A. Construction, remodeling or enlarging begun after September 1, 1988

All construction, remodeling and enlarging begun after September 1, 1988, of buildings subject to this chapter shall comply with the standards of construction, except that, in the case of toilet stalls, at least one standard stall configuration, ANSI Figure 30(a) shall be used. Any additional toilet stalls may either be standard stall configuration, ANSI Figure 30(a), or alternate stall configuration, ANSI Figure 30(b).

§2704. Penalty

Any violation of this chapter by any person, firm or organization responsible for the design or construction of any public building or facility shall be a civil violation punishable by a fine of not more than \$500, or subject to other appropriate equitable relief designed to secure substantial compliance with this chapter.

All civil violations under this chapter are enforceable by the Attorney General, his representative or any other appropriate public official in a civil action to recover what may be designated a fine or other sanction.

Chapter 337: HUMAN RIGHTS ACT (HEADING: PL 1971, c. 501, §1 (new); 1971, c. 622, §19 (amd))

Subchapter 5: PUBLIC ACCOMMODATIONS (HEADING: PL 1971, c. 501, §1 (new))

§4591. Equal access to public accommodations

The opportunity for every individual to have equal access to places of public accommodation without discrimination because of race, color, sex, sexual orientation, physical or mental disability, religion, ancestry or national origin is recognized as and declared to be a civil right.

§4592. Unlawful public accommodations

This section does not require an entity to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of that entity when the individual poses a direct threat to the health or safety of others. For the purposes of this section, the term "direct threat" means a significant risk to the health or safety of others that can not be eliminated by a modification of policies, practices or procedures or by the provision of auxiliary aids or services.

It is unlawful public accommodations discrimination, in violation of this Act:

1. Denial of public accommodations. For any public accommodation or any person who is the owner, lessor, lessee, proprietor, operator, manager, superintendent, agent or employee of any place of public accommodation to directly or indirectly refuse, discriminate against or in any manner withhold from or deny the full and equal enjoyment to any person, on account of race or color, sex, sexual orientation, physical or mental disability, religion, ancestry or national origin, any of the accommodations, advantages, facilities, goods, services or privileges of public accommodation, or in any manner discriminate against any person in the price, terms or conditions upon which access to accommodation, advantages, facilities, goods, services and privileges may depend.

For purposes of this subsection, unlawful discrimination also includes, but is not limited to:

A. The imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages or accommodations, unless the criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages or accommodations being offered;

B. A failure to make reasonable modifications in policies, practices or procedures, when modifications are necessary to afford the goods, services, facilities, privileges, advantages or accommodations to individuals with disabilities, unless, in the case of a private entity, the private entity can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages or accommodations;

C. A failure to take steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless, in the case of a private entity, the private entity can demonstrate that taking those steps would fundamentally alter the nature of the good, service, facility, privilege, advantage or accommodation being offered or would result in an undue burden;

D. A private entity's failure to remove architectural barriers and communication barriers that are structural in nature in existing facilities and transportation barriers in existing vehicles and rail passenger cars used by an establishment for transporting individuals, not including barriers that can be removed only through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift, where the removal is readily achievable;

When the entity can demonstrate that the removal of a barrier under this paragraph is not readily achievable, a failure to make the goods, services, facilities, privileges, advantages or accommodations available through alternative methods if alternative methods are readily achievable; and

E. A qualified individual with a disability, by reason of that disability, being excluded from participation in or being denied the benefits of the services, programs or activities of a public entity, or being subjected to discrimination by any such entity;

2. Communication, notice or advertisement. For any person to directly or indirectly publish, display or communicate any notice or advertisement to the effect that any of the accommodations, advantages, facilities and privileges of any place of public accommodation are refused, withheld from or denied to any person on account of race or color, sex, sexual orientation, physical or mental disability, religion, ancestry or national origin, or that the patronage or custom of any person belonging to or purporting to be of any particular race or color, sex, sexual orientation, physical or mental disability, religion, ancestry or national origin is unwelcome, objectionable or not

acceptable, desired or solicited, or that the clientele is restricted to any particular race or color, sexual orientation, physical or mental disability, religion, ancestry or national origin. The production of any communication, notice or advertisement purporting to relate to any place of accommodation is presumptive evidence in any action that the action was authorized by its owner, manager or proprietor;

3. Denial of lodging; children, exception. For any person who is the owner, lessee, proprietor, manager, superintendent, agent or employee of any public accommodation for lodging to directly or indirectly refuse or withhold from or deny to any person that lodging on the grounds that the person is accompanied by a child or children who will occupy the unit, unless the total number of persons seeking to occupy the unit exceeds the number permitted by local ordinances or reasonable standards relating to health, safety or sanitation.

This subsection does not apply to the owner of a lodging place:

- A. That serves breakfast;
- B. That contains no more than 5 rooms available to be let to lodgers; and
- C. In which the owner resides on the premises;

4. Participation. For a covered entity:

A. To subject an individual or a class of individuals, on the basis of a disability or disabilities of the individual or class, directly or through contractual, licensing or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages or accommodations of that entity;

B. To afford an individual or a class of individuals, on the basis of a disability or disabilities of the individual or class, directly or through contractual, licensing or other arrangements, with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage or accommodation in a manner that is not equal to that afforded to other individuals; and

C. To provide an individual or a class of individuals, on the basis of a disability or disabilities of the individual or class, directly or through contractual, licensing or other arrangements, with a good, service, facility, privilege, advantage or accommodation that is different or separate from that provided to other individuals, unless this action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage or accommodation or other opportunity that is as effective as that provided to others.

For purposes of this subsection, the term "individual" or "class of individuals" refers to the clients or customers of the covered public accommodation that enters into a contractual, licensing or other arrangement;

5. Integrated setting; programs or activities not separate or different. For a covered entity to not afford goods, services, facilities, privileges, advantages and accommodations to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability may not be denied the opportunity to participate in programs or activities that are not separate or different;

6. Association. For a covered entity to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association; and

7. Administrative methods. For an individual or an entity, directly or through contractual or other arrangements, to utilize standards or criteria or methods of administration:

- A. That have the effect of discrimination on the basis of disability; or
- B. That perpetuate the discrimination of others who are subject to common administrative control.

§4593. Existing facilities

1. Public accommodations. For any building or facility constructed specifically as a place of public accommodation on or after September 1, 1974, but before January 1, 1982, or when the estimated total costs for remodeling or enlarging an existing building exceed \$250,000 and the remodeling or enlarging is begun before January 1, 1982, the following standards of construction must be met.

A. There must be at least one public walk not less than 40 inches wide with a slope not greater than one foot rise in 12 feet leading directly to a primary entrance. However, after April 1, 1977, the public walk must be not less than 48 inches wide. [1991, c. 99, §23 (amd).]

B. There must be a door at the primary entrance with a clear opening of not less than 32 inches and operable by a single effort. If doors at a primary entrance are in a series, they must have a space between them of not less than 84 inches measured from their closed positions; and each must open in the same direction so that swings do not conflict.

C. Rest room facilities must have at least one stall that is not less than 4 feet wide, 5 feet in depth, a 32-inch wide door that swings out or slides, handrails on each side mounted 33 inches from the floor, and a water closet with a seat 20 inches high.

D. Doors that are not intended for normal use, and that are dangerous if a blind person were to enter or exit by them, must be made identifiable to touch by knurling the handle or knob.

E. There must be parking spaces designated for persons with physical disability set aside in adequate number and clearly marked for use only by the disabled. Set aside in adequate number means that, for every 25 parking spaces made available to the public on a public or private parking lot, at least one of those spaces must be made available in an appropriate location for parking exclusively used by persons with physical disability.

In any building designed and constructed specifically for public accommodations, the bathroom facilities and all accompanying fixtures must be arranged to permit access and use by a person in a wheelchair in at least 1% of the living units. The units must be constructed on ground level and must comply with paragraph C.

2. Places of employment. For any building or facility constructed specifically as a place of employment on or after September 1, 1974, but before January 1, 1982, or when the estimated total costs for remodeling or enlarging an existing building exceeds \$100,000, and the remodeling or enlarging is begun before January 1, 1982, the public accommodation provisions relating to walks, entries, restroom facilities and doors apply.

§4594. Public accommodations and places of employment constructed, remodeled or enlarged after January 1, 1982

1. Facilities attested. This section applies for the following facilities:

A. Any building or facility constructed specifically as a place of public accommodation on or after January 1, 1982, or when the estimated total costs for remodeling or enlarging an existing building exceeds \$250,000 and the remodeling or enlarging is begun after January 1, 1982; and

B. Any building or facility constructed specifically as a place of employment on or after January 1, 1982, or when the estimated total costs for remodeling or enlarging an existing building exceeds \$100,000, and the remodeling or enlarging is begun after January 1, 1982.

2. Application. Facilities subject to this section must meet the requirements of the 1981 standards of construction adopted pursuant to Title 25, chapter 331, to implement the following 4 parts of the American National Standards Institute's "Specification for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People," (ANSI A 117.1-1980):

A. 4.3 Accessible Route;

B. 4.13 Doors;

C. 4.17 Toilet Stalls;

D. 4.29.3 Tactile Warnings on doors to Hazardous Areas; and

E. Parking spaces for use by persons with physical disability in adequate number, pursuant to section 4593, subsection 1, paragraph E.

§4594-A. Public accommodations constructed, remodeled or enlarged after January 1, 1984

1. Facilities attested. This section applies to any building or facility constructed specifically as a place of public accommodation on or after January 1, 1984, or when the estimated total costs for remodeling or enlarging an existing building exceeds \$150,000 and the remodeling or enlarging is begun after January 1, 1984.

2. Application. Facilities subject to this section must meet the following standards.

A. Facilities subject to this section constructed on or after January 1, 1984, must meet the requirements of the 1981 standards of construction adopted pursuant to Title 25, chapter 331.

B. Plans to reconstruct, remodel or enlarge an existing place of public accommodation, when the estimated total cost exceeds \$150,000, are subject to this section when the proposed reconstruction, remodeling or enlargement will substantially affect that portion of the building normally accessible to the public.

Facilities subject to this section which are remodeled, enlarged or renovated on or after January 1, 1984, must meet the requirements of the following 4 parts of the 1981 standards of construction adopted pursuant to Title 25, chapter 331:

- (1) 4.3 accessible route;
- (2) 4.13 doors;
- (3) 4.17 toilet stalls;
- (4) 4.29.3 tactile warnings on doors to hazardous areas; and
- (5) Parking spaces for use by persons with physical disability in adequate number, pursuant to section 4593, subsection 1, paragraph E.

§4594-B. Public accommodations constructed, remodeled or enlarged after January 1, 1988

1. Definitions. As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

A. "Builder" means the applicant for a building permit in a municipality that requires such permits or the owner of the property in a municipality that does not require building permits.

B. "Design professional" means an architect or professional engineer registered to practice under Title 32.

C. "Standards of construction" means the 1986 standards set forth by the American National Standards Institute in the publication "Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People," ANSI A 117.1-1986.

2. Facilities attested. This section applies to any building or facility constructed specifically as a place of public accommodation on or after January 1, 1988, or when the estimated total costs for remodeling or enlarging an existing building exceeds \$150,000 and the remodeling or enlarging is begun after January 1, 1988.

3. Application. Facilities subject to this section shall meet the following standards.

A. Facilities subject to this section constructed on or after January 1, 1988, shall meet the standards of construction.

B. Plans to reconstruct, remodel or enlarge an existing place of public accommodation, when the estimated total cost exceeds \$150,000, shall be subject to this section when the proposed reconstruction, remodeling or enlargement will substantially affect that portion of the building normally accessible to the public.

Facilities subject to this section which are remodeled, enlarged or renovated on or after January 1, 1988, shall meet the requirements of the following 4 parts of the standards of construction:

- (1) 4.3 accessible routes;
- (2) 4.13 doors;
- (3) 4.17 toilet stalls; and
- (4) 4.29.3 tactile warnings on doors to hazardous areas.

4. Certification; inspection. The builder of a facility to which this section applies shall obtain a certification from a design professional that the plans of the facility meet the standards of construction required by this section. Prior to commencing construction of the facility, the builder shall submit the certification to:

A. The municipal authority who reviews plans in the municipality where the facility will be constructed; or

B. If the municipality where the facility will be constructed has no authority who reviews plans, the municipal officers of the municipality.

If municipal officials of the municipality where the facility will be constructed inspect buildings for compliance with construction standards, that inspection shall include an inspection for compliance with the standards required by this section. The municipal officials shall require the facility inspected to meet the construction standards of this

section before the municipal officials permit the facility to be occupied.

§4594-C. Public accommodation constructed, remodeled or enlarged after September 1, 1988

1. Definitions. As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

A. "Builder" means the applicant for a building permit in a municipality that requires such permits or the owner of the property in a municipality that does not require building permits.

B. "Design professional" means an architect or professional engineer registered to practice under Title 32.

C. "Standards of construction" means the 1986 standards set forth by the American National Standards Institute in the publication "Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People," ANSI A 117.1-1986.

2. Facilities attested. This section applies to any building or facility constructed specifically as a place of public accommodation on or after September 1, 1988, or when the estimated total costs for remodeling or enlarging an existing building exceed \$100,000 and the remodeling or enlarging is begun after September 1, 1988.

