



# Town of Merrimack, New Hampshire

Community Development Department

6 Baboosic Lake Road

Town Hall - Lower level - East Wing

Planning - Zoning - Economic Development - Conservation

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## **MEMORANDUM**

**Date:** August 12, 2015

**To:** Robert Best, Chairman, & Members, Planning Board

**From:** Timothy J. Thompson, AICP, Community Development Director

**Subject:** **Zoning Ordinance Amendments regarding "Alternative Treatment Centers" for Medical Cannabis (per RSA 126-X)**

**Background:** Please find this memo as supporting information related to the above referenced proposed Zoning Ordinance amendments that were proposed by the Town Council (introduced at their July 16, 2015 meeting, see attached draft minutes).

Over the course of the past several months, the Town has become aware of interest by *Prime Alternative Treatment Centers of NH* in locating one of the 4 medical cannabis dispensaries ("Alternative Treatment Centers" or "ATC's" as they are defined as in the new medical cannabis statutes) in Merrimack. In researching the current Zoning Ordinance language with the Town's Legal Counsel several months ago, Staff determined that without any regulatory amendments, the Town would be required to treat ATC's in the same manner as a "retail pharmacy" (which is a permitted use in the Commercial Districts, and a Conditional Use in the Industrial Districts). In response to the potential for an ATC to locate in Merrimack, the Town Council has developed proposed Zoning Ordinance amendments intended to provide greater local regulatory oversight to such operations.

### **Summary of Proposed Amendments (as posted for the Public Hearing):**

- *Section 1 – Purpose and Definitions:*
  - Section 1.03 (Definitions):
    - Insert new definitions for *Alternative Treatment Center (ATC)*, *Alternative Treatment Center (Cultivation Location Only)*, and *Alternative Treatment Center (Non-Cultivation Location)*;
    - Renumbering of remaining definitions throughout the section;
- *Section 2 – Establishment of Districts:*
  - Create new Subsection 2.02.2.D, creating a conditional use permit process for ATC's (Non-Cultivation);
  - Amend Subsection 2.02.3.D, creating a conditional use permit process for ATC's (Non-Cultivation), re-numbering existing CUP subsection for self-storage facilities;
  - Create new Subsection 2.02.4.C, creating a conditional use permit process for ATC's (Cultivation and Non-Cultivation), renumber remainder of subsection;

- Create new Subsection 2.02.4.F, creating a conditional use permit process for ATC (Non-Cultivation), renumber remainder of subsection;
- *Section 17 – Signs:*
  - Create new Subsection 17.10.12, creating signage requirements for ATC's.

**Legal Counsel Review:**

Staff has consulted with the Town's Legal Counsel on the ordinance that was posted for the Public Hearing, and Legal Counsel made a couple of recommendations for revisions to the proposed ordinance language. Included in your packet is an updated version of the ordinance amendments, including revisions that were suggested by Legal Counsel. Staff recommends that the Planning Board determine if these suggested revisions are appropriate, and incorporate them into any recommendation to the Town Council.

The modifications following the review of Legal Counsel are summarized as follows:

- *In Section 2.02.2 (D)(2) the sentence that previously read "It is neither the intent nor the effect of this Section to condone or legitimize the use or possession of marijuana except as allowed by NH State Law" has been removed. Legal Counsel suggests that this phrase does not need to be included since the purpose is expressly limited to medical cannabis.*
- *Section 17.10.12 has been completely re-written to include a reference to the State Department of Health and Human Services "advertising restrictions" section of the DHHS Administrative Rules for Medical Cannabis. The previous version of the section raised several constitutional concerns regarding "content-based" signage requirements, which could have opened up the Town for legal challenges.*

**Required Process for Adoption of Amendments**

Because the proposed amendments were initiated by the Town Council (and referred to the Planning Board for a recommendation at the July 16 Council Meeting), the Board needs to make a recommendation to the Town Council (in accordance with the Charter) following the Hearing on August 18. The recommendation must be either to recommend adoption, recommend adoption with amendments (which is what the Board would choose if you agree with the changes as recommended by Legal Counsel), or recommend denial (Because this ordinance originated with the Council, the Board cannot deny the amendments outright, the Board can only recommend action to the Council).

Following the Planning Board's Public Hearing, the Council will hold their public hearing/second reading on the proposed amendments on August 20, following which, the Council will hold a third reading and final vote at their first meeting in September. As always, the final decision on the adoption of any Zoning amendment rests with the Council in accordance with the Town Charter and State law.

cc: Town Council  
Eileen Cabanel, Town Manager  
Paul Micali, Finance Director/Assistant Town Manager  
Matthew Serge, Town Legal Counsel  
Community Development Staff  
Building Division Staff  
Zoning Board of Adjustment  
File



# Town Council Meeting Minutes

Thursday July 16, 2015, at 7:00 PM, in the Matthew Thornton Room

Chairman Harrington called the meeting of the Town Council to order at 7:00 p.m. Present at the meeting were Vice Chairman Mahon, Councilor Boyd, Councilor Dwyer, Councilor Koenig, Councilor Rothhaus, Town Manager Eileen Cabanel, and Assistant Town Manager/Finance Director Paul Micali. Councilor Vaillancourt was excused.

## Pledge of Allegiance

Chairman Harrington led in the Pledge of Allegiance.

## Announcements

The Town Council Retreat /Work Session will be held on Thursday, July 23, 2015 from 9:00 a.m. - 4:00 p.m. at the SERESC Conference Center located at 29 Commerce Drive in Bedford. Regular meetings of the Town Council will be conducted on Thursday, August 20th, September 10th, and September 24th at 7:00 p.m. in the Matthew Thornton Room.

The next Household Hazardous Waste collection will be held on Saturday, August 1st at the Nashua Public Works garage located at 9 Stadium Drive from 8:00 a.m. - Noon. For a list of acceptable materials please check the Solid Waste Division page on the Town website. The \$10 fee covers 10 gallons or 20 pounds of material.

## Kinder Morgan – Proposed Northeast Energy Direct (NED) Pipeline Project

### ● **Informational Reports and Updates**

- Scoping Meetings with the Federal Energy Regulatory Commission (FERC) have been scheduled for: July 29<sup>th</sup>, Radisson Hotel, Nashua and July 30<sup>th</sup>, Milford Town Hall, 3<sup>rd</sup> floor. Both meetings are scheduled for 6:30 - 11:00 p.m. Chairman Harrington noted the Milford Town Hall is small in size, and believed to be without air conditioning. All citizens are encouraged to attend the meetings and provide testimony. Chairman Harrington will represent the Town Council providing both verbal and written testimony. A majority of the Town Council will likely be present.
- The Council’s packet included the recommended language for the Survey Access Agreement, which continues to be negotiated.
- At the June 25, 2015 meeting, Councilor Vaillancourt provided a draft of a letter to the FERC, and requested the Council give it consideration. The letter states the Town of Merrimack supports the positions and concerns relayed to the FERC by the Town of Amherst in its June 8<sup>th</sup> letter, and offers additional and supplementary comments and concerns specifically related to Merrimack.

**MOTION made by Councilor Boyd and seconded by Councilor Mahon that the Town Council authorize the Town Manager to affix her signature to the letter dated July 16, 2015, as presented.**

**MOTION CARRIED 6-0-0**

<SNIPPED>

1 Training is conducted by the Oguntz Group; a Veteran-owned business based in New Hampshire, which  
2 provides specialized training to police departments. The group tailors training to specific needs. The  
3 focus the department has been working on is active shooter. The week long training consists of two  
4 days at the Dalton, NH range for firearm training and the remaining three days on building related  
5 training. The old Merrimack Hotel is at their disposal for that purpose. The training will conclude at the  
6 James Masticola Elementary School.

7  
8 *Chairman Harrington declared the Public Hearing open at 7:32 p.m.*

9  
10 *No one from the public addressed the Council.*

11  
12 *Chairman Harrington declared the Public Hearing closed at 7:33 p.m.*

13  
14 **MOTION made by Councilor Boyd and seconded by Councilor Rothhaus to accept and authorize**  
15 **the expenditure of a grant from the New Hampshire Department of Homeland Security in the**  
16 **amount of approximately Thirty Five Thousand Two Hundred and Fifty Dollars (\$35,250) for 5-**  
17 **day training of the Department’s Containment Team, pursuant to Charter Article 8-15 and RSA**  
18 **31:95-b, and furthermore that the Town Manager and/or her proxy be authorized to sign any and**  
19 **all paperwork necessary to perfect the grant. MOTION CARRIED 6-0-0**

20  
21 **2. Public Hearing – Zoning Ordinance Amendments**

22 *Submitted by Town Council Vice Chair Tom Mahon*

23 *The Town Council will hold a public hearing to consider amendments to the Zoning Ordinance*  
24 *(Sections 1, 2, and 17), pursuant to RSA 675:6 & 675:7 and Charter Article V.*

25  
26 *Chairman Harrington stated the item was incorrectly posted as a Public Hearing. Legal counsel has*  
27 *advised proper procedure would be for the proposed amendments to be introduced and the Ordinance*  
28 *receive a first reading. A Public Hearing will be conducted at a later date. The first reading will take*  
29 *place under Item #4 under New Business.*

30  
31 **Legislative Updates from State Representatives** - None

32  
33 **Town Manager’s Report**

34  
35 The Governor and Council has approved the Transportation Alternatives Program (TAP) grant, which  
36 will be used towards the construction of approximately 2,500 linear feet of non-motorized multi-use  
37 path that will connect Watson Park to the pedestrian crossing of the Souhegan River that was installed  
38 adjacent to the F.E. Everett Turnpike Merrill’s Marauders Bridge. The new path will connect the town  
39 center area to residential and recreational areas including Wildcat Falls Conservation Area and  
40 Merrimack High School. The consultant selection process has begun, and the Town is ready to move as  
41 fast as the Department of Transportation will allow.

42  
43 The Manchester Street Bridge over Pennichuck ponds is now open. Vice Chairman Mahon noted the  
44 road has closed due to an ongoing water project.

45  
46 Town-wide paving is progressing. For the latest updates check out the Town website or the Public  
47 Works Department’s Facebook site.

48 **<SNIPPED>**

1 **4. Proposed Zoning Ordinance Amendments [First Reading]**

2 *Submitted by Town Council Vice Chair Tom Mahon*

3 The Town Council to consider proposed amendments to the Zoning Ordinance (Sections 1, 2 and  
4 17), pursuant to RSA 675:6 & 675:7 and Charter Article V.

5  
6 Tim Thompson, Director, Community Development Division, stated, at the request of the Town  
7 Manager and members of the Council, he put together three different sections of zoning amendments as  
8 they relate to Alternative Treatment Centers (ATC) for the distribution of medical marijuana as has been  
9 recently authorized by State law and regulations from the State Department of Health & Human  
10 Services. He stated his awareness there is interest in the Town of Merrimack as a potential location for a  
11 dispensary. There are four different regions within the State that have been designated by Health &  
12 Human Services. There can be one dispensary in each of those four regions. He stated his belief  
13 Merrimack's region includes Nashua through to Bedford. In consultation with the Town's legal counsel  
14 it was determined, under the current zoning ordinance, if no amendments were to be made, the closest  
15 existing use would be retail pharmacy. This type of facility would have to be permitted anywhere where  
16 retail pharmacies are permitted currently, which is in the commercial districts and by Conditional Use  
17 Permit (CUP) in the industrial district.

18  
19 Director Thompson stated, after meeting with the Town Manager and Vice Chairman Mahon, he put  
20 together a series of definitions, conditional use criteria, and sign requirements. There is a mix of  
21 ordinance language from ordinances that have been adopted in the cities of Concord, Dover, and  
22 Laconia. The proposed amendment in Section 1 (page 1-2) would create a definition for ATC and sub-  
23 definitions of ATC for cultivation location and non-cultivation location. Those definitions are modeled  
24 primarily off the City of Concord's Ordinance. The rest of that section would be renumbered.

25  
26 The second set of amendments would be in Section 2.02.2 (page 2-12). That would be to set up CUP  
27 criteria that the Planning Board would need to consider. The proposal is to allow these by CUP in the  
28 same districts where they would be permitted today. Instead of it being a permitted use, it would require  
29 an extra level of scrutiny; they would have to meet the criteria from this section in order for the Planning  
30 Board to grant a CUP. This language is modeled primarily after the City of Dover's Ordinance.

31  
32 The final proposed amendment would be within Section 17 (last page); to add signage requirements for  
33 ATCs. The requirements are modeled after those adopted by the City of Laconia.

34  
35 Director Thompson stated should the Council wish to move forward with the Ordinance, it would move  
36 to a Planning Board Public Hearing, which would be posted the following day for the August 18<sup>th</sup>  
37 meeting of the Planning Board. The Town Council would meet on September 20<sup>th</sup>, at which time the  
38 Council could conduct its Public Hearing and second reading of the Ordinance.

39  
40 Councilor Boyd questioned why no hours of operations are alluded to. Director Thompson responded  
41 that would be something the Planning Board could stipulate as part of the conditions of their approval  
42 and part of the CUP process. He remarked he would not think it unreasonable if the Council wished to  
43 add that into the proposed conditions applicants would have to meet. He believes the Planning Board  
44 would be amenable to discussing that. In general, he tries to avoid including hours of operation in a  
45 Land Use Ordinance as much as possible as he believes they are likely better suited for a general Code  
46 of Ordinances for the community.

47  
48 Councilor Boyd noted the proposed Ordinance does not speak to growing. He questioned if the word  
49 "cultivate" or "manufacture" would allow ATCs to grow cannabis onsite. Director Thompson stated it

1 would not. He went on to state there are two different types of CUPs that would be allowed; in the  
2 Commercial District, what is proposed is that it would have to be a non-cultivation location. The  
3 proposed language does state that a potential cultivation location could be located, but only in an  
4 Industrial District. Per the State rules and regulations, it has to be internal to a building, and it really  
5 lends itself to more of a manufacturing type of operation. He stated his understanding, based on the  
6 information he is aware of, Merrimack is not being considered for a cultivation location; there is another  
7 community in the region being considered for that. When asked specifically about what is being  
8 considered, Director Thompson stated it to be a dispensary in a non-cultivation location.

9  
10 Councilor Boyd questioned the issue of signage; whether it would be at the discretion of the Planning  
11 Board to work with the applicant to identify a name that would be fitting of a location within our  
12 community. Director Thompson stated his belief that would be the case. He noted he modeled the  
13 language regarding signage requirements after the model used by Laconia, however, given a recent U.S.  
14 Supreme Court case dealing with content based signage regulations, it is something he will want to  
15 review with the Town Attorney to ensure we are on safe legal grounds, and not going too far with the  
16 proposed language.

17  
18 Councilor Dwyer commented whether pro or against, the State has taken a step in making it legal for  
19 medical purposes at this time. He believes it good for the Town to be proactive in having Ordinances in  
20 place. He noted it is not inevitable that such a facility would be located in Merrimack. Director  
21 Thompson stated many communities across the State have enacted similar ordinances over the past 6-8  
22 months. Councilor Rothhaus questioned why such a facility would not be treated as a pharmacy. The  
23 cultivation component and identifying the appropriate zoning of that makes good sense; however, the  
24 Statute allows for the regulatory authority. He questioned why the Council would go through the  
25 additional effort. Director Thompson responded the primary reason, which he has learned through  
26 research is security. Given the type of materials at the facility, it would potentially be more susceptible  
27 to theft, vandalism, etc. The security aspect of it is a key component of the CUP criteria. Councilor  
28 Rothhaus commented it would be regulated to the extent a pharmacy is, e.g., you cannot buy Sudafed  
29 without showing a Driver's License. Chairman Harrington remarked that is only a component of the  
30 business of a pharmacy, and in the instance being discussed, it is the business. Councilor Rothhaus  
31 questioned if that has been addressed by the State agency responsible for regulation. Director  
32 Thompson replied he has not read the hundreds of pages of the Health & Human Services requirements.  
33 Councilor Rothhaus remarked the information provided the Council noted regulation by a State  
34 organization, and he was imagining that they would have rules in place regarding security, etc.

35  
36 Chairman Harrington stated she would suspect that would be left up to the individual cities/towns to  
37 identify through Ordinance. Councilor Dwyer stated his suspicion it would be based on a pharmacy; it  
38 is a medical dispensary of a legal drug. He stated his assumption the security and hours of operation  
39 would reflect a typical pharmacy. Chairman Harrington commented with a pharmacy there is a  
40 particular section that has high security. In this instance, the entire facility would have to have high  
41 security. Director Thompson stated the criteria being proposed is that they need to have a security plan  
42 that takes into account the measures that will be taken to ensure the safe delivery of any product to the  
43 facility (including permitted times for delivery), how the product will be secured on site, and how  
44 patient transactions will be facilitated in order to ensure safety. The security plan shall be reviewed and  
45 approved by the Merrimack Police Department.

46  
47 Chairman Harrington commented pharmacies have been around a long time and narcotic controls have  
48 been in place for a long time. This is relatively new, and perhaps we are being a little overly cautious,  
49 but better to err on the side of caution. Director Thompson stated his general philosophy with these

1 types of ordinance amendments is something that is new to a State or region is to be on the conservative  
2 side as it is easier to waive or grant waivers to the requirements than it is to retroactively add additional  
3 requirements to something that comes forward.

4  
5 Chairman Harrington commented, because this legislation is so new, the public may be nervous. It is  
6 her belief the Council demonstrating concern and controls as much as possible might help in terms of  
7 those concerns. Councilor Boyd questioned whether Chairman Harrington, in her position as a Nurse,  
8 has ever been to a pharmacy that deals with compounded drugs. He spoke of having been to such a  
9 pharmacy in Littleton that was in a secure location and required visitors to be buzzed in. Councilor  
10 Boyd questioned whether the Council would like to establish hours within the body of the Ordinance or  
11 leave that to the jurisdiction of the Planning Board. Chairman Harrington stated her comfort with  
12 leaving that to the Planning Board.

13  
14 Chairman Harrington reiterated the need for the Council to amend the language of the Ordinance to  
15 identify the criteria by which such facilities can be reviewed and considered by the Planning Board.

16  
17 **MOTION made by Councilor Boyd and seconded by Councilor Mahon to accept the first reading,**  
18 **refer the proposed amendments to the Zoning Ordinance to the Planning Board, and move to a**  
19 **second reading and Public Hearing to be scheduled for the Council's August 20, 2015 meeting.**  
20 **MOTION CARRIED 6-0-0**

21  
22 *The Council returned to the regular order of business.*

### 23 24 **3. Application and Membership Agreement with HealthTrust**

25 *Submitted by Town Manager Eileen Cabanel*

26 The Town Council will consider amendments to the Application and Membership Agreement  
27 proposed by HealthTrust, to consider adopting the Certificate of Authorizing Resolution, and to  
28 authorize the Town Manager to sign any necessary paperwork.