3. Application. Facilities subject to this section shall meet the following standards.

A. Facilities subject to this section, constructed on or after September 1, 1988, shall meet the standards of construction, except that, in the case of toilet stalls, at least one toilet stall shall be the standard stall configuration pursuant to ANSI Figure 30(a). Any additional toilet stalls may be either standard stall configuration, ANSI Figure 30(a), or alternate stall configuration, ANSI Figure 30(b).

B. Plans to reconstruct, remodel or enlarge an existing place of public accommodation, when the estimated total cost exceeds \$100,000, shall be subject to this section when the proposed reconstruction, remodeling or enlargement substantially affects that portion of the building normally accessible to the public.

Facilities subject to this section which are remodeled, enlarged or renovated on or after September 1, 1988, shall meet the requirements of the following 4 parts of the standards of construction:

(1) 4.3 accessible routes;

(2) 4.13 doors;

(3) 4.17 toilet stalls, at least one of which must be a standard toilet stall configuration pursuant to ANSI Figure 30(a). Any additional toilet stalls may be either standard stall configuration, ANSI Figure 30(a), or alternate stall configuration, ANSI Figure 30(b); and

(4) 4.29.3 tactile warnings on doors to hazardous areas.

4. Certification; inspection. The builder of a facility to which this section applies shall obtain a certification from a design professional that the plans of the facility meet the standards of construction required by this section. Prior to commencing construction of the facility, the builder shall submit the certification to:

A. The municipal authority who reviews plans in the municipality where the facility will be constructed; or

B. If the municipality where the facility will be constructed has no authority who reviews plans, the municipal officers of the municipality.

If municipal officials of the municipality where the facility will be constructed inspect buildings for compliance with construction standards, that inspection shall include an inspection for compliance with the standards required by this section. The municipal officials shall require the facility inspected to meet the construction standards of this section before the municipal officials permit the facility to be occupied.

§4594-D. Public accommodations and places of employment constructed, remodeled or enlarged after January 1, 1991

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Builder" means the applicant for a building permit in a municipality that requires such permits or the owner of the property in a municipality that does not require building permits.

B. "Design professional" means an architect or professional engineer registered to practice under Title 32.

C. "Standards of construction" means the 1986 standards set forth by the American National Standards Institute in the publication "Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People," ANSI A 117.1-1986.

2. Facilities attested. This section applies to any building or facility constructed specifically as a place of public accommodation or place of employment on or after January 1, 1991, or when the estimated total costs for remodeling, enlarging or renovating an existing building exceed \$100,000, and the remodeling, enlarging or renovating is begun after January 1, 1991.

3. Application. Facilities subject to this section must meet the following standards.

A. Places of employment or public accommodation and additions to these places constructed on or after January 1, 1991, must meet the standards of construction.

B. Except for repairs undertaken in accordance with the rules adopted pursuant to subsection 4, when the proposed remodeling or renovation substantially affects that portion of the building normally accessible to the public, places of employment or public accommodation remodeled or renovated on or after January 1, 1991, must meet the following 5 parts of the standards of construction:

(1) 4.3 accessible routes;

(2) 4.13 doors;

(3) 4.29.3 tactile warnings on doors to hazardous areas;

(4) Parking spaces for use by persons with physical disability in adequate number, pursuant to section 4593, subsection 1, paragraph E; and

(5) 4.17 toilet stalls, at least one of which must be a standard toilet stall configuration pursuant to ANSI Figure 30(a). Any additional toilet stalls within the same toilet room may be either standard stall configuration, ANSI Figure 30(a), or alternate stall configuration, ANSI Figure 30(b).

4. Rules. The commission may adopt, alter, amend and repeal rules designed to make buildings under this section accessible to, functional for and safe for use by persons with physical disability in accordance with subsection 3, and may adopt, alter, amend and repeal rules designed otherwise to enforce this section.

5. Certification; inspection. The builder of a facility to which this section applies shall obtain a certification from a design professional that the plans meet the standards of construction required by this section. The builder shall provide the certification to the Office of the State Fire Marshal with the plans of the facility. The builder shall also provide the certification to the municipality where the facility exists or will be built.

6. Training, education and assistance. The commission and the Office of the State Fire Marshal shall, as necessary, develop information packets, lectures, seminars and educational forums on barrier-free design for the purpose of increasing the awareness and knowledge of owners, architects, design professionals, code enforcers, building contractors and other interested parties.

7. Mandatory plan review; certification; inspection. Builders of the following newly constructed facilities must submit plans to the Office of the State Fire Marshal to ensure that the plans meet the standards of construction required by subsection 3:

A. Restaurants;

B. Motels, hotels and inns;

C. State, municipal and county buildings; and

D. Schools, elementary and secondary.

Fees for reviews are established by the Office of the State Fire Marshal.

No building permit may be issued by the municipal authority having jurisdiction to issue these permits unless the Office of the State Fire Marshal approves the plans and certifies that the facility covered by the mandatory plan review meets the standards of construction required by this section; if, however, no decision is rendered within 2 weeks of submission to the Office of the State Fire Marshal, the builder may submit the building permit request directly to the municipality with an attestation that the plans meet the standards of construction.

If officials of the municipality in which the facility is constructed, renovated, remodeled or enlarged inspect buildings for compliance with construction standards, that inspection must include an inspection for compliance

with the certified plans. The municipal officials shall require that the facility be inspected for compliance with construction standards before the municipal officials permit the facility to be occupied.

8. Voluntary plan review. Builders of facilities not governed by subsection 7 may submit plans to the Office of the State Fire Marshal to ensure that the plans meet the standards of construction required by subsection 3. Fees for this review may be assessed by the Office of the State Fire Marshal.

9. Waivers; variance. Builders of facilities governed by subsection 7 may file a petition with the State Fire Marshal requesting a waiver or variance of the standards of construction. If the representative of the Office of the State Fire Marshal determines in cases covered by mandatory plan review that compliance with this section and its rules is not technologically feasible or would result in excessive and unreasonable costs without any substantial benefit to persons with physical disability, the State Fire Marshal may provide for modification of, or substitution for, these standards. In all petitions for variance or waiver, the burden of proof is on the party requesting a variance or waiver to justify its allowance.

Requests for waivers or variances for buildings covered by mandatory plan review are heard by a designee of the Office of the State Fire Marshal. A decision must be provided in writing to the party requesting the waiver or variance.

10. Appeals. Decisions of the State Fire Marshal on requests for waivers or variances in cases covered by mandatory plan review are subject to review in Superior Court upon petition of the aggrieved party within 30 days after the issuance of the decision for which review is sought. The court may enter an order enforcing, modifying or setting aside the decision of the State Fire Marshal, or it may remand the proceeding to the State Fire Marshal for such further action as the court may direct.

11. Report. The commission shall report to the joint standing committee of the Legislature having jurisdiction over judiciary matters by March 1992, regarding the effectiveness of efforts to provide technical assistance and compliance with the standards set forth in this section requiring accessibility by persons subject to this section. The commission shall submit a copy of the report to the Executive Director of the Legislative Council.

§4594-E. Waivers for existing buildings (REPEALED)

§4594-F. Access to places of public accommodation and commercial facilities; standards

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Alteration" means a change to a place of public accommodation or a commercial facility that affects or could affect the usability of the building or facility or any part of the building or facility, including, but not limited to, reconstruction, remodeling, rehabilitation, historic restoration, changes or rearrangement in structural parts or elements and changes or rearrangement in the plan configuration of walls and full-height partitions.

B. "Builder" means the applicant for a building permit in a municipality that requires such permits or the owner of a property in a municipality that does not require building permits.

C. [1997, c. 630, §1 (rp).]

D. "Facility" means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots or other real or personal property, including the site where the building, property, structure or equipment is located.

E. "Historic preservation programs" means programs conducted by a public or private entity that have preservation of historic properties as a primary purpose.

F. "Historic properties" means those properties that are listed or eligible for listing in the National Register of Historic Places or the State of Maine Register of Historic Places.

G. "Maximum extent feasible" applies to the occasional case when the nature of an existing facility makes it virtually impossible to comply fully with applicable accessibility standards through a planned alteration. In these circumstances, the alteration must provide the maximum physical accessibility feasible. Any altered features of the facility that can be made accessible must be made accessible. If providing accessibility in conformance with this section to individuals with certain disabilities would not be feasible, the facility must be made accessible to persons with other types of disabilities.

H. "New construction" includes, but is not limited to, the design and construction of facilities for first occupancy

after January 1, 1996 or an alteration affecting at least 80% of the space of the internal structure of facilities after January 1, 1996.

I. "Readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include:

- (1) The nature and cost of the action needed under this subchapter;
- (2) The overall financial resources of the facility or facilities involved in the action, the number of persons employed at the facility, the effect on expenses and resources or other impacts of the action on the operation of the facility;
- (3) The overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of its employees and the number, type and location of its facilities; and
- (4) The type of operation or operations of the covered entity, including the composition, structure and functions of the entity's work force, the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the covered entity.

J. "Standards of construction" means the standards set forth in the federal Americans with Disabilities Act Accessibility Guidelines, "ADAAG," standards. The ADAAG standards of construction replace ANSI standards and provide the architectural standards of construction.

2. Facilities attested. This section applies to any building or facility constructed specifically as a place of public accommodation or place of employment on or after January 1, 1996 or to any alterations of an existing place of public accommodation or place of employment when the alteration is begun after January 1, 1996.

3. Application. Facilities subject to this section must meet the following standards.

A. Places of employment or public accommodation and additions to those places constructed on or after January 1, 1996, must meet the standards of construction, including, but not limited to, the 5 parts of construction in paragraph B, subparagraph (2).

B. Alterations are governed by the following.

(1) Any alteration to a place of public accommodation, commercial facility or place of employment on or after January 1, 1996 must be made so as to ensure that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. If existing elements, spaces or common areas are altered, then each altered element, space or area must comply with the applicable provisions of the standards of construction.

(2) This subparagraph applies to only buildings remodeled or renovated or to any alterations if the estimated total costs for remodeling or renovating or for alterations to an existing building exceed \$100,000.

(a) Except for repairs undertaken in accordance with the rules adopted pursuant to subsection 4, when the proposed alteration substantially affects that portion of the building normally accessible to the public, a place of employment or public accommodation altered on or after January 1, 1996 must meet the following 5 parts of the standards of construction or as otherwise indicated:

(i) 4.3 accessible routes;

(ii) 4.13 doors;

(iii) Tactile warnings on doors to hazardous areas. Doors that lead to areas that might prove dangerous to a blind person, for example, doors to loading platforms, boiler rooms, stages and the like, must be made identifiable to the touch by a textured surface on the door handle, knob, pull or other operating hardware. This textured surface may be made by knurling or roughening or by a material applied to the contact surface. Textured surfaces may not be provided for emergency exit doors or any doors other than those to hazardous areas;

(iv) Parking spaces for use by persons with physical disabilities pursuant to 4.1.2 of the standards of construction; and

(v) 4.17 toilet stalls, at least one of which must be a standard toilet stall configuration pursuant to ADAAG figure 30(a). Any additional toilet stalls within the same toilet room may be either standard stall configuration, ADAAG figure 30(a) or alternate stall configuration ADAAG figure 30(b).

(b) In addition to the 5 parts of the standards of construction specified in division (a), each of which must be met regardless of the cost of the 5 parts of the standards, when the entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the

alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones and drinking fountains serving the altered area are readily accessible to and usable by individuals with disabilities where such alterations to the path of travel or the bathrooms, telephones and drinking fountains serving the altered area to the extent that the costs to provide an accessible path of travel do not exceed 20% of the cost of the alteration to the primary function area.

If the cost to provide an accessible path of travel to the altered area exceeds 20% of the costs of the alteration to the primary function area, the path of travel must be made accessible to the extent that it can be made accessible without incurring disproportionate costs.

In determining whether the 20% cost figure has been met, the following analysis must be used. The analysis must include an evaluation of whether the following elements of access have been provided, using the following order of priority, before costing 20%, regardless of other elements of access that may have been provided which may affect the path of travel:

- (i) An accessible entrance;
- (ii) An accessible route to the altered area;
- (iii) At least one accessible restroom for each sex or a single unisex restroom;
- (iv) Accessible telephones;
- (v) Accessible drinking fountains; and
- (vi) When possible, additional accessible elements such as parking, storage and alarms.

The obligation to provide an accessible path of travel may not be evaded by performing a series of small alterations to the area served by a single path of travel if those alterations could have been performed as a single undertaking.

(3) This subparagraph applies to only buildings remodeled or renovated or to any alterations if the estimated total costs for remodeling or renovating or for alterations to an existing building do not exceed \$100,000. When the entity is undertaking an alteration that affects or could affect usability or access to an area of the facility containing a primary function, the entity shall make the alterations in a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones and drinking fountains serving the altered area are readily accessible to and usable by individuals with disabilities, where the alterations to the path of travel or the bathrooms, telephones and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope.