29  
30 Town Manager Cabanel noted receipt of a boilerplate Membership Agreement, Bylaws, and stand-alone  
31 agreements for COBRA Administration and Retiree Billing Services from the HealthTrust. As she took  
32 exception to some of the language included in the Agreement and the Bylaws regarding the return of  
33 surplus, she took it upon herself to recommend modifications to the Agreement. With regard to  
34 insurance, the Town of Merrimack is primarily rated on its own experience. The Bylaws that were  
35 provided included language stating the Town concurs with language within the Bylaws that states if the  
36 Town were to leave the Trust any monies remaining from previous years' surplus (of our own  
37 experience) would be forfeited. As an example, this year the Town anticipates receipt of \$500,000 in  
38 surplus. If the language were not changed, a decision not to continue as a member of the Trust would  
39 result in the loss of that \$500,000.

40  
41 She requested the Agreement language be modified noting the matter is currently being adjudicated and  
42 the Town would accept the court's final decision on the matter.

43  
44 Councilor Rothhaus remarked, his reading of the letter provided by Peter Bragdon, Executive Director,  
45 HealthTrust, Inc., suggests the language has been in place for a long time. Town Manager Cabanel  
46 responded she and Mr. Bragdon discussed that. He was of the opinion the Town is bound by it because  
47 it had agreed to the Bylaws in a previous agreement. Her response was they are a new organization with  
48 new bylaws, and as such, the Town would not be obligated under prior agreements with an old business  
49 and old bylaws.

<SNIPPED>

Proposed Zoning Amendments for Alternative Treatment Centers  
under RSA 126-X  
As Posted for Planning Board Public Hearing - August 18, 2015

SECTION 1 - PURPOSE AND DEFINITIONS [revised TBD]

Deleted: 5/14/15

**1.01 Purposes**

This ordinance shall be known as the Zoning Ordinance and Building Code. To promote the health, safety, convenience and general welfare of the Town of Merrimack and to make it an attractive place in which to live, the following ordinance and building code is hereby enacted by the voters of said Town of Merrimack.

**1.02 Other Definitions Found at Other Locations in This Ordinance**

- A. Certain terms and words are also defined at Section 2.02.8 *Flood Hazard Conservation District*, Page 28.
- B. Certain terms and words are also defined at Section 2.02.11 *Aquifer Conservation District*, page 42.
- C. Certain terms and words are also defined at Section 17.04 *Signs*, page 126.
- D. Certain terms and words are also defined at Section 2.02.12 *Shoreland Protection District*, page 49.

**1.03 - Definitions**

- A. For the purposes of this ordinance, certain terms and words are hereby defined.
  - 1. Abutter: Any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the Planning Board or Zoning Board of Adjustment.
  - 2. Accessory Dwelling Unit: A second dwelling which is contained within an existing or proposed single family detached dwelling unit that is clearly incidental and subordinate in extent, use and purpose to the principal dwelling.
  - 3. Accessory Use: A subordinate use of land or building which is customarily incidental and subordinate to the principal building or to the principal use of the land and which is located on the same lot with the principal building or use.
  - 4. Airport/helicopter/aircraft: An area of land or water providing certain specified facilities and services for use in connection with air transportation which could be used as a site for landing and taking-off of aircraft. Aircraft means any engine powered contrivance for air transportation.

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**Section 1.03 Definitions (cont):**

5. Alternative Treatment Center: An "alternative treatment center" as defined in RSA 126-X:l, I, namely, a not-for-profit entity registered under RSA 126-X:7 that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies, and dispenses cannabis, and related supplies and educational materials, to qualifying patients and alternative treatment centers.
- a) Alternative Treatment Center (Cultivation Location Only): A "cultivation location" as defined in RSA 126-X:l, IV, namely, a locked and enclosed site under the control of an alternative treatment center where cannabis is cultivated, secured with one or more locks or other security devices in accordance with RSA 126-X and the Department of Health and Human Service's administrative rules.
- b) Alternative Treatment Center (Non-Cultivation Location): An alternative treatment center operated in accordance with RSA 126-X and the Department of Health and Human Services administrative rules that has a separate location for the cultivation of cannabis.
6. Appeal: A process whereby any person, officer, department, board or bureau aggrieved by a decision of the Planning & Zoning Administrator or Building Official may appeal to the Zoning Board of Adjustment where such matter is within the board's power and shall file a Notice of Appeal specifying the grounds therefore, and shall include the process whereby any adverse decisions by the Zoning Board of Adjustment are further appealed to the Superior Court.
7. Aquifer: Those areas designated as having high, medium, and low potential to yield water which appear on state-wide mapping prepared by the U.S. Geological Survey (USGS) entitled "Availability of Groundwater in the lower Merrimack River Basin Southern N.H." by John E. Cotton, 1977, or as most recently published by USGS..
8. Building Official: An appointed official whose primary responsibility is to enforce the Building Code of the Town of Merrimack.
9. Certificate of Occupancy: A statement signed by the Building Official setting forth that a building or structure or any portion thereof complies with the zoning and building ordinance; that a building, structure or parcel of land may lawfully be employed for specified uses; or both.
10. Certified Soil Scientist: a person who, by reason of special knowledge of pedological principles acquired professional education and practical experience, as specified in RSA 310-A:84, I & II, is qualified to identify, classify, and prepare soil maps according to the standards of the National Cooperative Soil Survey, or standards adopted by the New Hampshire Department of Environmental Services, or standards adopted by the board, and who has been duly certified by the authorized state board of natural sciences.

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Deleted: 8

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TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

**Section 1.03 - Definitions (continued)**

- 11. Certified Wetland Scientist: a person who, by reason of his or her special knowledge of hydric soils, hydrophytic vegetation, and wetland hydrology acquired by course work and experience, as specified in RSA 310-A:84, II-a & II-b, is qualified to delineate wetland boundaries and prepare wetland maps in accordance with standards for identification of wetlands adopted by the New Hampshire Department of Environmental Services or the United States Army Corps of Engineers or its successor and who has been duly certified by the authorized state board of natural sciences. Deleted: 0
  
- 12. Change of Use: The change in the use of land and/or building(s) to another use. Deleted: 1
  
- 13. Community Development Director: The chief administrator of the Community Development Department. Deleted: 2
  
- 14. Conservation Commission: A seven member municipal body appointed by the Town Council for the proper utilization and protection of natural resources and for the protection of water-shed resources within the Town of Merrimack. Deleted: 3
  
- 15. District, Overlay: A special district or zone which addresses special land use circumstances and/or environmental safeguards and is superimposed over the underlying existing zoning districts. Permitted uses in the underlying zoning district shall continue subject to compliance with the regulations of the overlay zone or district. Deleted: 4
  
- 16. District or Zone: A geographical section or sections of the Town for which the regulations and provisions governing the use of buildings and land are uniform for each class of use permitted therein and where certain uses of land may be permitted, permitted or denied pursuant to municipal review or prohibited. Deleted: 5
  
- 17. Dwelling Unit: A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. Deleted: 6
  
- 18. Expansion/Alteration: As applied to a building or structure, means a change or rearrangement in the structural parts or in the means of egress; or an enlargement, whether by extending on a side or by increasing in height; or the moving from one location or position to another. Deleted: 7
  
- 19. Family: One or more persons related by blood or marriage, or a group of not more than five persons who need not be related by blood or marriage, living together as a single housekeeping unit in a dwelling unit. Deleted: 8

**Section 1.03 - Definitions (continued)**

20. **Family Day Care Home:** An occupied residence in which child day care is provided for less than 24 hours per day, except in emergencies, for up to 6 children from one or more unrelated families. The 6 children shall include any foster children residing in the home and all children who are related to the caregiver except the children who are 10 years of age or older. In addition to the 6 children, up to three children attending a full day school program may also be cared for up to five hours per day on school days and all day during school holidays.

Deleted: 19

21. **Farms, Agriculture, Farming:** As defined in RSA 21:34-a and amendments thereto, the word "farm" shall mean any land or buildings or structures on or in which agriculture and farming operations are carried on and shall include the residence or residences of owners, occupants, or employees located on such land. The words "agriculture" and "farming" shall mean all operations of a farm such as the cultivation, conserving, and tillage of the soil, dairying, greenhouse operations, the production, cultivation, growing and harvesting of any agricultural, floricultural, sod or horticultural commodities, the raising of livestock, bees, fur-bearing animals, fresh water fish or poultry, or any practices on the farm as an incident to or in conjunction with such farming operations including, but not necessarily restricted to, the following: preparation for market, delivery to storage or to market, or to carriers for transportation to market, of any products or materials from the farm; the transportation to the farm of supplies and materials; the transportation of farm workers; forestry or lumbering operations; the marketing or selling at wholesale or retail or in any other manner any products from the farm and of other supplies that do not exceed in average yearly dollar volume the value of products from such farm.

22. **Floor Area, Gross:** For the purpose of determining required parking spaces, the gross floor area is the total floor area within the perimeter of the outside walls of the building without deduction for hallways, stairs, closets, thickness of walls, columns and other similar features.