C. This subsection may not be construed to require the installation of an elevator for a facility that is less than 3 stories in height or has less than 3,000 square feet per story unless the facility is a shopping center, a shopping mall, the professional office of a health care provider, a terminal, depot or other station used for specified public transportation or an airport passenger terminal or a facility covered by Title II of the Americans with Disabilities Act or unless the United States Attorney General determines that a particular category of facility requires the installation of elevators based on the usage of the facility.

4. Curb ramps. Curb ramps or other slopes are required in the following situations.

A. Newly constructed or altered streets, roads and highways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street-level pedestrian walkway.

B. Newly constructed or altered street-level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads or highways.

5. Rules. The commission shall adopt, alter and amend rules designed to make facilities under this section accessible to, functional for and safe for use by persons with physical or mental disabilities in accordance with subsections 3 and 4 and shall adopt, alter and amend rules designed to enforce this section. The commission may repeal only those rules contrary to this chapter. The commission shall also adopt rules concerning procedures and requirements for alterations that will threaten or destroy the historic significance of qualified historic buildings and facilities as defined in 4.1.7(1) and (2) of the Uniform Federal Accessibility Standards, maintaining, at a minimum, the procedures and requirements established in 4.1.7(1) and (2) of the Uniform Federal Accessibility Standards.

6. Barrier-free certification; inspection. If the costs of construction or alterations are at least \$50,000, the builder of a facility to which this section applies must obtain a certification from an architect, professional engineer, certified interior designer or landscape architect who is licensed, certified or registered to practice under Title 32 and is practicing within the scope of that individual's profession that the plans meet the standards of construction

required by this section. The builder shall provide the certification to the Office of the State Fire Marshal with the plans of the facility. The builder shall also provide the certification to the municipality where the facility exists or will be built. Nothing in this section may be construed to change the scope of practice of any individual licensed, certified or registered to practice under Title 32.

7. Training, education and assistance. The commission and the Office of the State Fire Marshal, with input from organizations representing individuals with disabilities, shall develop, as necessary, information packets, lectures, seminars and educational forums on barrier-free design for the purpose of increasing the awareness and knowledge of owners, architects, professional engineers, certified interior designers, landscape architects, code enforcers, building contractors, individuals with disabilities and other interested parties.

8. Mandatory plan review; certification; inspection. Builders of newly constructed public buildings shall submit plans to the Office of the State Fire Marshal to ensure that the plans meet the standards of construction required by subsections 3 and 4.

A. For purposes of this subsection, "public building" means any building or structure constructed, operated or maintained for use by the general public, including, but not limited to, all buildings or portions of buildings used for:

- (1) State, municipal or county purposes;
- (2) Education;
- (3) Health care;
- (4) Public assembly;
- (5) A hotel, motel or inn;
- (6) A restaurant;
- (7) Business occupancy; or
- (8) Mercantile establishments occupying more than 3000 square feet.

B. The municipal authority having jurisdiction to issue building permits may not issue a building permit unless the Office of the State Fire Marshal approves the plans and certifies that the public building covered by this subsection meets the standards of construction required by this section. If no decision is rendered within 2 weeks of submission to the Office of the State Fire Marshal, the builder may submit the building permit request directly to the municipality with an attestation from an architect or professional engineer licensed or registered to practice under Title 32 that the plans meet the standards of construction.

C. If officials of the municipality in which a restaurant; motel; hotel; inn; state; municipal or county building; or an elementary or secondary school covered by this subsection is constructed, renovated, remodeled or enlarged inspect buildings for compliance with construction standards, that inspection must include an inspection for compliance with the certified plans. The municipal officials shall require that a facility covered by this paragraph be inspected for compliance with construction standards before the municipal officials permit a facility covered by this paragraph to be occupied.

9. Voluntary plan review. Builders of facilities not governed by subsection 8 may submit plans to the Office of the State Fire Marshal to ensure that the plans meet the standards of construction required by subsections 3 and 4. Certification for a voluntary plan review may be provided by an architect, professional engineer, certified interior designer or landscape architect licensed, certified or registered to practice under Title 32 and practicing within the scope of that individual's profession.

10. Waivers; variance. Builders of facilities governed by subsection 8 that are private entities, when the facilities are not to be owned or operated by, or leased to or by, a public entity, may file a petition with the State Fire Marshal requesting a waiver or variance of the standards of construction. If a representative of the Office of the State Fire Marshal determines, in cases covered by mandatory plan review pursuant to subsection 8, that compliance with this section and its rules is structurally impracticable, the State Fire Marshal may provide for modification of, or substitution for, these standards. In all petitions for variance or waiver, the burden of proof is on the party requesting the variance or waiver to justify its allowance.

11. Appeals relating to mandatory plan reviews. Decisions of the State Fire Marshal on requests for waivers or variances in cases covered by mandatory plan review under subsection 8 are subject to review in Superior Court

upon petition of the aggrieved party within 30 days after the issuance of the decision for which review is sought. The court may enter an order enforcing, modifying or setting aside the decision of the State Fire Marshal, or it may remand the proceeding to the State Fire Marshal for further action as the court may direct.

12. Fees. The Office of the State Fire Marshal shall establish fees for reviews, waivers or variances under this section. The Office of the State Fire Marshal shall pay all fees to the Treasurer of State to be used to carry out this chapter. Any balance of these fees does not lapse but is carried forward as a continuing account to be expended for the same purposes in the following fiscal years.

Subchapter 5-B: EDUCATIONAL OPPORTUNITY (HEADING: PL 1983, c. 578, §3 (new))

§4601. Right to freedom from discrimination in education

The opportunity for an individual at an educational institution to participate in all educational, counseling and vocational guidance programs and all apprenticeship and on-the-job training programs without discrimination because of sex, sexual orientation, a physical or mental disability, national origin or race is recognized and declared to be a civil right.

Chapter 255: SAFETY GLAZING

Title 25 MRSA § 2051. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings.

1. Hazardous locations. "Hazardous locations" means those installations, glazed or to be glazed in commercial and public buildings, known as framed or unframed glass entrance doors; and those installations, glazed or to be glazed in residential buildings and other structures used as dwellings, commercial buildings and public buildings, known as sliding glass doors, storm doors, shower doors, bathtub enclosures and fixed glazed panels adjacent to entrance and exit doors which because of their location present a barrier in the normal path traveled by persons going into or out of these buildings, and because of their size and design may be mistaken as means of ingress or egress; and any other installation, glazed or to be glazed, wherein the use of other than safety glazing materials would constitute an unreasonable hazard as the Commissioner of Public Safety may determine after notice and hearings, whether or not the glazing in such doors, panels, enclosures and other installations is transparent.

2. Safety glazing material. "Safety glazing material" means any glazing material, such as tempered glass, laminated glass, wire glass or rigid plastic, which meets the test requirements of the then current ANSI Standard Z97.1 and such further requirements as may be adopted by the Department of Public Safety after notice and hearing and which are so constructed, treated or combined with other materials as to minimize the likelihood of cutting and piercing injuries resulting from human contact with the glazing material.

§2052. Labeling required

Each light of safety glazing material manufactured, distributed, imported or sold for use in hazardous locations or installed in such a location within the State of Maine shall be permanently labeled by such means as etching, sandblasting, firing of ceramic material on the safety glazing material or by other suitable means. The label shall identify the labeler, whether manufacturer, fabricator or installer, and the nominal thickness and the type of safety glazing material and the fact that said material meets the test requirements of ANSI Standard Z-97.1-1966 and such further requirements as may be adopted by the Department of Public Safety.

The label must be legible and visible after installation.

Such safety glazing labeling shall not be used on other than safety glazing materials.

§2053. Safety glazing materials required

It shall be unlawful within the State of Maine to knowingly sell, fabricate, assemble, glaze, install, consent or cause to be installed glazing materials other than safety glazing materials in, or for use in, any hazardous location. This section shall apply only to new construction contracted for, or to replacement of glass in place, after January 1, 1974.

§2054. Employees not covered

No liability under this chapter shall be created as to workmen who are employees of a contractor, subcontractor or other employer responsible for compliance with this chapter.

§2055. Penalty

A person who violates this chapter commits a Class E crime. Except as otherwise specifically provided, violation of this chapter is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

§2056. Local ordinances

This chapter shall supersede any local, municipal or county ordinance or parts thereof relating to the subject matter.

Chapter 219: INSULATION CONTRACTORS

Title 10 MRSA §1481. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings.

- 1. Insulation.** "Insulation" means any material, including, but not limited to, mineral wool, cellulose fibre, vermiculite and perlite, and foams to reduce heat flow between the interior and exterior surfaces of a building.
- 2. Person.** "Person" means an individual, a copartnership, corporation or any other legal entity.
- 3. Residence or residential.** "Residence" or "residential" shall mean any existing dwelling structure with 3 or less living units whether leased or owner occupied. Except as provided in this subsection, buildings used for commercial or business purposes shall not be subject to the provisions of this chapter.
- 4. Resistance factor.** "Resistance factor" shall have the same meaning as "thermal resistance," as defined in the ASHRAE Handbook of Fundamentals.

§1482. Residential insulation contract

No person shall install insulation in any existing residence for compensation without providing the owner or lessee in advance with a written contract which shall include, but not be limited to, the following provisions which shall be clearly and conspicuously disclosed in the contract:

- 1. Resistance factor.** The resistance factor of the insulation per inch and the thickness in inches to be installed;
- 2. Type of insulation.** The type of insulation to be installed;
- 3. Area covered.** An estimate of the square footage of area to be covered;
- 4. Degree of flammability.** The degree of flammability of the insulation;
- 5. Method of installation.** The method of installation to be used;
- 6. Type of ventilation.** The type of ventilation to be installed. If no ventilation is to be installed, the contract shall so state;
- 7. Guarantee against settling.** Whether the installed insulation is guaranteed against settling and, if so, for how long and to what degree; if not, the contract shall so state;
- 8. Type of vapor barrier.** The type of vapor barrier to be installed. If no vapor barrier is to be installed, the contract shall so state;
- 9. Areas to be insulated.** The areas of the dwelling to be insulated;
- 10. Changes required.** Any construction, reconstruction or structural changes required to install the insulation;
- 11. Work following insulation.** Any restoration, finishing or cleanup work to be performed following the installation of insulation;
- 12. Provisions of warranties.** The provisions of all warranties;
- 13. Names.** The name, business address and owner of the firm providing the goods and services provided herein; and
- 14. Use of urea formaldehyde insulation.** If urea formaldehyde insulation is to be installed, the following information:
 - A. A warning that urea formaldehyde may cause the occupants to experience harmful side effects, including respiratory problems, dizziness, nausea, eye and throat irritations and cancer;
 - B. Disclosure that allergic symptoms may develop anywhere from a few days to more than 6 months after

installation; and

C. Disclosure whether the contractor will take corrective action if an allergic reaction develops.

§1483. Civil forfeiture; Unfair Trade Practices Act violation

Any person who fails to provide the owner or tenant with an insulation contract, containing at least the minimum information required by section 1482, prior to this installation of insulation into an existing residence shall be deemed to have committed a civil violation for which a forfeiture of not less than \$200 for the first offense and not less than \$500 for each subsequent offense shall be adjudged. In addition to the civil penalty provided in this section, any violation of this chapter shall constitute a violation of the Unfair Trade Practices Act in Title 5, chapter 10.

§1484. Exemption

This chapter shall not apply to any person who provides to the owner or the lessee of a residence the labor or material for installing insulation in that residence if that person is not primarily engaged in the business of installing insulation and if that person does not advertise, solicit or hold himself out as one who installs insulation. For the purposes of this section, the term "not primarily engaged in the business of installing insulation" means having gross receipts for the installation of insulation which do not exceed either \$2,500 for all labor or \$4,500 for all materials in any one calendar year.

§1485. Development of insulation fact sheet (REPEALED)

Chapter 219-A: HOME CONSTRUCTION CONTRACTS (HEADING: PL 1987, c. 574 (new))

Title 10 MRSA §1486. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Change orders. "Change orders" means a written amendment to the home construction contract which becomes part of and is in conformance with the existing contract.

2. Down payment. "Down payment" means all payments to a home construction contractor prior to or contemporaneous with the execution of the home construction contract.

3. Materials. "Materials" means all supplies which are used to construct, alter or repair a residence.

4. Home construction contract. "Home construction contract" means a contract to build, remodel or repair a residence, including not only structural work but also electrical, plumbing and heating work; carpeting; window replacements; and other nonstructural work.

5. Residence. "Residence" means a dwelling with 3 or fewer living units and garages, if any. Buildings used for commercial or business purposes are not subject to this chapter.

§1487. Home construction contracts

Any home construction contract for more than \$3,000 in materials or labor must be in writing and must be signed by both the home construction contractor and the homeowner or lessee. Both the contractor and the homeowner or lessee must receive a copy of the executed contract prior to any work performance. This basic contract must contain the entire agreement between the homeowner or lessee and the home construction contractor and must contain at least the following parts: [2003, c. 85, §1 (amd) .]