Deleted: 1

23. **Floor Area, Net:** For the purpose of determining required parking spaces, the net floor area is total floor area within the perimeter of the inside walls of the building deducting for interior walls, hallways, stairs, closets, storage and similar features including other areas such as those for the preparation of food and drink, restrooms and waiting rooms.

Deleted: 2

24. **Floor Area of Building:** The total number of square feet of floor area of all stories in a building, excluding cellars, unfinished attics, uncovered steps and uncovered porches. All horizontal measurements shall be made between exterior faces of walls.

Deleted: 3

25. **Frontage:** The length of the lot line connecting the side lot lines which borders on a Class V or better highway (excepting the F.E. Everett Turnpike and other Limited Access Highways as defined in RSA 230:44 (as may be amended from time to time)), or a street on a subdivision plat approved by the Planning Board, or land designed to become a Class V or better highway.

Deleted: 4

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

**Section 1.03 - Definitions (continued)**

- ~~26.~~ Hazardous or Toxic Materials or Liquids: Materials or liquids that pose a threat present or future to the environment, whether in use, storage or transit, including without exception hazardous waste identified and listed in accordance with Section 3001 of the Resource Conservation and Recovery Act of 1976. Deleted: 5
  
- ~~27.~~ Home Occupation: A non-residential use carried on within a residence or its accessory buildings, which use is clearly incidental and secondary to the principal use of the property as a residence and does not change the character thereof. Deleted: 6
  
- ~~28.~~ Home Owner: The owner of record of any land and residential and accessory structures located thereon. Deleted: 7
  
- ~~29.~~ Junk: Unregistered motor vehicles no longer intended or in condition for legal use on the public highways; used parts of motor vehicles or old iron, metal, glass, paper, cordage, or other waste or discarded or second-hand material which has been a part, or intended to be a part, of any motor vehicle; or any machinery, scrap metal or other worn out, cast off, or discarded articles or materials ready for destruction or collected or stored for salvage or conversion to same use. Junk shall also include any worn out or discarded materials including but not necessarily limited to construction material, household wastes, including garbage, discarded appliances, and discarded consumer electronic devices. Any article or material which unaltered or unchanged and without further reconditioning can be used for its original purpose as readily as when new, shall not be considered junk. Deleted: 8
  
- ~~30.~~ Junk Yard: Any space more than 200 square feet in area, whether inside or outside a building, used for storage, keeping, processing, salvaging or abandonment of junk. Deleted: 29
  
- ~~31.~~ Junk Yard, Commercial: Any junk yard which is operated for profit, whether said profit is derived from the storage, reconditioning, conversion, or sale of junk, or otherwise. Deleted: 0
  
- ~~32.~~ Lot Depth: Lot depth shall be considered to be the distance between the midpoints of straight lines connecting the foremost points of the side lot lines in front and the rearmost points of the side lot lines in the rear. Deleted: 1
  
- ~~33.~~ Lot Frontage: The front of a lot shall be construed to be the portion nearest the street. For the purpose of determining yard requirements for corner lots and double frontage lots, all sides of a lot adjacent to streets shall be considered frontage. Deleted: 2
  
- ~~34.~~ Lot Line, Rear: The lot line or lines generally opposite or parallel to the front lot line, except in a double frontage lot. If the rear lot line is less than 10 feet long or the lot comes to a point at the rear, said rear lot line is assumed to be a line not less than 20 feet long, lying wholly within the lot, parallel to the front lot line, or in the case of a curved front lot line, parallel to the chord of the arc of said front lot line. Deleted: 3

**Section 1.03 – Definitions (continued)**

35. Lot of Record: A lot held under separate ownership from the adjacent lots or a lot shown to be a separate and distinct numbered lot of record by a plan of lots which has been recorded.

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36. Manufactured Housing: Any structure, transportable in one or more sections, which, in the traveling mode, is 8 body feet or more in width and 40 body feet or more in length, or when erected on site, is 320 square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating, and electrical heating systems contained therein. The terms "mobile home" or "trailer", as these may appear in this ordinance, should be understood to mean "manufactured housing" as defined herein.

Deleted: 5

37. Manufactured Housing Park: A parcel of land containing at least five acres, upon which one or more manufactured homes are parked or intended to be parked for living purposes.

Deleted: 6

38. Multiple (Multi) family dwelling: A building containing three (3) or more dwelling units.

Deleted: 7

39. Non-Conforming Lot: A lot lawfully existing at the time this or any previous zoning ordinance became effective and which does not conform with the regulations of the district in which it is located.

Deleted: 8

40. Non-Conforming Use: A use of a building or of land lawfully existing at the time this or any previous zoning ordinance became effective and which does not conform with the use regulations of the district in which it is located.

Deleted: 39

41. Nonprofit Organization: Nonprofit organization shall include, but not be limited to, a not for profit organization, corporation, community chest, fund or foundation organized and operated exclusively for religious, cultural, charitable, scientific, recreational, literary, agricultural, or educational purposes, or to foster amateur competition in a sport formally recognized by the National Collegiate Athletic Association, and an organization exempt from taxation under Section 501 (c) of the Internal Revenue Code of 1986 organized or incorporated in this state or another state of having a principal place of business in this state or in another state.

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42. Parking Space, Off-Street: A rectangular area, not less than 9 X 18.5 feet forming a parking stall within or without a structure, not located in any public right-of-way.

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43. Planning Board: A seven member legislative body charged with the duty to prepare and amend the Town of Merrimack Master Plan, prepare and amend a capital improvements program, the formulation of proposed amendments to the Merrimack Zoning Ordinance, and the review and approval of subdivision plans and site plans, and other duties as set forth in RSA 674:1.

Deleted: 2

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

**Section 1.03 - Definitions (continued)**

44. Planning & Zoning Administrator: An appointed official whose responsibilities include administration and enforcement the zoning ordinance of the Town of Merrimack.

Deleted: 3

45. Public Hearing: A publicly advertised meeting of an official legislative or quasi-judicial body conducting Town business during which the public is allowed to give testimony concerning issues under consideration.

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46. Public Land and Institutions: All publicly owned land and facilities such as schools, parks and conservation land, museums, libraries, administration and maintenance building and grounds, police and fire stations, utility sites and utility rights-of-way and easements.

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47. Restaurant: An establishment whose principal business is selling food and beverages in a ready-to-consume state whether said food and beverages are consumed on or off the premises.

Deleted: 6

a) Restaurant, carry-out: An establishment which sells food and beverages in a ready-to-consume state where no provisions are made for consumption on the premises.

b) Restaurant, combination: An establishment which sells food and beverages in a ready-to-consume state which may be either consumed on or taken off of the premises.

c) Restaurant, drive-in: An establishment which sells food and beverages in a ready-to-consume state primarily for consumption on the premises by persons in parked motor vehicles.

d) Restaurant, sit-down: An establishment which sells food and beverages in a ready-to-consume state primarily to persons who are seated within the building or outside on the premises.

48. Seasonal Building or Structure: A building or structure, usually but not always a dwelling unit, which was originally designed to be occupied only during the warm months of the year, not during winter; such a structure may not have been originally built with insulation or any permanent, central heating system; such a structure, when originally constructed, may not have had a septic system designed for year round use. (Reference 9.02.E)

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Section 1.03 - Definitions (continued)

~~49~~ Self-Storage Facility: A building, group of buildings or other facility having compartments, rooms, spaces, containers or other type of units that are individually leased, rented, sold or otherwise contracted for, by customers for the storage of non-toxic, non-explosive personal or business goods or property, and where the facility owner/operator has limited access to the units. For purposes of this Ordinance, "self-storage facility" shall be considered synonymous with self-storage warehouse, self-service storage facility, mini-warehouse or mini-storage.

Deleted: 8

~~50~~ Setback, Front Yard: Open space extending across the full width of lot between the front lot line and nearest line of the principal building or any enclosed portion thereof. The depth of such yard shall be the shortest horizontal distance between the front lot line and the nearest point of the building or any enclosed portion thereof.

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~~51~~ Setback, Rear Yard: Open space extending across the full width of lot between the rear line of the lot and the nearest line of the building or any enclosed portion thereof. The depth of such yard is the shortest horizontal distance between the rear lot line and the nearest point of the building. When the rear lot line is less than 10 feet long or if the lot comes to a point at the rear, the depth of the rear yard is measured to an assumed rear lot line not less than 20 feet long, lying wholly within the lot, parallel to the front lot line, or in the case of a curved front lot line, parallel to the chord of the arc of said front lot line.

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~~52~~ Setback, Side Yard: Open space between the side lot line, and the nearest line of the principal buildings, or any enclosed portion thereof, extending from the front yard to the rear yard, or, in the absence of either of such yards, to the front lot line and/or rear lot line. The width of a side yard shall be the shortest distance between the side lot line and the nearest point of the principal building or any enclosed portion thereof.

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~~53~~ Setback, Yard: A required open space on a lot unoccupied and unobstructed by any principal structure or portion thereof, except for such projections into any required open space as are expressly permitted herein.

Deleted: 2

~~54~~ Special Exception: Uses authorized under the Zoning Ordinance subject to appropriate conditions and safeguards as set forth in the ordinance as may be approved by the Zoning Board of Adjustment. Applicants for a special exception need not prove hardship but must comply with all other applicable zoning laws and any conditions for approval imposed by the Zoning Board.

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~~55~~ Street: Class V Highway or better, as defined in RSA 229:5(VI).

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~~56~~ Structural Alterations: Any change in the supporting members of a building or structure, such as walls, columns, beams or girders.