1. Names of parties. The name, address and phone number of both the home construction contractor and the homeowner or lessee;

2. Location. The location of the property upon which the construction work is to be done;

3. Work dates. Both the estimated date of commencement of work and the estimated date when the work will be substantially completed. The estimated date of commencement of work and the completion date may be changed if work can not begin or end due to circumstances beyond the control of the contractor, including, but not limited to, the lack of readiness of the job site or the unavailability of building materials;

4. Contract price. The total contract price, including all costs to be incurred in the proper performance of the work, or, if the work is priced according to a "cost-plus" formula, the agreed-upon price and an estimate of the cost of labor and materials;

5. Payment. The method of payment, with the initial down payment being limited to no more than 1/3 of the total contract price;

6. Description of the work. A general description of the work and materials to be used;

7. Warranty. A warranty statement which reads:

"In addition to any additional warranties agreed to by the parties, the contractor warrants that the work will be free from faulty materials; constructed according to the standards of the building code applicable for this location; constructed in a skillful manner and fit for habitation or appropriate use. The warranty rights and remedies set forth in the Maine Uniform Commercial Code apply to this contract";

8. Resolution of disputes. A statement allowing the parties the option to adopt one of 3 methods of resolving contract disputes. At a minimum, this statement must provide the following information:

"If a dispute arises concerning the provisions of this contract or the performance by the parties, then the parties agree to settle this dispute by jointly paying for one of the following (check only one):

(1) Binding arbitration as regulated by the Maine Uniform Arbitration Act, with the parties agreeing to accept as final the arbitrator's decision ();

(2) Nonbinding arbitration, with the parties free to not accept the arbitrator's decision and to seek satisfaction through other means, including a lawsuit (); or

(3) Mediation, with the parties agreeing to enter into good faith negotiations through a neutral mediator in order to attempt to resolve their differences ();

9. Change orders. A change order statement which reads:

"Any alteration or deviation from the above contractual specifications that results in a revision of the contract price will be executed only upon the parties entering into a written change order";

10. Door-to-door sales. If the contract is being used for sales regulated by the consumer solicitation sales law, Title 32, chapter 69, subchapter V or the home solicitation sales law, Title 9-A, Part 5, a description of the consumer's rights to avoid the contract, as set forth in these laws;

11. Residential insulation. If the construction includes installation of insulation in an existing residence, any disclosures required by chapter 219, Insulation Contractors;

12. Energy standards. A statement by the contractor that chapter 214 establishes minimum energy efficiency building standards for new residential construction, and whether the new building or an addition to an existing building will meet or exceed those standards;

13. Consumer protection information. As an addendum to the contract, a copy of the Attorney General's consumer protection information on home construction and repair, which includes information on contractors successfully sued by the State, as provided on the Attorney General's publicly accessible website; and

14. Attorney General's publicly accessible website. A clear and conspicuous notice that states that consumers are strongly advised to visit the Attorney General's publicly accessible website to gather current information on how to enforce their rights when constructing or repairing their homes, as well as the Attorney General's publicly accessible website address and telephone number.

§1488. Change orders

Each change order to a home construction contract must be in writing and becomes a part of and is in conformance with the existing contract. All work shall be performed under the same terms and conditions as specified in the original contract unless otherwise stipulated. The change order must detail all changes to the original contract that result in a revision of the contract price. The previous contract price must be stated and the revised price shall also be stated. Both parties must sign the change order.

§1489. Exemption

Parties to a home construction contract may exempt themselves from the requirements of this chapter only if the contractor specifically informs the homeowner or lessee of his rights under this chapter and the parties then mutually agree to a contract or change order that does not contain the parts set forth in sections 1487 and 1488.

§1490. Penalties

1. Violation. Any violation of this chapter shall constitute prima facie evidence of a violation of the Unfair Trade Practices Act, Title 5, chapter 10.

2. Civil penalty. Each violation of this chapter constitutes a civil violation for which a forfeiture of not less than \$100 nor more than \$1,000 may be adjudged. No action may be brought for a civil violation under this subsection more than 2 years after the date of the occurrence of the violation. No home construction contractor may be held liable for a civil violation under this subsection if the contractor shows by a preponderance of the evidence that the violation was unintentional and a bona fide error, notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 31

SALE OF MOBILE AND MODULAR HOMES

This bulletin is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. It contains general and specific information of interest as well as interpretations and determinations by Maine Revenue Services regarding issues commonly faced by your business. Portions of the Sales and Use Tax Law referred to in this bulletin can be found at the end of the bulletin in Attachment #1. Also attached are applicable Sales and Use Tax Rules.

When a new mobile or modular home is sold, the sales or use tax applies only to the portion of the sale price that represents the cost of materials. No sales or use tax applies to sales of manufactured housing that has been permanently incorporated into real property by the seller; however, the tax does apply to the purchase of the housing in the form of tangible personal property by the person who incorporates it into real property. Sales of used mobile and modular homes are exempt from Maine sales or use tax.

1. DEFINITION OF MOBILE AND MODULAR HOMES

"Mobile and modular homes" includes any unit that falls within the definition of "manufactured housing" as set forth in the Manufactured Housing Act (10 MRS [Ae9001 et seq.](#)). Units described in paragraph A or C of 10 MRS [Ae9002\(7\)](#) are considered mobile homes. Units described in paragraph B of 10 MRS [Ae9002\(7\)](#) are considered modular homes. The definition of "manufactured housing" from the Manufactured Housing Act is included in Attachment #1.

"Mobile and modular homes" does not include units that are designed and constructed primarily for temporary living quarters for recreation, camping or travel.

2. SALE OF NEW MOBILE AND MODULAR HOMES

A sale of a new mobile home will ordinarily be considered a sale of tangible personal property. The seller of the mobile home should purchase the home exempt from tax by furnishing the supplier with a resale certificate as provided in Rule 301, and should collect tax from the customer when the home is sold.

Sales of new modular homes are considered sales of real property if the seller, or an employee or agent of the seller, does any more than deliver the home to the location of the customer. In that situation, the seller must pay sales tax when purchasing the home if the supplier is registered to collect Maine sales tax. If the supplier does not collect the sales tax, the seller is re-

sponsible for payment of use tax directly to the State. The sales or use tax paid by the seller represents a cost which would be considered in determining the sale price of the home, but should not be billed to the customer as a separate amount.

When the customer takes delivery of a modular home at the location of the seller, or when the seller delivers the home to the location of the customer but does not install or erect it, the sale is one of tangible personal property. The seller should buy tax-free and collect tax from the customer in the same way as when selling a mobile home.

3. SALE PRICE OF NEW MOBILE AND MODULAR HOMES

a. **New Mobile Homes.** All costs included in the sale price of a new mobile home other than the cost of materials are exempt from sales tax. If the cost of materials cannot be determined by the retailer, or if the cost of materials is less than 50% of the sale price, the retailer may not exempt more than 50% of the retail price.

b. **New Modular Homes Installed by the Manufacturer.** A sale of new modular housing installed on a foundation by the manufacturer prior to passage of title to the customer will be considered a sale of real property. The manufacturer, as the last purchaser of tangible personal property used in the construction of the real property, is liable for use tax based on the purchase price of materials used in the construction of the modular home.

c. **New Modular Homes Installed by the Seller.** A sale of new modular housing installed on a foundation by a seller who is not the manufacturer, prior to passage of title to the customer, will be considered a sale of real property. The seller, as the last purchaser of the home in the form of tangible personal property, is liable for use tax based on the cost of materials included in the purchase price of the modular home. If the cost of materials cannot be determined by the seller, or if the cost of materials is less than 50% of the sale price, the seller is liable for sales or use tax based on 50% of the purchase price of the modular home. Purchase by the seller of other materials incorporated into real property such as foundation work, steps, septic systems and similar items are subject to sales or use tax based on 100% of the sale price.

d. **New Modular Homes Installed by the Customer.** A sale of new modular housing installed on a foundation by the customer will be considered a sale of tangible personal property. If the seller is registered to collect Maine sales tax, the seller must collect tax from the customer based on the cost of materials included in the sale price of the home. If the cost of materials cannot be determined by the retailer, or if the cost of materials is less than 50% of the sale price, the retailer may not exempt more than 50% of the retail price. The sale price of a mobile or modular home includes furniture and appliances installed by the manufacturer of the mobile or modular home and any services that are a part of the sale.

4. EXEMPT SALES

a. **Sales to Government Agencies.** Sales made directly to the federal government, the State of Maine and political subdivisions of the State of Maine are exempt from sales tax. When making sales to government agencies, no evidence of exemption is required other than the invoice of the seller indicating a sale to an exempt governmental entity. Sales to other states or foreign countries or their sub-divisions are not exempt from Maine sales tax.

b. **Sales to Exempt Organizations.** The Maine Sales and Use Tax Law provides exemptions for sales to various organizations such as hospitals, schools, regularly organized churches or houses of religious worship and a number of other types of organizations. Organizations that qualify for exemption must obtain exemption certificates from Maine Revenue Services in accordance with Rule 302, and sales should be made tax-free to these organizations only when the purchaser furnishes a copy of its exemption certificate to the seller. The exemption does not apply to the clergy, staff or employees of exempt organizations.

c. **Refund of Purchase Price.** The sales tax does not apply to an allowance made upon the return of merchandise pursuant to warranty, or to the price of property returned by customers when the full purchase price is refunded. If a defective mobile or modular home or defective part is returned or replaced pursuant to a written or unwritten warranty, the amount refunded or applied toward the price of the replacement is not subject to tax. If a mobile or modular home is returned to the seller for any reason and the customer receives a refund of the full purchase price, the customer is also entitled to a refund of the sales tax.

d. **Sales Where Out-Of-State Delivery is Made by Dealer.** When a mobile or modular home is sold in Maine but delivered by the seller to the customer at a point outside the State of Maine, the Maine sales tax does not apply. The dealer must complete the "Affidavit of Exemption (to support out-of-state delivery)" (form ST-MV-36 - copy attached) and file this affidavit with the Dealer's Supplemental Sales Report (form ST-MV-8) on which the sale is reported. This affidavit must be signed by the person making delivery, not by the customer. It must be completed at the time of delivery. If the home is subsequently returned to Maine within twelve months from the date of purchase, the purchaser will become liable for use tax based on the original purchase price.

There is no exemption in the Maine Sales and Use Tax Law for the sale of a mobile or modular home to a customer who intends to remove it from Maine for use outside the State.

e. **Sales for Resale.** A retailer who sells mobile homes, or who sells modular homes as tangible personal property, should furnish the supplier with a resale certificate as provided in Rule 301. The certificate will enable the retailer to purchase tangible personal property for resale without payment of sales tax. Only one certificate need be filed with each supplier to cover subsequent purchases. However, the retailer must state to the

supplier whether the purchase is for resale or not and will be held responsible for the tax on any item purchased for resale but subsequently used by the retailer.

Purchasers who avoid payment of tax through deliberate misuse of resale certificates will be subject to prosecution.

Sales of modular homes to the consumer are ordinarily in the form of real property. A retailer who purchases modular homes that will be resold as real property must pay sales tax to the supplier as indicated above.

5. REPAIRS TO MOBILE HOMES BEING HELD FOR RESALE

Parts used to recondition a used mobile home in order to restore it to a salable condition, where the sale of the used mobile home will be in the form of tangible personal property, are not taxable when purchased by the retailer since they are purchased for resale. The retailer should furnish the supplier with a resale certificate as provided in Rule 301.

6. REPORTING SALES OF MOBILE AND MODULAR HOMES

In addition to the Sales and Use Tax Return (form ST-7), manufactured housing dealers are required to report their sales of mobile and modular homes on a "Dealer's Supplemental Sales Report" (form ST-MV-8), copies of which can be obtained from the Sales and Use Tax Section. Both taxable and exempt sales of mobile and modular homes must be reported.

7. RENTALS OF MOBILE AND MODULAR HOMES

Rentals of mobile and modular homes for use at the location of the lessee will be considered rentals of tangible personal property. The lessor is subject to sales or use tax based on the cost of the unit unless the rental qualifies as an interim rental of tangible personal property being held for resale and the lessor has filed a "Certificate of Election to Pay Tax on Interim Rental Receipts" (form ST-R-42) as provided in Rule 316, or unless the lease is such as to be deemed in lieu of purchase. For additional information about rentals of tangible personal property, please refer to Rule 316.

Rentals of mobile or modular homes at a location provided by the lessor are considered rentals of living quarters. Application of the Maine Sales and Use Tax Law to rentals of living quarters is discussed in detail in Sales and Use Tax Instruction Bulletin No. 32.

When a dealer has elected to file an interim rental certificate for the rental of a new mobile or modular home, the subsequent sale of the mobile or modular home will be considered a sale of a new mobile or modular home, and will be subject to all sales tax provisions applicable to new mobile or modular homes.

8. GENERAL INFORMATION REGARDING MOBILE HOME REGISTRATION

Maine manufactured housing dealers must provide their customers with a "Dealer's Certificate" showing either that the sales tax due on the home to be registered has been collected by the dealer, or that the sale of the home is not subject to tax. A properly completed "Dealer's Certificate" must be submitted by the customer to the Secretary of State as a prerequisite to any original registration. The Certificate must be signed by the dealer or an authorized representative, and the dealer's Seller's Registration Number must be indicated.

It is the responsibility of Maine manufactured housing dealers to collect and report the applicable sales tax on all retail sales made in this State, unless the purchaser qualifies for one of the tax exemptions discussed in Section 3 of this Bulletin. A Maine dealer does not have the option of allowing customers to pay the use tax directly to the Secretary of State at the time of registration, and the dealer will be held accountable for the tax on all taxable retail sales.

Application for registration of a mobile home purchased outside this State will be considered evidence of intent to use the mobile home in this State. The purchaser is required to pay the applicable tax to the Secretary of State or establish that no tax is due as a prerequisite to registration.

9. BUILDING PERMITS FOR MOBILE AND MODULAR HOMES

Any person applying for a permit to locate any form of new manufactured housing in Maine is required to show proof either that the home was purchased from a dealer registered to collect the Maine sales tax, or that Maine use tax has been paid directly to Maine Revenue Services. The city, town or plantation in which the home will be located may not allow the construction or location of new manufactured housing by anyone other than a dealer registered as a seller under the Maine Sales and Use Tax Law without either a bill of sale from a registered dealer or certification that the tax was paid to Maine Revenue Services. The permit is deemed to be not approved or valid until payment of the sales or use tax has been certified.

If the person siting the manufactured housing in the municipality needs to obtain a building permit in order to prepare the site for reception of the home before the home has actually been purchased, and consequently is unable to provide a bill of sale when applying for the building permit, a contract for a future sale of manufactured housing by a person registered to report Maine sales or use tax which otherwise meets the above requirements is sufficient evidence to allow issuance of a building permit by the municipality.

10. ADDITIONAL INFORMATION.

The information in this bulletin addresses some of the more common questions regarding the Sales and Use Tax Law faced by your business. It is not intended to be all inclusive. Requests for information on specific situations should be in writing, should contain full information as to the transaction in question and should be directed to the:

**MAINE REVENUE SERVICES
SALES, FUEL & SPECIAL TAX DIVISION**

**P.O. BOX 1065
AUGUSTA, ME 04332-1065
TEL: (207) 624-9693
TTY: (207) 287-4477**

The Department of Administrative and Financial Services does not discriminate on the basis of disability in admission, to access to, or operation of its programs, services or activities.

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ATTACHMENT #1
Excerpts taken from 36 M.R.S.A.

36 §1752. Definitions

The following words, terms and phrases when used in chapters 211 to 225 have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

10. Retailer. "Retailer" means any person who makes retail sales or who is required to register by section 1754-A or 1754-B or who is registered under section 1756.

11. Retail sale. "Retail sale" means any sale of tangible personal property in the ordinary course of business for any purpose other than for resale, except resale as a casual sale, in the form of tangible personal property. "Retail sale" also means any sale of a taxable service in the ordinary course of business for any purpose other than for resale, except resale as a casual sale.

13. Sale. "Sale" means any transfer, exchange or barter, in any manner or by any means whatsoever, for a consideration and includes leases and contracts payable by rental or license fees for the right of possession and use, but only when such leases and contracts are deemed by the State Tax Assessor to be in lieu of purchase.

14. Sale price. "Sale price" means the total amount of a retail sale valued in money, whether received in money or otherwise.

A. "Sale price" includes:

- (1) Services which are a part of a retail sale; and
- (2) All receipts, cash, credits and property of any kind or nature and any amount for which credit is allowed by the seller to the purchaser, without any deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses or any other expenses.

B. "Sale price" does not include:

- (1) Discounts allowed and taken on sales;
- (2) Allowances in cash or by credit made upon the return of merchandise or with respect to fabrication services pursuant to warranty;
- (3) The price of property returned or fabrication services rejected by customers, when the full price is refunded either in cash or by credit;
- (4) The price received for labor or services used in installing or applying or repairing the property sold or fabricated, if separately charged or stated;

17. Tangible personal property. "Tangible personal property" means personal property which may be seen, weighed, measured, felt, touched or in any other manner perceived by the senses, but does not include rights and credits, insurance policies, bills of exchange, stocks and bonds and similar evidences of indebtedness or ownership. "Tangible personal property" includes electricity.

36 §1758. Tax on interim rental of property purchased for resale

Every person making a purchase for resale or use in this State and other than at casual sale of any article of tangible personal property as to which no sales tax has been paid pursuant to chapters 211 to 225 and renting it to another in this State shall be liable for a use tax thereon as provided in 1861 based on the purchase price thereof, unless such renting is while holding it for resale and unless within 30 days after first so renting it he certifies in writing to the Tax Assessor on a form prescribed and furnished by the Tax Assessor that such article was purchased by him for resale. A tax is imposed at the same rate as that provided in the case of sales taxes by 1811 upon all rentals received by such person for use of the article covered by such certification; and if such person thereafter makes any use of, or disposes of, such article other than by renting it to others or by making a sale thereof which is subject to a sales tax or by holding it for such sale, he shall be liable for a use tax thereon as provided in section 1861 based on the purchase price paid therefor by him less the aggregate amount of tax paid pursuant to this section on the rentals thereof. The tax on rentals imposed by this section shall be subject to 1812 and all other pertinent provisions of chapters 211 to 225 and for the purposes thereof shall be treated the same as the sales tax imposed by 1811 with the rentor deemed to be the retailer, the rentals deemed to be the sale price, and the rentee deemed to be the purchaser and consumer. Any certification under this section shall cover one article only with its attachments and accompanying accessories, if any. The term "renting" as used in this section shall include renting, letting, leasing and chartering and the term "rentals" as used in this section shall include any receipts derived from the use of any such article covered by any such certification.

36 §1760. Exemptions

No tax on sales, storage or use shall be collected upon or in connection with:

40. Mobile and modular homes. Sales of mobile or modular homes includes:

A. Used mobile and modular homes; and

B. New mobile and modular homes. Exemption is limited to all costs, other than materials, included in the sale price, but not to exceed 50% of the sale price.

36 §1952-B. Manufactured housing

The tax imposed by chapters 211 to 225 on the sale or use of any type of manufactured housing, as defined in Title 30-A, section 4358, subsection 1, paragraph A, except when the dealer has collected the tax in full, must be paid by the purchaser to the State Tax Assessor. The State Tax Assessor shall provide a tax receipt to the purchaser, which, upon request by the municipal officials, assessors of a plantation or the Maine Land Use Regulation Commission, must be made available by the purchaser to certify that the tax imposed by chapters 211 to 225 has been paid, pursuant to Title 30-A, section 4358, subsection 4 or Title 30-A, section 7060, subsection 1, paragraph C.

A valid bill of sale from a dealer showing that the tax has been collected in full serves to certify that the tax imposed by chapters 211 to 225 has been paid, pursuant to Title 30-A, section 4358, subsection 4, or Title 30-A, section 7060, subsection 1, paragraph C, in lieu of a tax receipt provided by the State Tax Assessor.

Relevant Rules:

- #301 - Sales for Resale and Sales of Packaging Materials
- #302 - Government Agencies, Exempt Organizations and Sales Thereto
- #304 - Reports and Payment
- #305 - Retailers' Records
- #316 - Rental of Tangible Personal Property

Chapter 91: NUISANCES

Subchapter 4: DANGEROUS BUILDINGS

Title 17 M.R.S.A § 2851. Dangerous buildings

Whenever the municipal officers in the case of a municipality, or the county commissioners in the case of the unorganized or deorganized areas in their county, find that a building or structure or any portion thereof or any wharf, pier, pilings or any portion thereof that is or was located on or extending from land within the boundaries of the municipality or the unorganized or deorganized area, as measured from low water mark, is structurally unsafe; unstable; unsanitary; constitutes a fire hazard; is unsuitable or improper for the use or occupancy to which it is put; constitutes a hazard to health or safety because of inadequate maintenance, dilapidation, obsolescence or abandonment; or is otherwise dangerous to life or property, they may after notice and hearing on this matter adjudge the same to be a nuisance or dangerous and may make and record an order prescribing what disposal must be made of that building or structure.

1. Notice. The notice must be served on the owner and all parties in interest, as defined in Title 14, section 6321, in the same way service of process is made in accordance with the Maine Rules of Civil Procedure.

2. Notice; how published. When the name or address of any owner or co-owner is unknown or is not ascertainable with reasonable diligence, then the notice must be published once a week for 3 successive weeks prior to the date of hearing in a newspaper generally circulated in the county, or if none, in the state paper.

3. Order. The order made by the municipal officers or county commissioners must be recorded by the municipal or county clerk, who shall cause an attested copy to be served upon the owner and all parties in interest in the same way service of process is made in accordance with the Maine Rules of Civil Procedure. If the name or address cannot be ascertained, the clerk shall publish a copy of the order in the same manner as provided for notice in subsection 2.

4. Proceedings in Superior Court. In addition to proceedings before the municipal officers or the county commissioners, the municipality or the county may seek an order of demolition by filing a complaint in the Superior Court situated in the county where the structure is located. The complaint must identify the location of the property and set forth the reasons why the municipality or the county seeks its removal. Service of the complaint must be made upon the owner and parties-in-interest in accordance with the Maine Rules of Civil Procedure. After hearing before the court sitting without a jury, the court shall issue an appropriate order and, if it requires removal of the structure, it shall award costs as authorized by this subchapter to the municipality or the county. Appeal from a decision of the Superior Court is to the law court in accordance with the Maine Rules of Civil Procedure.

§2852. Appeal; hearing

An appeal from a decision of the municipal officers or county commissioners must be to the Superior Court, pursuant to the provisions of the Maine Rules of Civil Procedure, Rule 80B.

§2853. Municipal officers may order nuisance abated

If no appeal is filed, the municipal officers of such municipality shall cause said nuisance to be abated or removed in compliance with their order, and all expenses thereof shall be repaid to the municipality by the owner or co-owner within 30 days after demand or a special tax may be assessed by the assessors against the land on which said building was located for the amount of such expenses and such amount shall be included in the next annual warrant to the tax collector of said town for collection, and shall be collected in the same manner as other state, county and municipal taxes are collected.

In the case of any claim for expenses incurred in the abatement or removal of any wharf, pier, pilings or any portion thereof which extends beyond the low water mark, the special tax authorized by this section shall apply to the land from which such wharf, pier or pilings extended or to which they were adjacent, provided the owner of the land is also the owner of the said wharf, pier, pilings or portion thereof.

Expenses shall include, but not by way of limitation, the costs of title searches, location reports, service or process, costs of removal of the structure, any costs incurred in securing the structure, pending its removal, and all other costs incurred by the municipality which are reasonably related to the removal of the structure. In addition to levying a special tax, the municipality may recover its expenses, including its reasonable attorney's fees, by means of a civil action brought against the owner.

§2854. Costs (REPEALED)

§2855. Entry into force by town vote (REPEALED)

§2856. Securing dangerous structures

In addition to other proceedings authorized by this subchapter, a municipality shall have the right to secure structures which pose a serious threat to the public health and safety and to recover its expenses in so doing as provided in this subchapter. If a building is secured under this section, notice, in accordance with section 2851, subsection 1, shall be given. This notice need not be given before securing the structure if the threat to the public health and safety requires prompt action.

§2857. Recording of notice

The municipal clerk shall cause an attested copy of the notice to be recorded in the Registry of Deeds located within the county where the structure is situated. Recording of this notice shall be deemed to put any person claiming under the owner of a structure subject to proceedings under this subchapter on notice of the pendency of the proceedings.

§2858. Consent to removal

The owner and parties-in-interest of a dangerous structure may consent to its removal and to the recovery of the expenses incurred by a municipality by means of a special tax as set forth in this subchapter. Notices of the consent shall be recorded in the Registry of Deeds located in the county where the structure is situated.

§2859. Summary process

In cases involving an immediate and serious threat to the public health, safety or welfare, in addition to any other remedies, a municipality may obtain an order of demolition by summary process in Superior Court, in accordance with this section.

1. Commencement of action. A municipality, acting through its building inspector, code enforcement officer, fire chief or municipal officers, shall file a verified complaint setting forth such facts as would justify a conclusion that a building or structure is "dangerous," as that term is defined in section 2851; and shall state therein that the public health, safety or welfare requires the immediate removal of that building or structure.

2. Order of notice. Whenever a complaint is filed under this section, the justice before whom it is brought, acting ex parte, shall promptly issue an order:

- A. Requiring the owner and all parties-in-interest, as that term is defined in the statutes governing foreclosure by civil action, to appear and show cause why the building or structure should not be ordered demolished;
- B. Specifying the method of service of the order and the complaint;
- C. Setting a time and place for hearing the complaint, which shall be the earliest possible time but not be later than 10 days from the date of filing; and
- D. Fixing the time for filing an answer to the complaint if the court determines that an answer is required.

3. Enlargement of time; default. The court may for good cause shown enlarge the time for the hearing. If the owner or parties-in-interest, or any of them, fail to answer, if an answer is required, or fail to appear as directed, or to attend the hearing at the time appointed or as enlarged, the court shall order a default judgment to be entered with respect to the owner or parties-in-interest.

4. Hearing. After hearing, the court shall enter judgment. If the judgment requires removal of the building or structure, the court shall award costs to the municipality as authorized by this subchapter. The award of costs may be contested and damages sought in a separate action to the extent permitted by subsection 7.