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TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

**Section 1.03 - Definitions (continued)**

~~57.~~ Structure: Anything constructed or erected, the use of which demands its permanent location on the land, or anything attached to something permanently located on the land.

Deleted: 6

~~58.~~ Travel Trailer: A mobile home designed to be used for temporary occupancy for travel, recreational or vacation use; with the manufacturer's permanent identification "Travel Trailer" thereon; and when factory equipped for the road, being of any length provided its gross weight does not exceed forty-five hundred (4500) pounds, or being of any weight provided its overall length does not exceed twenty-eight (28) feet.

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~~59.~~ Variance: A grant of permission by the Zoning Board of Adjustment that authorizes the recipient to do that which, according to the strict letter of the zoning laws, could not otherwise legally be done.

Deleted: 8

~~60.~~ Wetlands: "Wetlands" means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

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~~61.~~ Zoning Board of Adjustment: A quasi-judicial body which hears and decides matters relating to the application of the zoning ordinance and considers appeals from the decisions of the Planning & Zoning Administrator and Building Official and considers variance and special exception applications.

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**SECTION 2 - ESTABLISHMENT OF DISTRICTS** [revised **TBD**]

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**2.01 - The Town of Merrimack is hereby divided into twelve districts:**

- R. Residential District
- C-1. Limited Commercial District
- C-2. General Commercial District
- I-1. Industrial District
- I-2. Industrial District
- I-3. Industrial District
- W. Wetland Conservation District
- F. Flood Hazard Conservation District
- E. Elderly Zoning District
- PRD. Planned Residential District
- A. Aquifer Conservation District
- SP. Shoreland Protection District

The location and boundaries of districts are and shall be as shown on the Zoning Map, the Wetlands Conservation District Map, the Flood Hazard Conservation District Map, the Soils Limitation District Photo Maps, the Elderly Zoning District Map, and the Planned Residential District Map which are hereby declared to be a part of this ordinance.

**2.01.1 - Industrial District - Metes and Bounds, I-1, I-2, I-3**

- A. From Souhegan River North to Bedford line from Merrimack River to 200 feet west of the railroad tracks and the extension of the industrial zone in the area of the B&M Railroad at the northerly side of the Souhegan River as mapped [including all of Tax Map Parcels 6D-1/75 except for that portion of the parcel south and west of the southwesterly property line of Tax Map Parcel 6D-1/76 and north and west of a line drawn from the southwestern corner of Tax Map Parcel 6D-1/76 to a point at a jog in the southwesterly boundary line of Tax Map Parcel 6D-1/75, said point being approximately 249 feet east of the Front Street Right-of-Way, and all of Tax Map Parcels 6D-1/76, 6E-2/60 and 6E-2/61 but excluding all of Tax Map Parcels 6D-1/69 and 75-4, 6E-1/5, 7, 8, 9, 10, 10-1, 11, 12, 13, 38, 37, 36, 35, 34, 33 and 6E-2/39.
- B. Beginning at a point at the intersection of the westerly right-of-way line of Camp Sargent Road and the southerly right-of-way line of Continental Boulevard; thence
  - 1. Westerly along the said southerly right-of-way line of Continental Boulevard, a distance of seven hundred ninety (790) feet, more or less, to a point at the most westerly corner of Lot 4D/54-4 and the most northerly corner of Lot 3D/3; thence
  - 2. Southeasterly along the southwesterly line of said line of said Lot 4D/54-4 and Lot 4D/53 and the northeasterly line of said Lot 3D/3, a distance of three hundred sixty-nine (369) feet, more or less, to a point on the westerly line of Lot 3D/18; thence

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TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

**Section 2.02.2 - District C-1, Limited Commercial - Permitted Uses (continued)**

- b) Cafes,
  - c) Residential (other than a Planned Unit Development), and
  - d) Accessory uses as defined herein;
2. Provided that it finds that all of the following conditions are met:
- a) The specific site is an appropriate location for such a use or uses in terms of overall community development.
  - b) The use as developed will not adversely affect the neighborhood.
  - c) There will be no nuisance or serious hazard to vehicles or pedestrians.
  - d) Adequate and appropriate facilities will be provided for the proper operation of the proposed use or uses.

D. Conditional Use Permits:

- 1. Pursuant to the authority provided in RSA 674:21, the Planning Board may grant a Conditional Use Permit for Alternative Treatment Centers (Non-Cultivation Location) within the C-1 District.
- 2. Purpose & Intent: The purpose of this Section is to implement NH RSA 126-X, authorizing the use of therapeutic cannabis and to regulate the locations and operations of Alternative Treatment Center uses, so as to promote and protect the public health, safety, and welfare of the residents of Merrimack. It is neither the intent nor the effect of this Section to condone or legitimize the use or possession of marijuana except as allowed by NH State Law. The intent of this Section is to:
  - a) Provide for the safe sale and distribution of medical marijuana to patients who qualify to obtain, possess, and use marijuana for medical purposes under RSA 126-X and as managed by the New Hampshire Department of Health & Human Services; and
  - b) Protect public health and safety through reasonable limitations on business operations as they relate to noise, air and water quality, food safety, building safety, neighborhood and patient safety, security for the business and its personnel and other health safety concerns.
- 3. The following criteria must be satisfied in order for the Planning Board to grant a Conditional Use Permit for Alternative Treatment Centers (Non-Cultivation Location):
  - a) An Alternative Treatment Center shall not be located within one thousand (1,000) feet of the property line of a public or private elementary or secondary school or designated drug free school zone; and

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

**Section 2.02.2 - District C-1, Limited Commercial - Permitted Uses (continued)**

- b) The Alternative Treatment Center shall be located in a permanent structure and may not be located in a trailer, manufactured home, cargo container, or any structure that has axles with wheels. Drive-Thru services at an Alternative Treatment Center are prohibited; and
- c) The Alternative Treatment Center shall provide for the proper disposal of cannabis remnants or byproducts, which remnants or byproducts shall not be placed in the facility's exterior refuse containers; and
- d) The applicant shall provide a detailed narrative and floor plan, as well as any other relevant documentation, describing how the Alternative Treatment Center shall be secured. The security plan must take into account the measures that will be taken to ensure the safe delivery of any product to the facility (including permitted times for delivery), how the product will be secured on site, and how patient transactions will be facilitated in order to ensure safety. The security plan shall be reviewed and approved by the Merrimack Police Department; and
- e) The use of cannabis on the premises is prohibited; and
- f) The Alternative Treatment Center shall emit no cannabis related fumes, vapors or odors which can be smelled or otherwise perceived from beyond the lot lines of the property where the facility is located.

E. A buffer shall be erected and maintained to screen between commercial and existing residential uses. Buffers may be fence screens, dense plantings of suitable trees and shrubbery, or naturally occurring shrubs and trees.

**2.02.3 - District C-2, General Commercial - Permitted Uses**

A. In recognition of the demand created by Merrimack's strategic location and continuing growth, commercial areas are hereby designated allowing for the establishment of retail businesses.

A criterion in their location must be readily accessible to high traffic volume carrying facilities to allow not only for the stores and facilities themselves but also for parking, landscaping, and ancillary requirements as well. The primary function of this district use would be to serve a regional and/or local shopping and service need.

B. Only the following uses are permitted in the general commercial district. Such uses shall be primarily conducted inside a building:

1. Stores for sale of goods at retail or performance of regional customary personal services, or services clearly incidental to retail sales including services and construction materials, but no fabrication or manufacturing except incidental to, and on the same premises with, such retail sales, provided such incidental fabrication is conducted entirely within a building and does not occupy more than 20% of the floor area used for business purposes. Specifically excluded are "big box", single user retail stores greater than 75,000 square feet.
2. Business, professional, or banking offices.

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TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

**Section 2.02.3 - District C-2, General Commercial - Permitted Uses (continued)**

- 7) Twice yearly inspections and bonding required: a) the structural integrity of all towers, whether in use, abandoned or unused, shall be inspected at least twice a year; b) copies of inspection reports shall be filed with the Community Development Department within thirty (30) days of the inspection; c) all owners of commercial wireless telecommunication towers shall obtain and maintain a bond to cover the cost of removal of abandoned, unused towers or portions of towers. d) the amount of said bond shall be reviewed by the Town every five (5) years to ensure the amount of security is adequate and may be increased if necessary; e) failure to file the required biannual inspection report with the Community Development Department within the specified time-frame shall constitute sufficient grounds to cause the bond to be called.
  - 8) Permit Required: a) building permits shall be obtained for all towers, accessory structures and antennae; b) the number of users and the total number of antennae on any individual tower shall not exceed that which is permitted under the site plan approved by the Merrimack Planning Board.
- c) Written evidence demonstrating that no existing structure can accommodate the applicant's proposed antenna if the applicant is proposing to build a new tower. This evidence can consist of an analysis of the location, height, strength, potential interference, and co-location costs which would make co-location impractical.

D. Conditional Use Permit: Pursuant to the authority provided in RSA 674:21, the Planning Board may grant a Conditional Use Permit for Alternative Treatment Centers (Non-Cultivation Location) and Self-Storage Facilities within the C 2 District.

1. Alternative Treatment Centers (Non-Cultivation Location): Subject to the requirements of Section 2.02.2.D, Subsections 2 and 3.

2. Self Storage Facilities

- a) Purpose & Intent: Self-Storage Facilities have characteristics in common with both commercial uses and industrial uses. This subsection provides regulations to appropriately site Self-Storage Facilities in the C-2 District while maintaining the desired character and function of those zones. In general, Self-Storage Facilities generate low levels of vehicular and pedestrian activity and typically do not contribute to the vitality of a commercial area compared to other commercial uses. Historically self-storage facilities have visually resembled industrial facilities, but some trends in the industry have featured designs compatible with higher quality commercial development. If designed appropriately as stand-alone structures that emulate the exterior architecture of residential or multi-family residential or as components located within larger commercial/ office developments, Self-Storage Facilities may be located without adversely impacting the intent of the C-2 District or surrounding neighborhoods, provided the criteria below are satisfied.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

**Section 2.02.3 - District C-2, General Commercial - Permitted Uses (continued)**

b) \_\_\_\_\_ The following criteria must be satisfied in order for the Planning Board to grant a Conditional Use Permit for Self-Storage Facilities:

- 1) Granting of the application would meet some public need or convenience;
- 2) Granting of the application is in the public interest;
- 3) The property in question is reasonably suited for the use requested;
- 4) The use requested would not have a substantial adverse effect on the rights of the owners of surrounding properties;
- 5) There must be appropriate provision for access facilities adequate for the estimated traffic from public streets and sidewalks, so as to assure public safety and to avoid traffic congestion;
- 6) Electrical service to storage units shall be for lighting and climate control only. No electrical outlets are permitted inside individual storage units. Lighting fixtures and switches shall be of a secure design that will not allow tapping the fixtures for other purposes;
- 7) If the facility abuts residentially zoned property, the facility loading bays, docks or doors shall not be visible from the residential property or from public rights-of-way;
- 8) In order to promote visual compatibility with commercial development allowed in commercial zones, Self-Storage Facility buildings shall incorporate appropriate landscaping/screening and architectural and design features common to commercial and/or multifamily development. (Examples of such architectural and design features include: massing; proportion; facade modulation; exterior building materials and detailing; varied roofline; pedestrian scale; fenestration; repetition; etc.).

E. General Requirements:

Site Plan Review: In each case where a building or use is proposed in this district other than a single-family residence, the Building Official shall refer the site plan of the proposal to the Planning Board for its review in accordance with its subdivision and/or site review regulations. Such Board shall determine that all requirements of this ordinance have been met, and buffer protection provided to adjacent residential uses and, after holding a public hearing on each application, shall approve, approve with modifications, or disapprove said site plan. In modifying or disapproving any site plan, the Board shall enter its reasons for such actions in its records.

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TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

**Section 2.02.4 - District I-1 & I-2, Industrial - Permitted Uses (continued)**

- 3) The antenna(s) and supporting electrical and mechanical equipment shall be a neutral color that is the same as the color as the supporting structure so as to make the antenna(s) and related equipment as visually unobtrusive as possible.
- 4) All utility buildings and structures accessory to the antenna(s) shall be screened from view by suitable vegetation from any adjacent residentially zoned property or public roads.

C. Alternative Treatment Centers Permitted in the I-1 District by Conditional Use Permit

1. Pursuant to the authority provided in RSA 674:21, the Planning Board may grant a Conditional Use Permit for Alternative Treatment Centers (both Cultivation and Non-Cultivation Locations) within the I-1 District, subject to the requirements of Section 2.02.2.D, Subsections 2 and 3.

D. Mixed Use Developments Permitted in the I-1 District by Conditional Use Permit

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Pursuant to the authority provided in RSA 674:21, the Planning Board may grant a Conditional Use Permit for mixed uses on parcels in the I-1 District consisting of a minimum of 50 acres provided there is compliance with the terms of this section.

1. Purpose

The purpose of this section is to permit mixed uses which allow the creative integration of industrial, commercial and residential housing developments based on a master site development plan that permits flexibility in the design and integration of the permitted uses contained therein. The permitted mixed uses are intended to be complementary, so as to provide for the appropriate use of the land, fiscally beneficial development, the efficient provision of public services, and expanded opportunities for a diversity of residential development outside the traditional residential districts.

Conditional Use Permits are limited to single consolidated tracts of land situated in the I-1 Industrial District that:

- a. Are a minimum of 50 acres in size;
- b. Are serviced by municipal sewer;
- c. Are serviced by the Merrimack Village District or Pennichuck Water Works;
- d. Have 500 (five hundred) feet of continuous frontage on the State maintained portions of Daniel Webster Highway located south of Star Drive to the Nashua City Line, or north of Bedford Road to the Bedford Town Line.

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TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

**Section 2.02.4 - District I-1 & I-2, Industrial - Permitted Uses (continued)**

E. Special Exceptions

The Zoning Board of Adjustment may grant a special exception for the following uses of lands within the Industrial Districts I-1 & I-2:

1. Accessory uses as defined herein.
2. Other industrial uses except waste disposal sites and dumps, upon the approval by the Board of Adjustment such uses are of the same general character as those permitted and which will not be detrimental to the other uses within the district or to the adjoining land uses, shall be permitted. This may include the conversion of existing residential uses to commercial or industrial uses as are allowed and provided for in paragraph B. of this section.
3. On-site caretakers lodges or residences.
4. For the purpose of determining whether an applicant shall be granted a special exception as provided in this section, the Zoning Board of Adjustment shall use the special exception criteria set forth in a-d only, subsection B.1, Special Exceptions, Section 2.02.1 District R, Residential Zone.

F. Alternative Treatment Centers Permitted in the I-2 District by Conditional Use Permit

1. Pursuant to the authority provided in RSA 674:21, the Planning Board may grant a Conditional Use Permit for Alternative Treatment Centers (both Cultivation and Non-Cultivation Locations) within the I-2 District, subject to the requirements of Section 2.02.2.D, Subsections 2 and 3.

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G. General Requirements

Site Plan Review: In each case where a building or use is proposed in these districts other than a single-family residence, the Building Official shall refer the site plan of the proposal to the Planning Board for its review in accordance with Subdivision Regulations. The Planning Board shall determine that all requirements of this Ordinance have been met, including appropriate conditions and safeguards with respect to the adequacy of traffic access, circulation and parking, landscaping and screening. After holding a public hearing on each application, the Planning Board shall approve, approve with modification, or disapprove said site plan. In modifying or disapproving any site plan, the Board shall enter its reasons for such action in its records.

**2.02.5 - District I-3, Industrial - Permitted Uses**

A. District Objectives

This district shall allow for establishment of manufacturing employment opportunities in the community and take into consideration the proximity of the town water supply wells and established residential uses adjacent to this district.

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TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

**SECTION 17 - SIGNS** [revised *TBD*]

Deleted: 5/14/15

**17.01 - Purpose**

The purpose of this article is to encourage the effective use of signage to direct movement, advertise, and inform the public while protecting public safety, preserving neighborhood character and minimizing visual clutter.

**17.02 - Governmental Signs and Signs Required By Law**

Nothing in this section shall prevent the erection, location or construction of signs on private property where such erection, construction or location is required by any law or ordinance enacted by the local, state or federal governments, nor shall any village district or municipally operated utility be prohibited from erecting signs on private property when otherwise permitted.

**17.03 - Permit Required**

No sign shall be erected or affixed to any building exterior or placed freestanding on any premises or altered or moved, without a permit issued by the Building Official and approved by Planning/Zoning Administrator except as otherwise exempted in this ordinance.

**17.04 - Definitions**

The following definitions shall apply throughout these regulations.

1. *Awning*: a removable shelter of canvas, plastic, metal or some other material, extending over a doorway or window and providing shelter from rain or sun.
2. *Awning Sign*: a sign affixed to the surface of an awning but not extending above below or beyond the awning surface.
3. *Banner Sign*: a temporary sign of lightweight material (paper, plastic or fabric) hung either with or without frames. Flags and insignias containing only markings of any government, corporation or business are not considered to be banners.
4. *Building Face or Wall*: all window and wall area of a building in one plane or elevation.
5. *Changeable Copy Sign*: a sign on which message copy can be changed through use of attachable letters and numerals excluding electronic switching of lamps or illuminated tubes to form words and numerals. *Changeable copy sign* includes a sign which has automatic switching, limited to time and temperature.
6. *Construction or Project Sign*: a sign erected on a project site prior to or during a construction project.
7. *Directional Sign*: a sign identifying site locations, entrances, exits, parking areas,

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

**Section 17.10 - Commercial and Industrial Districts (continued)**

Section 11.10 Subdivision Regulations of the Town of Merrimack; and

- d) The owner/installer of Electronic Message Displays shall certify as part of the application that signs will not exceed the brightness levels specified in Section 11.10 Subdivision Regulations of the Town of Merrimack.

12. Signage Requirements for Alternative Treatment Centers

- a) Alternative Treatment Centers (Non-Cultivation Locations) that have received a Conditional Use Permit and Site Plan approval from the Planning Board shall be subject to following requirements:

- 1) Any displays of merchandise, signs, or any other exhibit depicting the activities of the Alternative Treatment Center placed within the interior of the registered premises shall be arranged or screened to prevent public viewing from outside such building or premises.
- 2) One (1) wall sign which displays the business name and logo, and which meets the size requirements of Section 17.10.4 is permitted.
- 3) A business name and logo may be used in labeling, signage, and other materials, however, the use of medical symbols, images of cannabis or cannabis products, related cannabis paraphernalia, and colloquial references to cannabis or marijuana shall be prohibited from use in the business name or logo.
- 4) Exterior signage shall not be illuminated during non-business hours. Illumination of signage shall otherwise comply with all applicable illumination requirements of the Subdivision and Site Plan Regulations.