5. Appeal. No judgment requiring demolition issued pursuant to this section may be appealed. The owner of a building or structure which is the subject of an order issued under this section, or a party-in-interest, may appeal the award of costs, if any, or seek damages for wrongful removal pursuant to subsection 7.

6. Stay. No judgment authorizing demolition may be stayed pending appeal, unless the court first determines that granting a stay would not pose a significant risk to the public health, safety or welfare.

7. Damages. Any complaint that either seeks damages for the wrongful removal of a building or structure or challenges the award of costs must be filed no later than 30 days from the date of the judgment or order that is the subject of the appeal. The damages that may be awarded for wrongful demolition are limited to the actual value of the structure at the time of its removal. The provisions of Title 14, section 7552 do not apply. If the municipality should prevail, the court may award it its costs in defending any appeal which may include, but are not limited to, reasonable attorney's fees.

Chapter 185: REGULATION OF CONSTRUCTION AND IMPROVEMENTS (HEADING: PL 1987, c. 737, Pt. A, §2 (new))

Subchapter 1: REGULATION OF BUILDINGS (HEADING: PL 1987, c. 737, Pt. A, §2 (new))

Title 30-A M.R.S.A. § 4101. Permits for buildings

This subchapter applies to any municipal ordinance requiring a permit in connection with:

1. Construction, demolition and alteration. The construction, demolition, improvement or alteration of any building;

2. Building maintenance and facilities. The maintenance, repair, use, change of use, safety features, light, ventilation and sanitation facilities of any building;

3. Sanitation and parking facilities for mobile homes and travel trailers. The sanitation and parking facilities for mobile homes, travel trailers intended to be used for human habitation and travel trailer parking facilities;

4. Building equipment. The installation, alteration, maintenance, repair and use of all equipment in or connected to all buildings; and

5. Buildings used for public assembly. The operation of a building which is used occasionally or regularly for public assembly.

A. As used in this subsection, "building used for public assembly" means a room or space in or on any structure which is used for the gathering of 100 or more persons for any purpose, and includes any connecting room or space on the same level, above or below, which has a common entrance.

This subchapter does not apply to a zoning ordinance as defined in section 4301, subsection 15-A or to a shoreland zoning ordinance adopted pursuant to Title 38, chapter 3, subchapter I, article 2-B.

§4102. Nuisance

Any building, structure, travel trailer parking facility or equipment existing in violation of an ordinance subject to this subchapter is a nuisance.

§4103. Permits

The provisions of this section apply to any ordinance described in section 4101.

1. Applicability. The provisions of the ordinance which pertain to buildings apply equally to all structures, including wharves, piers and pilings and parts of them.

2. Licensing authority. The building inspector is the licensing authority unless otherwise provided by the municipality.

3. Application; issuance of permit. An application for a permit must be in writing and shall be signed by the applicant and directed to the licensing authority. The failure of the licensing authority to issue a written notice of its decision, directed to the applicant, within 30 days from the date when the application is filed, constitutes a refusal of the permit.

A. The licensing authority may not issue any permit for a building or use for which the applicant is required to obtain a license under Title 38, section 413, until the applicant has obtained that license.

B. The licensing authority may not issue any permit for a building or use within a subdivision, as defined in section 4401, subsection 4, unless that subdivision has been approved in accordance with chapter 187, subchapter IV.

C. The licensing authority may not issue a permit for installation of a mobile home previously installed in another municipality until the mobile home owner provides proof of payment of all property taxes on that mobile home in the municipality where the home was formerly located.

D. The licensing authority may not issue a permit for a building or use for which the applicant is required to obtain a driveway or entrance or traffic movement permit under Title 23, section 704 or 704-A until the applicant has obtained that permit from the Department of Transportation.

4. Powers and duties of enforcement officers. Ordinances defining the duties of the building inspector and other enforcement officers, not contrary to Title 25, chapter 313, may be enacted under a municipality's home rule authority. All enforcement officers designated by ordinance shall be given free access at reasonable hours to all parts of buildings regulated by ordinance.

5. Appeal to municipal officers or board of appeals. An appeal may be taken from any order issued by the building inspector, or from the licensing authority's refusal to grant a permit, to the municipal officers or to a board of appeals established under section 2691. If a municipality has by ordinance required that all such appeals be taken to a board of appeals, the procedure shall be the same as in appeals directed to the municipal officers, unless the municipality has provided otherwise.

A. On an appeal in writing to the municipal officers, they shall at their next meeting affirm, modify or set aside the decision of the building inspector or licensing authority according to the terms of the pertinent ordinance.

(1) The municipal officers may permit a variance from the terms of an ordinance when necessary to avoid undue hardship, provided there is no substantial departure from the intent of the ordinance.

(2) The municipal officers may permit an exception to an ordinance only when the terms of the exception have been specifically set forth by the municipality.

B. The failure of the municipal officers to issue a written notice of their decision, directed to the appellant, within 30 days after the appeal is filed, constitutes a denial of the appeal.

6. Appeal to Superior Court. An appeal may be taken from the decision of the municipal officers or the board of appeals as provided in section 2691, subsection 3, paragraph G.

§4104. Public building violation; liability

1. Written order sent. The building inspector shall send a written order to the owner or lessee of a building used for public assembly requiring any conditions which exist in violation of an ordinance to be corrected within 30 days after the order is sent.

2. Liability. After the expiration of the 30-day period, the owner or lessee is absolutely liable for all injury caused by failure to correct any conditions cited in the order under subsection 1, and the building inspector shall order the building vacated.

Subchapter 2: REGULATION AND INSPECTION OF ELECTRICAL INSTALLATIONS (HEADING: PL 1987, c. 737, Pt. A, §2 (new))

Article 1: GENERAL PROVISIONS (HEADING: PL 1987, c. 737, Pt. A, §2 (new))

Title 30-A § 4151. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Electrical equipment. "Electrical equipment" means all electrical conductors, fittings, devices and fixtures.

2. Reasonably safe to persons and property. "Reasonably safe to persons and property," as applied to electrical installations and electrical equipment, means reasonably safe to use in the service for which the installation or equipment is intended without unnecessary hazard to life, limb or property.

§4152. Applicability of provisions

This subchapter applies to all installations of electrical equipment, made after August 6, 1949, within or on public and private buildings and premises, including mobile homes, with the following general exceptions which apply to all of this subchapter:

1. Under jurisdiction of certain commissions. Any person under the jurisdiction of the Public Utilities Commission of the State or of the Federal Communications Commission;

2. Public utilities. The electrical work and equipment employed in connection with the construction, installation, operation, repair or maintenance of any utility facility by a public utility, as defined in Title 35-A, section 102, or by a sewer district or sanitary district in providing its authorized service, or in any way incidental to providing that service;

3. Industrial or manufacturing plants. Any electrical equipment and work, including construction, installation, operation, maintenance and repair in or about industrial or manufacturing plants;

4. Other property of industrial or manufacturing plants. Any electrical equipment and work, including construction, installation, operation, maintenance and repair in, on or about other properties, equipment or buildings, residential or of any other kind, owned or controlled by the operators of industrial or manufacturing plants, if the work is done under the supervision of an electrical engineer employed by the operator;

5. Mines, transportation and sound equipment. The electrical work and equipment in mines, pipe line systems, ships, railway rolling stock or automotive equipment, or the operation of portable sound equipment;

6. Electrical equipment in manufacturer's plant. Any electrical installations or equipment involved in the manufacture, test or repair of electrical equipment in the manufacturer's plant; and

7. Certain laboratories. Installations in suitable laboratories of exposed electrical wiring for experimental purposes only.

§4153. Effect on bylaws or ordinances

Any bylaw or ordinance in effect in any municipality on August 6, 1949 is not affected in any way by this subchapter.

§4154. Penalties

Any person who violates this subchapter commits a civil violation for which a forfeiture of not less than \$25 nor more than \$1,000 for each offense may be adjudged.

Article 2: STANDARDS (HEADING: PL 1987, c. 737, Pt. A, §2 (new))

§4161. Standards; installation

All installations of electrical equipment must be reasonably safe to persons and property and must comply with the applicable laws of the State and all applicable ordinances, orders and regulations of any municipality, not in conflict with this subchapter.

Conformity of installations of electrical equipment with applicable regulations set forth in the National Electrical Code, National Electrical Safety Code or electrical provisions of other safety codes which have been approved by the American Standards Association is prima facie evidence that the installations are reasonably safe to persons and property.

1. Tests of special wiring. The Commissioner of Public Safety may authorize installations of special wiring to obtain field experience under controlled conditions in territory where electrical inspection is provided.

§4162. Standards; equipment

All electrical equipment installed or used must be reasonably safe to persons and property and must comply with the applicable laws of the State.

Conformity of electrical equipment with applicable standards of Underwriters' Laboratories, Inc. is prima facie evidence that the equipment is reasonably safe to persons and property.

1. Tests of special wiring. The Commissioner of Public Safety may authorize installations of special wiring to obtain field experience under controlled conditions in territory where electrical inspection is provided.

§4163. Standards of equipment in mobile homes

No person engaged in the business of selling mobile homes may sell any mobile home which contains electrical equipment that does not conform to the standards of the National Electrical Code and of the Underwriters' Laboratories, Inc.

§4171. Local inspectors

A municipality may provide by resolution or ordinance under its home rule authority for the inspection of electrical installations within the municipality and may appoint an electrical inspector who shall enforce this subchapter and any applicable resolution or ordinance within the inspector's jurisdiction. Any municipality may join with one or more other municipalities in paying for the services of an electrical inspector, provided the municipalities have authorized the appointment of the inspector. Any ordinance or resolution must state whether the electrical inspection in the municipality applies to all or any of the following:

1. **Original installations.** Original installations of electrical equipment;
2. **Alterations or additions.** Alteration or addition to existing electrical equipment; and
3. **Area of municipality.** All the territory of the municipality, or only the section or sections of the municipality that are described in the ordinance or resolution.

§4172. Inspections

The electrical inspectors shall examine and issue certificates of acceptance of electrical installations at the request or complaint of any owner, lessee, tenant or municipal officer. An electrical inspector may enter any building with the permission of any person having control of that building or may apply to a court for process to do so. If an electrical inspector finds any hazardous electrical installation, the inspector shall order the person having charge of that installation to have it corrected immediately. If that person refuses or neglects to do so, the inspector may apply to an appropriate court for injunctive relief.

§4173. Permits

A municipality which has provided for electrical inspections under this subchapter may require that no electrical equipment may be installed within or on any publicly or privately owned building, structure or premises, nor may any alteration or addition be made in any such existing equipment without first obtaining a permit for that installation or alteration from the electrical inspector.

1. **Minor repair work excluded.** This section does not apply to minor repair work, including, but not limited to:

- A. The replacement of fuses;
- B. The installation of additional outlets;
- C. The replacement of existing switches, sockets and lamps;
- D. Repairs to entrance service equipment; and
- E. Repairs or installation of radio and low voltage equipment.

2. **Application for permit.** The person performing the work must apply to the electrical inspector in writing for a permit. A general description of the electrical work to be done must be included with the application. If required by the electrical inspector, the applicant must file any plans, specifications and schedules that are necessary to determine whether the installation, as described, will comply with this subchapter.

3. **Issuance of permit.** The electrical inspector shall issue the permit if the applicant has:

- A. Complied with this subchapter; and
- B. Paid any fee established by a municipality for electrical inspections under this subchapter.

4. **Deviation from installation described in permit.** No major deviation may be made from the installation described in the permit without the written approval of the electrical inspector.

5. **Where permit is not required.** The installation or alteration of electrical equipment in municipalities which do not require a permit and in the unorganized territories is governed by Title 32, section 1102-B.

§4174. Inspection and certificates of approval

When the installation of any electrical equipment under a permit is completed, the person making the installation shall notify the electrical inspector having jurisdiction. The electrical inspector shall inspect the work within a reasonable time.

1. Approval of installation. If, upon inspection, the inspector finds that the installation complies with this subchapter, and all applicable local ordinances and regulations, the inspector shall issue a certificate of approval to the person making the installation.

2. Notice of defects. If, upon inspection, the inspector finds that the installation does not comply with this subchapter, and all applicable local ordinances and regulations, the inspector shall immediately send a written notice to the person making the installation stating the defects which were found to exist.

Subchapter 3: REGULATION AND INSPECTION OF PLUMBING (HEADING: PL 1987, c. 737, Pt. A, §2 (new))

Article 1: GENERAL PROVISIONS (HEADING: PL 1987, c. 737, Pt. A, §2 (new))

§4201. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Commissioner. "Commissioner" means the Commissioner of Health and Human Services.

2. Department. "Department" means the Department of Health and Human Services.

3. Plumbing. "Plumbing" means the installation, alteration or replacement of pipes, fixtures and other apparatus for bringing in potable water, removing waste water and the piping connections to heating systems using water. Except for the initial connection to a potable water supply and the final connection that discharges indirectly into a public sewer or waste water disposal system, the following are excluded from this definition:

- A. All piping, equipment or material used exclusively for manufacturing or industrial processes;
- B. The installation or alteration of automatic sprinkler systems used for fire protection and standpipes connected to automatic sprinkler systems or overhead;
- C. Building drains outside the foundation wall or structure;
- D. The replacement of fixtures with similar fixtures at the same location without any alteration of pipes; or
- E. The sealing of leaks within an existing line.

4. Seasonal dwelling. "Seasonal dwelling" means a dwelling which existed on December 31, 1981, and which was not used as a principal or year-round residence during the period from 1977 to 1981. Evidence of use as a principal or year-round residence includes, but is not limited to:

A. The listing of that dwelling as an occupant's legal residence for the purpose of:

- (1) Voting;
- (2) Filing a state tax return; or
- (3) Automobile registration; or

B. The occupancy of that dwelling for a period exceeding 7 months in any calendar year.

5. Subsurface waste water disposal system. "Subsurface waste water disposal system" means:

A. Any system for the disposal of waste or waste water on or beneath the surface of the earth including, but not limited to:

- (1) Septic tanks;
- (2) Drainage fields;
- (3) Grandfathered cesspools;
- (4) Holding tanks; or
- (5) Any other fixture, mechanism or apparatus used for those purposes; but

B. Does not include:

- (1) Any discharge system licensed under Title 38, section 414;
- (2) Any surface waste water disposal system; or
- (3) Any municipal or quasi-municipal sewer or waste water treatment system.

Article 2: REGULATIONS AND PERMITS (HEADING: PL 1987, c. 737, Pt. A, §2 (new))

§4211. Plumbing regulations

1. Municipal ordinances. Municipalities may enact ordinances under their home rule authority that are more restrictive than rules governing plumbing or subsurface wastewater disposal systems adopted by the Department of Professional and Financial Regulation and the Department of Health and Human Services, respectively. Either department may provide technical assistance to municipalities in the development of ordinances under this subchapter, pertaining to their respective rules. The municipality shall enforce any such ordinance.

2. State rules. A municipal ordinance may not be less restrictive than the rules of the department relating to subsurface wastewater disposal systems as adopted under Title 22, section 42. The rules of the department relating to all subsurface wastewater disposal systems have full force and effect, provided that, to the extent that a municipality has enacted more restrictive ordinances, the provisions of those ordinances prevail.

3. Subsurface waste water disposal system. No person may erect a structure that requires a subsurface waste water disposal system until documentation has been provided to the municipal officers that the disposal system can be constructed in compliance with rules adopted under Title 22, section 42, and this section.

A. For the purposes of this section, "expansion" means the enlargement or change in use of a structure using an existing subsurface waste water disposal system that brings the total structure into a classification that requires larger subsurface waste water disposal system components under rules adopted pursuant to Title 22, section 42, and this section.

B. No person may expand a structure using a subsurface waste water disposal system until documentation is provided to the municipal officers and a notice of the documentation is recorded in the appropriate registry of deeds that, in the event of a future malfunction of the system, the disposal system can be replaced and enlarged to comply with the rules adopted under Title 22, section 42, and any municipal ordinances governing subsurface waste water disposal systems. No requirement of these rules and ordinances may be waived for an expanded structure.

(1) The department shall prescribe the form of the notice to be recorded in the registry of deeds. The notice must include a site plan showing:

- (a) The exact location of the replacement system;
- (b) The approximate location of lot lines; and
- (c) The exact location of existing wells serving the lot on which the replacement system will be located and those located on abutting lots.

(2) The person seeking to expand a structure shall send copies of the notice by certified mail, return receipt requested, to all owners of abutting lots and to a public drinking water supplier if the lot with the structure that is being expanded is within its source water protection area.

(3) After the notice required by this paragraph is recorded, no abutting landowner may install a well on that landowner's property in a location which would prevent the installation of the replacement septic system. The owner of the lot on which the replacement system will be installed may not erect any structure on the proposed site of the replacement system or conduct any other activity which would prevent the use of the designated site for the replacement system.

4. Enforcement and penalty. Any person who violates this section shall be penalized in accordance with section 4506. The municipality or the department may seek to enjoin violations of this section.

5. Permit fees. The following permit fees may be charged.

- A. A plumbing permit fee of \$6 per internal fixture may be charged.
- B. [1999, c. 228, §3 (rp).]
- C. A minimum fee, not to exceed \$24, may be charged for all internal plumbing permits combined.
- D. A nonengineered subsurface wastewater disposal system fee not to exceed \$100 may be charged.

§4212. Department of Health and Human Services; responsibilities

1. Administration of rules. The department is responsible for ensuring the proper administration of the

subsurface wastewater disposal rules and permitting processes by municipalities. The department shall assist municipalities in complying with this subchapter and with section 3428.

2. Review. The department shall review the administration of subsurface wastewater disposal rules and laws in each municipality for compliance with this subchapter and with section 3428. This review must be made on a regular basis and may be made in response to a written complaint from any person as necessary. The department shall inspect the municipality's records and discuss the administration of the program with the local plumbing inspector. The local plumbing inspector shall be available during the department's review and shall cooperate in providing all necessary information. The department shall report the results of its review in writing to the municipality and, when applicable, to the complainant. The written notice must set forth the department's findings of whether the municipality is in compliance with this subchapter and section 3428.

3. Violation; penalty. If after review the department finds any violation of this subchapter or section 3428, it shall notify the municipality that it has 30 days in which to take enforcement action and shall specify what action must be taken in order to achieve compliance. The municipality shall file a plan acceptable to the department setting forth how it will attain compliance. The department shall notify the municipality that it will review the municipality for compliance within 60 days of accepting the plan and shall conduct that review. Any municipality which fails to file an acceptable plan with the department or which remains in violation at the expiration of the 60-day period is subject to a civil penalty of at least \$500. The department shall enforce this section in any court of competent jurisdiction. Every 30-day period that a municipality remains in violation after review and notification constitutes a separate offense.

§4213. Right of entry on inspection

The department and any duly designated representative or employee of the department, including the local plumbing inspector, may enter any property at reasonable hours, enter any building with the consent of the property owner, occupant or agent, inspect the property or structure for compliance with the applicable rules or investigate alleged conditions which do not comply with the rules. Upon the request of the occupant of the premises, the department's representative or the local plumbing inspector shall present proper credentials before entering the premises.

If entry is denied, entry shall not be attempted until after obtaining an order of the court.

§4214. Legislative intent

It is the intent of the Legislature that local jurisdictions have primary responsibility for enforcing rules adopted by the department governing the installation and inspection of subsurface wastewater disposal systems. The adoption of rules by the department does not deny municipal authority under section 3001 to adopt more restrictive ordinances.

§4215. Permits

1. Permit required. A permit is required for the following activities and is valid for work commenced within 24 months after the permit is issued:

- A. The installation of plumbing into a building;
- B. The installation of a subsurface waste water disposal system or components; or
- C. The conversion of a seasonal dwelling as provided in subsection 2. This paragraph may not be construed to require a permit for any dwelling which:
 - (1) Will be occupied seasonally;
 - (2) Is not the principal dwelling place of the occupant; or
 - (3) Has the disposal system located outside the shoreland zoned area.

2. Permit for seasonal conversion. Before converting a seasonal dwelling which is located in the shoreland zoning area, as defined in Title 38, section 435, to a year-round or principal dwelling, a conversion permit must be obtained from the local plumbing inspector. A seasonal conversion permit shall not be approved if a holding tank is used as a means of waste water disposal or storage. The inspector shall issue a permit for conversion of a seasonal dwelling to a year-round or principal dwelling if one of the following conditions is met:

- A. A subsurface waste water disposal application, completed after July 1, 1974, exists indicating that the dwelling's waste water disposal system substantially complies with departmental rules and applicable municipal ordinances,

provided that the disposal system was installed with the required permit and certificate of approval;

B. A replacement for an existing wastewater disposal system has been constructed so that it substantially complies with departmental rules and applicable municipal ordinances; or

C. The dwelling unit's wastewater is connected to an approved sanitary sewer system.

3. Penalties. Any person who installs or orders the installation of any plumbing or subsurface wastewater disposal system without the permit required by this section or who otherwise violates this section must be penalized in accordance with section 4452. The municipality or the department may seek to enjoin violations of this section.

4. Fees. The plumbing inspector shall issue any permit under this section upon receipt and approval of a completed application form as prescribed by the commissioner and payment by the applicant of the fee established by the municipality. The fee must be at least the minimum amount determined by rule of the department. One-quarter of the amount of the minimum fee must be paid through the department to the Treasurer of State to be maintained as a permanent fund and used by the department to implement its subsurface wastewater disposal rules, to administer the receipt and collation of completed permits and to issue plumbing permit labels to the municipality and by the State Planning Office for training and certification of local plumbing inspectors. The remainder of the fee must be paid to the treasurer of the municipality.

§4216. Transfers of shoreland property

Any person transferring property on which a subsurface waste water disposal system is located within the shoreland area, as defined in Title 38, section 435, shall provide the transferee with a written statement by the transferor as to whether the system has malfunctioned during the 180 days preceding the date of transfer.

Title 30-A § 4221. Plumbing inspectors

1. Appointment; compensation; removal. In every municipality, the municipal officers shall appoint one or more inspectors of plumbing, who need not be residents of the municipality for which they are appointed. Plumbing inspectors are appointed for a term of one year or more and must be sworn and the appointment recorded as provided in section 2526, subsection 9. An individual properly appointed as plumbing inspector and satisfactorily performing the duties may continue in that capacity after the term has expired until replaced. The municipal officers shall notify the department and the State Planning Office of the appointment of a plumbing inspector in writing within 30 days of the appointment.

Compensation of plumbing inspectors is determined by the municipal officers and paid by the respective municipalities.

The municipal officers may remove a plumbing inspector for cause, after notice and hearing.

2. Certification requirements. A person may not hold the office of plumbing inspector unless currently certified as qualified by the State Planning Office pursuant to section 4451. Certification is effective for a period of 5 years unless sooner revoked or suspended by the District Court as provided for in section 4451.

3. Duties. Plumbing inspectors shall:

- A. Inspect all plumbing for which permits are granted, within their respective municipalities, to ensure compliance with state rules and municipal ordinances and investigate all construction or work covered by those rules and ordinances;
- B. Condemn and reject all work done or being done or material used or being used which does not comply with state rules and municipal ordinances, and order changes necessary to obtain compliance;
- C. Issue a certificate of approval for any work that the inspector has approved;
- D. Keep an accurate account of all fees collected and transfer those fees to the municipal treasurer;
- E. Keep a complete record of all essential transactions of the office;
- F. Perform other duties as provided by municipal ordinance; and
- G. Investigate complaints of alleged violations relating to plumbing or subsurface waste water disposal and take appropriate action as specified by the department by rule in the State of Maine Enforcement Manual, Procedures for Correcting Violations to the Subsurface Waste Water Disposal and Plumbing Rules.

4. Inspections and permits not required. Plumbing inspections and permits are not required for:

- A. Minor plumbing work or minor installations that are performed in compliance with state laws and rules if that plumbing work or those installations are done inside the structure of a private residence by the owner of that residence;
- B. Installation of domestic heating appliances by master oil burner technicians licensed pursuant to Title 32, chapter 33; and
- C. Installation of stand-alone water meters, water meters in combination with nontestable backflow prevention devices and related valves by water utility personnel or water utility contractors. The water utility shall include in any notice it provides to a customer regarding entry to install such a meter or related valves a statement that installation of a backflow preventor may necessitate installation by the customer of additional devices, such as an expansion tank, due to thermal expansion.

Subchapter 5: ENFORCEMENT OF LAND USE REGULATIONS (HEADING: PL 1989, c. 104, Pt. A, §45 (new))

§4451. Training and certification for code enforcement officers

1. Certification required; exceptions. Beginning January 1, 1993, a municipality may not employ any individual to perform the duties of a code enforcement officer who is not certified by the office, except that:

A. An individual other than an individual appointed as a plumbing inspector has 12 months after beginning employment to be trained and certified as provided in this section;

B. Whether or not any extension is available under paragraph A, the office may waive this requirement for up to one year if the certification requirements cannot be met without imposing a hardship on the municipality employing the individual; and

C. An individual may be temporarily authorized in writing by the Department of Health and Human Services, Division of Health Engineering to be employed as a plumbing inspector for a period not to exceed 12 months.

A person employed by a municipality or municipalities as a code enforcement officer for at least 3 years prior to January 1, 1990 is deemed certified under this section and, 5 years after the effective date of this paragraph, is subject to the recertification requirements of subsection 6.

2. Penalty. Any municipality that violates this section commits a civil violation for which a forfeiture of not more than \$100 may be adjudged. Each day in violation constitutes a separate offense.

2-A. Code enforcement officer; definition and duties. As used in this subchapter, "code enforcement officer" means a person certified under this section and employed by a municipality to enforce all applicable laws and ordinances in the following areas:

A. Shoreland zoning under Title 38, chapter 3, subchapter I, article 2-B;

B. Comprehensive planning and land use under Part 2, Subpart VI-A;

C. Internal plumbing under chapter 185, subchapter III;

D. Subsurface wastewater disposal under chapter 185, subchapter III; and

E. Building standards under chapter 141; chapter 185, subchapter I; and Title 25, chapters 313 and 331.

3. Training and certification of code enforcement officers. In cooperation with the Maine Community College System, the Department of Environmental Protection and the Department of Health and Human Services, the office shall establish a continuing education program for individuals engaged in code enforcement. This program must provide basic and advanced training in the technical and legal aspects of code enforcement necessary for certification.