- b) Alternative Treatment Centers (Cultivation Locations) shall not be permitted to have any exterior signage other than that indicating the property's address.

**17.11 - Off-Premise Advertising Signs**

Off premise advertising signs may be erected on parcels of real estate within, and only within, the Commercial and Industrial zones. Off premise advertising signs shall be limited to Ground Signs conforming to the regulations provided in Section 17.10.3.

A premise may display either an On-Premise sign or an Off-Premise sign, but not both, unless it has enough frontage to display two signs (as described in 17.10.3) in which case one sign may be devoted to on-premise advertising and one sign devoted to off-premise advertising.

| SECTION 1 - PURPOSE AND DEFINITIONS [revised TBD]

Deleted: 5/14/15

**1.01 Purposes**

This ordinance shall be known as the Zoning Ordinance and Building Code. To promote the health, safety, convenience and general welfare of the Town of Merrimack and to make it an attractive place in which to live, the following ordinance and building code is hereby enacted by the voters of said Town of Merrimack.

**1.02 Other Definitions Found at Other Locations in This Ordinance**

- A. Certain terms and words are also defined at Section 2.02.8 *Flood Hazard Conservation District*, Page 28.
- B. Certain terms and words are also defined at Section 2.02.11 *Aquifer Conservation District*, page 42.
- C. Certain terms and words are also defined at Section 17.04 *Signs*, page 126.
- D. Certain terms and words are also defined at Section 2.02.12 *Shoreland Protection District*, page 49.

**1.03 - Definitions**

- A. For the purposes of this ordinance, certain terms and words are hereby defined.
  - 1. Abutter: Any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the Planning Board or Zoning Board of Adjustment.
  - 2. Accessory Dwelling Unit: A second dwelling which is contained within an existing or proposed single family detached dwelling unit that is clearly incidental and subordinate in extent, use and purpose to the principal dwelling.
  - 3. Accessory Use: A subordinate use of land or building which is customarily incidental and subordinate to the principal building or to the principal use of the land and which is located on the same lot with the principal building or use.
  - 4. Airport/helicopter/aircraft: An area of land or water providing certain specified facilities and services for use in connection with air transportation which could be used as a site for landing and taking-off of aircraft. Aircraft means any engine powered contrivance for air transportation.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

**Section 1.03 Definitions (cont):**

5. Alternative Treatment Center: An "alternative treatment center" as defined in RSA 126-X:l, I, namely, a not-for-profit entity registered under RSA 126-X:7 that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies, and dispenses cannabis, and related supplies and educational materials, to qualifying patients and alternative treatment centers.
- a) Alternative Treatment Center (Cultivation Location Only): A "cultivation location" as defined in RSA 126-X:l, IV, namely, a locked and enclosed site under the control of an alternative treatment center where cannabis is cultivated, secured with one or more locks or other security devices in accordance with RSA 126-X and the Department of Health and Human Service's administrative rules.
- b) Alternative Treatment Center (Non-Cultivation Location): An alternative treatment center operated in accordance with RSA 126-X and the Department of Health and Human Services administrative rules that has a separate location for the cultivation of cannabis.
6. Appeal: A process whereby any person, officer, department, board or bureau aggrieved by a decision of the Planning & Zoning Administrator or Building Official may appeal to the Zoning Board of Adjustment where such matter is within the board's power and shall file a Notice of Appeal specifying the grounds therefore, and shall include the process whereby any adverse decisions by the Zoning Board of Adjustment are further appealed to the Superior Court.
7. Aquifer: Those areas designated as having high, medium, and low potential to yield water which appear on state-wide mapping prepared by the U.S. Geological Survey (USGS) entitled "Availability of Groundwater in the lower Merrimack River Basin Southern N.H." by John E. Cotton, 1977, or as most recently published by USGS..
8. Building Official: An appointed official whose primary responsibility is to enforce the Building Code of the Town of Merrimack.
9. Certificate of Occupancy: A statement signed by the Building Official setting forth that a building or structure or any portion thereof complies with the zoning and building ordinance; that a building, structure or parcel of land may lawfully be employed for specified uses; or both.
10. Certified Soil Scientist: a person who, by reason of special knowledge of pedological principles acquired professional education and practical experience, as specified in RSA 310-A:84, I & II, is qualified to identify, classify, and prepare soil maps according to the standards of the National Cooperative Soil Survey, or standards adopted by the New Hampshire Department of Environmental Services, or standards adopted by the board, and who has been duly certified by the authorized state board of natural sciences.

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TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

**Section 1.03 - Definitions (continued)**

- 11. Certified Wetland Scientist: a person who, by reason of his or her special knowledge of hydric soils, hydrophytic vegetation, and wetland hydrology acquired by course work and experience, as specified in RSA 310-A:84, II-a & II-b, is qualified to delineate wetland boundaries and prepare wetland maps in accordance with standards for identification of wetlands adopted by the New Hampshire Department of Environmental Services or the United States Army Corps of Engineers or its successor and who has been duly certified by the authorized state board of natural sciences. Deleted: 0
- 12. Change of Use: The change in the use of land and/or building(s) to another use. Deleted: 1
- 13. Community Development Director: The chief administrator of the Community Development Department. Deleted: 2
- 14. Conservation Commission: A seven member municipal body appointed by the Town Council for the proper utilization and protection of natural resources and for the protection of water-shed resources within the Town of Merrimack. Deleted: 3
- 15. District, Overlay: A special district or zone which addresses special land use circumstances and/or environmental safeguards and is superimposed over the underlying existing zoning districts. Permitted uses in the underlying zoning district shall continue subject to compliance with the regulations of the overlay zone or district. Deleted: 4
- 16. District or Zone: A geographical section or sections of the Town for which the regulations and provisions governing the use of buildings and land are uniform for each class of use permitted therein and where certain uses of land may be permitted, permitted or denied pursuant to municipal review or prohibited. Deleted: 5
- 17. Dwelling Unit: A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. Deleted: 6
- 18. Expansion/Alteration: As applied to a building or structure, means a change or rearrangement in the structural parts or in the means of egress; or an enlargement, whether by extending on a side or by increasing in height; or the moving from one location or position to another. Deleted: 7
- 19. Family: One or more persons related by blood or marriage, or a group of not more than five persons who need not be related by blood or marriage, living together as a single housekeeping unit in a dwelling unit. Deleted: 8

**Section 1.03 - Definitions (continued)**

20. **Family Day Care Home:** An occupied residence in which child day care is provided for less than 24 hours per day, except in emergencies, for up to 6 children from one or more unrelated families. The 6 children shall include any foster children residing in the home and all children who are related to the caregiver except the children who are 10 years of age or older. In addition to the 6 children, up to three children attending a full day school program may also be cared for up to five hours per day on school days and all day during school holidays.

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21. **Farms, Agriculture, Farming:** As defined in RSA 21:34-a and amendments thereto, the word "farm" shall mean any land or buildings or structures on or in which agriculture and farming operations are carried on and shall include the residence or residences of owners, occupants, or employees located on such land. The words "agriculture" and "farming" shall mean all operations of a farm such as the cultivation, conserving, and tillage of the soil, dairying, greenhouse operations, the production, cultivation, growing and harvesting of any agricultural, floricultural, sod or horticultural commodities, the raising of livestock, bees, fur-bearing animals, fresh water fish or poultry, or any practices on the farm as an incident to or in conjunction with such farming operations including, but not necessarily restricted to, the following: preparation for market, delivery to storage or to market, or to carriers for transportation to market, of any products or materials from the farm; the transportation to the farm of supplies and materials; the transportation of farm workers; forestry or lumbering operations; the marketing or selling at wholesale or retail or in any other manner any products from the farm and of other supplies that do not exceed in average yearly dollar volume the value of products from such farm.

22. **Floor Area, Gross:** For the purpose of determining required parking spaces, the gross floor area is the total floor area within the perimeter of the outside walls of the building without deduction for hallways, stairs, closets, thickness of walls, columns and other similar features.

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23. **Floor Area, Net:** For the purpose of determining required parking spaces, the net floor area is total floor area within the perimeter of the inside walls of the building deducting for interior walls, hallways, stairs, closets, storage and similar features including other areas such as those for the preparation of food and drink, restrooms and waiting rooms.

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24. **Floor Area of Building:** The total number of square feet of floor area of all stories in a building, excluding cellars, unfinished attics, uncovered steps and uncovered porches. All horizontal measurements shall be made between exterior faces of walls.

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25. **Frontage:** The length of the lot line connecting the side lot lines which borders on a Class V or better highway (excepting the F.E. Everett Turnpike and other Limited Access Highways as defined in RSA 230:44 (as may be amended from time to time)), or a street on a subdivision plat approved by the Planning Board, or land designed to become a Class V or better highway.