4. Examination. The office shall conduct at least one examination each year to examine candidates for certification at a time and place designated by it. The office may conduct additional examinations to carry out the purposes of this subchapter.

5. Certification standards. The office shall establish by rule the qualifications, conditions and licensing standards and procedures for the certification and recertification of individuals as code enforcement officers. A code enforcement officer need only be certified in the areas of actual job responsibilities. The rules established under this subsection must identify standards for each of the areas of training under subsection 2-A, in addition to general standards that apply to all code enforcement officers.

6. Certification; terms; revocation. The office shall certify individuals as to their competency to successfully enforce ordinances and other land use regulations and permits granted under those ordinances and regulations and shall issue certificates attesting to the competency of those individuals to act as code enforcement officers. Certificates are valid for 5 years unless revoked by the District Court. An examination is not required for recertification of code enforcement officers. The office shall recertify a code enforcement officer if the code enforcement officer successfully completes at least 12 hours of approved training in each area of job responsibility during the 5-year certification period.

A. The District Court may revoke the certificate of a code enforcement officer, in accordance with Title 4, chapter 5, when it finds that:

- (1) The code enforcement officer has practiced fraud or deception;
- (2) Reasonable care, judgment or the application of a duly trained and knowledgeable code enforcement officer's ability was not used in the performance of the duties of the office; or
- (3) The code enforcement officer is incompetent or unable to perform properly the duties of the office.

B. Code enforcement officers whose certificates are invalidated under this subsection may be issued new certificates provided that they are newly certified as provided in this section.

7. Other professions unaffected. This subchapter may not be construed to affect or prevent the practice of any other profession.

§4452. Enforcement of land use laws and ordinances

1. Enforcement. A municipal official, such as a municipal code enforcement officer, local plumbing inspector or building inspector, who is designated by ordinance or law with the responsibility to enforce a particular law or ordinance set forth in subsection 5, 6 or 7, may:

A. Enter any property at reasonable hours or enter any building with the consent of the owner, occupant or agent to inspect the property or building for compliance with the laws or ordinances set forth in subsection 5. A municipal official's entry onto property under this paragraph is not a trespass;

B. Issue a summons to any person who violates a law or ordinance, which the official is authorized to enforce; and

C. When specifically authorized by the municipal officers, represent the municipality in District Court in the prosecution of alleged violations of ordinances or laws, which the official is authorized to enforce.

2. Liability for violations. Any person, including, but not limited to, a landowner, the landowner's agent or a contractor, who violates any of the laws or ordinances set forth in subsection 5 or 6 is liable for the penalties set forth in subsection 3.

3. Civil penalties. The following provisions apply to violations of the laws and ordinances set forth in subsection 5. Except for paragraph H, monetary penalties may be assessed on a per-day basis and are civil penalties.

A. The minimum penalty for starting construction or undertaking a land use activity without a required permit is \$100, and the maximum penalty is \$2,500.

B. The minimum penalty for a specific violation is \$100, and the maximum penalty is \$2,500.

B-1. Notwithstanding paragraph B, the maximum penalty is \$5,000 for any violation of a law or an ordinance set forth in subsection 5, paragraph Q, if the violation occurs within an area zoned for resource protection.

C. The violator may be ordered to correct or abate the violations. When the court finds that the violation was willful, the violator shall be ordered to correct or abate the violation unless the abatement or correction results in:

- (1) A threat or hazard to public health or safety;
- (2) Substantial environmental damage; or
- (3) A substantial injustice.

C-1. Notwithstanding paragraph C, for violations of the laws and ordinances set forth in subsection 5, paragraph Q, the violator shall be ordered to correct or mitigate the violation unless the correction or mitigation results in:

- (1) A threat or hazard to public health or safety;
- (2) Substantial environmental damage; or
- (3) A substantial injustice.

D. If the municipality is the prevailing party, the municipality must be awarded reasonable attorney fees, expert witness fees and costs, unless the court finds that special circumstances make the award of these fees and costs unjust. If the defendant is the prevailing party, the defendant may be awarded reasonable attorney fees, expert witness fees and costs as provided by court rule.

E. In setting a penalty, the court shall consider, but is not limited to, the following:

- (1) Prior violations by the same party;
- (2) The degree of environmental damage that cannot be abated or corrected;

- (3) The extent to which the violation continued following a municipal order to stop; and
- (4) The extent to which the municipality contributed to the violation by providing the violator with incorrect information or by failing to take timely action.

F. The maximum penalty may exceed \$2,500, but may not exceed \$25,000, when it is shown that there has been a previous conviction of the same party within the past 2 years for a violation of the same law or ordinance.

G. The penalties for violations of a septage land disposal or storage site permit issued by the Department of Environmental Protection under Title 38, chapter 13, subchapter 1, are as prescribed in Title 38, section 349.

H. If the economic benefit resulting from the violation exceeds the applicable penalties under this subsection, the maximum civil penalties may be increased. The maximum civil penalty may not exceed an amount equal to twice the economic benefit resulting from the violation. Economic benefit includes, but is not limited to, the costs avoided or enhanced value accrued at the time of the violation as a result of the violator's noncompliance with the applicable legal requirements.

4. Proceedings brought for benefit of municipality. All proceedings arising under locally administered laws and ordinances shall be brought in the name of the municipality. All fines resulting from those proceedings shall be paid to the municipality.

5. Application. This section applies to the enforcement of land use laws and ordinances or rules which are administered and enforced primarily at the local level, including:

- A. The plumbing and subsurface waste water disposal rules adopted by the Department of Health and Human Services under Title 22, section 42, including the land area of the State which is subject to the jurisdiction of the Maine Land Use Regulation Commission;
- B. Laws pertaining to public water supplies, Title 22, sections 2642, 2647 and 2648;
- C. Local ordinances adopted pursuant to Title 22, section 2642;
- D. Laws administered by local health officers pursuant to Title 22, chapters 153 and 263;
- E. Laws pertaining to fire prevention and protection, which require enforcement by local officers pursuant to Title 25, chapter 313;
- F. Laws pertaining to the construction of public buildings for the physically disabled pursuant to Title 25, chapter 331;
- G. Local land use ordinances adopted pursuant to section 3001;
- H. Local building codes adopted pursuant to sections 3001 and 3007;
- I. Local housing codes adopted pursuant to sections 3001 and 3007;
- J. Laws pertaining to junkyards, automobile graveyards and automobile recycling businesses and local ordinances regarding junkyards, automobile graveyards and automobile recycling businesses, pursuant to chapter 183, subchapter 1 and Title 38, section 1665-A, subsection 3.
- K. Local ordinances regarding electrical installations pursuant to chapter 185, subchapter II;
- L. Local ordinances regarding regulation and inspection of plumbing pursuant to chapter 185, subchapter III;
- M. Local ordinances regarding malfunctioning subsurface waste water disposal systems pursuant to section 3428;
- N. The subdivision law and local subdivision ordinances adopted pursuant to section 3001 and subdivision regulations adopted pursuant to section 4403;
- O. Local zoning ordinances adopted pursuant to section 3001 and in accordance with section 4352;
- P. Wastewater discharge licenses issued pursuant to Title 38, section 353-B;
- Q. Shoreland zoning ordinances adopted pursuant to Title 38, sections 435 to 447, including those that were state-imposed;
- R. The laws pertaining to harbors in Title 38, chapter 1, subchapter 1, local harbor ordinances adopted in accordance with Title 38, section 7 and regulations adopted by municipal officers pursuant to Title 38, section 2; and
- S. Local ordinances and ordinance provisions regarding storm water, including, but not limited to, ordinances and

ordinance provisions regulating nonstorm water discharges, construction site runoff and postconstruction storm water management, enacted as required by the federal Clean Water Act and federal regulations and by state permits and rules.

6. Septage and sludge permits issued by the Department of Environmental Protection. A municipality, after notifying the Department of Environmental Protection, may enforce the terms and conditions of a septage land disposal or storage site permit or a sludge land application or storage site permit issued by the Department of Environmental Protection pursuant to Title 38, chapter 13, subchapter 1.

7. Natural resources protection laws. A code enforcement officer, authorized by a municipality to represent that municipality in District Court and certified by the State Planning Office under section 4453 as familiar with court procedures, may enforce the provisions of the natural resources protection laws, Title 38, chapter 3, subchapter I, article 5-A and Title 38, section 420-C, by instituting injunctive proceedings or by seeking civil penalties in accordance with Title 38, section 349, subsection 2.

Title 30-A M.R.S.A. § 4453. Certification for representation in court

The office shall establish certification standards and a program to certify familiarity with court procedures for the following individuals:

1. Code enforcement officers. Code enforcement officers as set forth in sections 4451 and 4452 and Title 38, section 441;

2. Plumbing inspectors. Plumbing inspectors as set forth in sections 4221 and 4451;

3. Department of Environmental Protection. Department of Environmental Protection employees as set forth in Title 38, section 342, subsection 7;

4. Maine Land Use Regulation Commission. Maine Land Use Regulation Commission employees as set forth in Title 12, section 685-C, subsection 9; and

INTERPRETING GRADE STAMPS

With few exceptions (see note), all approved grade stamps include the following five elements:

Visually Graded Lumber¹:

<i>(a)</i> TRADEMARK®	<i>(c)</i> Grade Designation
<i>(b)</i> Mill Identification	<i>(d)</i> <i>(e)</i> Species Seasoning

- a. *Trademark* – indicates identity of agency quality supervision
 - b. *Mill Identification* – product manufacturer name, brand or assigned mill number
 - c. *Grade Designation* – grade name (number or abbreviation)
 - d. *Species Identification* – name or abbreviation of individual species or species combination
 - e. *Condition of Seasoning*^a – moisture content classification at time of surfacing
 1. *S-Dry* – 19% maximum moisture content
 2. *MC15* – 15% maximum moisture content
 3. *KD* – kiln dried to moisture content indicated in grading rules
 4. *S-Gm* – over 19% moisture content (unseasoned)
- ^a – *HT* – designation for Heat Treated - while not a seasoning designation, the abbreviation HT may be found in conjunction with the above seasoning abbreviations (see notes below). The HT definition can be found in the grading rules.

Machine Graded Lumber¹:

Grade stamps on machine graded lumber include the five elements listed above for visually graded lumber. Grade designations for the two types of machine graded lumber, machine stress rated (MSR) lumber and machine evaluated lumber (MEL), are distinctive from those used for visually graded lumber grades.

Machine Stress Rated Lumber (MSR) Stamp:

<i>(b)</i> Mill Identification	<i>(d)</i> Species	<i>(e)</i> Seasoning
<i>(a)</i> TRADEMARK®	<i>(c)</i> #### Fb - #.#E	
Machine Rated		

- MSR grade designations are composed of the assigned extreme fiber in bending (Fb or f) in psi and the assigned modulus of elasticity (E) in millions of pounds per square inch. Examples include 1650f-1.5E; 2100f-1.8E; and 2400f-2.0E.
- The phrase "Machine Rated" or "MSR" is also required on machine stress rated lumber stamps.

Machine Evaluated Lumber (MEL) Stamp:

<i>(a)</i> TRADEMARK®	<i>(b)</i> Mill Identification
<i>(d)</i> Species	<i>(e)</i> Seasoning
<i>(c)</i> M – xx	
#### Fb	#.# E #### Ft

- MEL grade designations use the format, M-xx; where xx indicates a one or two digit number. Examples include M-12; M-15; and M-19.
- In addition, the assigned extreme fiber in bending (Fb or f) in psi, the assigned modulus of elasticity (E) in millions of pounds per square inch, and the assigned tension parallel to grain (Ft) in psi are required elements on machine evaluated lumber stamps.

Glued Lumber¹:

<i>(a)</i> TRADEMARK®	<i>(b)</i> Mill Identification
<i>(d)</i> Species	<i>(e)</i> Seasoning
<i>(c)</i> Grade Identification	
(Type Glue/Appropriate Use)	

Grade stamps on glued lumber include all the information indicated for visually graded lumber. In addition, the grade stamp includes a designation or abbreviation indicating the type of glue joint and appropriate use. Examples include "Stud Use Only", "Vertical Use Only", "Certified End Joint", and "Certified Exterior Joints".

¹ Grade Stamp Layout – The placement of the required elements within a grade stamp may vary, depending on the preferences of the specific supervising agency. The sample grade stamp facsimiles that accompany the agency listing herein provide a good example of the typical placement of elements preferred by that particular agency. Contact the agency, whose trademark appears on the lumber, for specific information related to the agency's grade stamping policies.

Note: Grade stamps for timbers are not required to include the condition of seasoning. An approved grade stamp may include only a) trademark, b) mill identification, c) HT designation. Grade stamps are permitted to include information that is not required, so long as the additional information is not confusing, misleading or deceptive. Contact the agency, whose trademark appears on the lumber, for specific information related to the agency's grade stamping policy.

American Lumber Standard Committee, Incorporated
P.O. Box 210 Germantown, MD 20875-0210
301.972.1700 fax 301.540.8004 e-mail: alsc@alsc.org url: www.alsc.org