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TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

**Section 1.03 - Definitions (continued)**

- ~~26.~~ Hazardous or Toxic Materials or Liquids: Materials or liquids that pose a threat present or future to the environment, whether in use, storage or transit, including without exception hazardous waste identified and listed in accordance with Section 3001 of the Resource Conservation and Recovery Act of 1976. Deleted: 5
  
- ~~27.~~ Home Occupation: A non-residential use carried on within a residence or its accessory buildings, which use is clearly incidental and secondary to the principal use of the property as a residence and does not change the character thereof. Deleted: 6
  
- ~~28.~~ Home Owner: The owner of record of any land and residential and accessory structures located thereon. Deleted: 7
  
- ~~29.~~ Junk: Unregistered motor vehicles no longer intended or in condition for legal use on the public highways; used parts of motor vehicles or old iron, metal, glass, paper, cordage, or other waste or discarded or second-hand material which has been a part, or intended to be a part, of any motor vehicle; or any machinery, scrap metal or other worn out, cast off, or discarded articles or materials ready for destruction or collected or stored for salvage or conversion to same use. Junk shall also include any worn out or discarded materials including but not necessarily limited to construction material, household wastes, including garbage, discarded appliances, and discarded consumer electronic devices. Any article or material which unaltered or unchanged and without further reconditioning can be used for its original purpose as readily as when new, shall not be considered junk. Deleted: 8
  
- ~~30.~~ Junk Yard: Any space more than 200 square feet in area, whether inside or outside a building, used for storage, keeping, processing, salvaging or abandonment of junk. Deleted: 29
  
- ~~31.~~ Junk Yard, Commercial: Any junk yard which is operated for profit, whether said profit is derived from the storage, reconditioning, conversion, or sale of junk, or otherwise. Deleted: 0
  
- ~~32.~~ Lot Depth: Lot depth shall be considered to be the distance between the midpoints of straight lines connecting the foremost points of the side lot lines in front and the rearmost points of the side lot lines in the rear. Deleted: 1
  
- ~~33.~~ Lot Frontage: The front of a lot shall be construed to be the portion nearest the street. For the purpose of determining yard requirements for corner lots and double frontage lots, all sides of a lot adjacent to streets shall be considered frontage. Deleted: 2
  
- ~~34.~~ Lot Line, Rear: The lot line or lines generally opposite or parallel to the front lot line, except in a double frontage lot. If the rear lot line is less than 10 feet long or the lot comes to a point at the rear, said rear lot line is assumed to be a line not less than 20 feet long, lying wholly within the lot, parallel to the front lot line, or in the case of a curved front lot line, parallel to the chord of the arc of said front lot line. Deleted: 3

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

**Section 1.03 – Definitions (continued)**

35. Lot of Record: A lot held under separate ownership from the adjacent lots or a lot shown to be a separate and distinct numbered lot of record by a plan of lots which has been recorded. Deleted: 4
36. Manufactured Housing: Any structure, transportable in one or more sections, which, in the traveling mode, is 8 body feet or more in width and 40 body feet or more in length, or when erected on site, is 320 square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating, and electrical heating systems contained therein. The terms "mobile home" or "trailer", as these may appear in this ordinance, should be understood to mean "manufactured housing" as defined herein. Deleted: 5
37. Manufactured Housing Park: A parcel of land containing at least five acres, upon which one or more manufactured homes are parked or intended to be parked for living purposes. Deleted: 6
38. Multiple (Multi) family dwelling: A building containing three (3) or more dwelling units. Deleted: 7
39. Non-Conforming Lot: A lot lawfully existing at the time this or any previous zoning ordinance became effective and which does not conform with the regulations of the district in which it is located. Deleted: 8
40. Non-Conforming Use: A use of a building or of land lawfully existing at the time this or any previous zoning ordinance became effective and which does not conform with the use regulations of the district in which it is located. Deleted: 39
41. Nonprofit Organization: Nonprofit organization shall include, but not be limited to, a not for profit organization, corporation, community chest, fund or foundation organized and operated exclusively for religious, cultural, charitable, scientific, recreational, literary, agricultural, or educational purposes, or to foster amateur competition in a sport formally recognized by the National Collegiate Athletic Association, and an organization exempt from taxation under Section 501 (c) of the Internal Revenue Code of 1986 organized or incorporated in this state or another state of having a principal place of business in this state or in another state. Deleted: 0
42. Parking Space, Off-Street: A rectangular area, not less than 9 X 18.5 feet forming a parking stall within or without a structure, not located in any public right-of-way. Deleted: 1
43. Planning Board: A seven member legislative body charged with the duty to prepare and amend the Town of Merrimack Master Plan, prepare and amend a capital improvements program, the formulation of proposed amendments to the Merrimack Zoning Ordinance, and the review and approval of subdivision plans and site plans, and other duties as set forth in RSA 674:1. Deleted: 2

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

**Section 1.03 - Definitions (continued)**

44. Planning & Zoning Administrator: An appointed official whose responsibilities include administration and enforcement the zoning ordinance of the Town of Merrimack.

Deleted: 3

45. Public Hearing: A publicly advertised meeting of an official legislative or quasi-judicial body conducting Town business during which the public is allowed to give testimony concerning issues under consideration.

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46. Public Land and Institutions: All publicly owned land and facilities such as schools, parks and conservation land, museums, libraries, administration and maintenance building and grounds, police and fire stations, utility sites and utility rights-of-way and easements.

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47. Restaurant: An establishment whose principal business is selling food and beverages in a ready-to-consume state whether said food and beverages are consumed on or off the premises.

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a) Restaurant, carry-out: An establishment which sells food and beverages in a ready-to-consume state where no provisions are made for consumption on the premises.

b) Restaurant, combination: An establishment which sells food and beverages in a ready-to-consume state which may be either consumed on or taken off of the premises.

c) Restaurant, drive-in: An establishment which sells food and beverages in a ready-to-consume state primarily for consumption on the premises by persons in parked motor vehicles.

d) Restaurant, sit-down: An establishment which sells food and beverages in a ready-to-consume state primarily to persons who are seated within the building or outside on the premises.

48. Seasonal Building or Structure: A building or structure, usually but not always a dwelling unit, which was originally designed to be occupied only during the warm months of the year, not during winter; such a structure may not have been originally built with insulation or any permanent, central heating system; such a structure, when originally constructed, may not have had a septic system designed for year round use. (Reference 9.02.E)

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Section 1.03 - Definitions (continued)

~~49.~~ Self-Storage Facility: A building, group of buildings or other facility having compartments, rooms, spaces, containers or other type of units that are individually leased, rented, sold or otherwise contracted for, by customers for the storage of non-toxic, non-explosive personal or business goods or property, and where the facility owner/operator has limited access to the units. For purposes of this Ordinance, "self-storage facility" shall be considered synonymous with self-storage warehouse, self-service storage facility, mini-warehouse or mini-storage.

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~~50.~~ Setback, Front Yard: Open space extending across the full width of lot between the front lot line and nearest line of the principal building or any enclosed portion thereof. The depth of such yard shall be the shortest horizontal distance between the front lot line and the nearest point of the building or any enclosed portion thereof.

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~~51.~~ Setback, Rear Yard: Open space extending across the full width of lot between the rear line of the lot and the nearest line of the building or any enclosed portion thereof. The depth of such yard is the shortest horizontal distance between the rear lot line and the nearest point of the building. When the rear lot line is less than 10 feet long or if the lot comes to a point at the rear, the depth of the rear yard is measured to an assumed rear lot line not less than 20 feet long, lying wholly within the lot, parallel to the front lot line, or in the case of a curved front lot line, parallel to the chord of the arc of said front lot line.

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~~52.~~ Setback, Side Yard: Open space between the side lot line, and the nearest line of the principal buildings, or any enclosed portion thereof, extending from the front yard to the rear yard, or, in the absence of either of such yards, to the front lot line and/or rear lot line. The width of a side yard shall be the shortest distance between the side lot line and the nearest point of the principal building or any enclosed portion thereof.

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~~53.~~ Setback, Yard: A required open space on a lot unoccupied and unobstructed by any principal structure or portion thereof, except for such projections into any required open space as are expressly permitted herein.

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~~54.~~ Special Exception: Uses authorized under the Zoning Ordinance subject to appropriate conditions and safeguards as set forth in the ordinance as may be approved by the Zoning Board of Adjustment. Applicants for a special exception need not prove hardship but must comply with all other applicable zoning laws and any conditions for approval imposed by the Zoning Board.

Deleted: 3

~~55.~~ Street: Class V Highway or better, as defined in RSA 229:5(VI).

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~~56.~~ Structural Alterations: Any change in the supporting members of a building or structure, such as walls, columns, beams or girders.

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TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

**Section 1.03 - Definitions (continued)**

~~57.~~ Structure: Anything constructed or erected, the use of which demands its permanent location on the land, or anything attached to something permanently located on the land.

Deleted: 6

~~58.~~ Travel Trailer: A mobile home designed to be used for temporary occupancy for travel, recreational or vacation use; with the manufacturer's permanent identification "Travel Trailer" thereon; and when factory equipped for the road, being of any length provided its gross weight does not exceed forty-five hundred (4500) pounds, or being of any weight provided its overall length does not exceed twenty-eight (28) feet.

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~~59.~~ Variance: A grant of permission by the Zoning Board of Adjustment that authorizes the recipient to do that which, according to the strict letter of the zoning laws, could not otherwise legally be done.

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~~60.~~ Wetlands: "Wetlands" means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

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~~61.~~ Zoning Board of Adjustment: A quasi-judicial body which hears and decides matters relating to the application of the zoning ordinance and considers appeals from the decisions of the Planning & Zoning Administrator and Building Official and considers variance and special exception applications.

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**SECTION 2 - ESTABLISHMENT OF DISTRICTS** [revised *TBD*]

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**2.01 - The Town of Merrimack is hereby divided into twelve districts:**

- R. Residential District
- C-1. Limited Commercial District
- C-2. General Commercial District
- I-1. Industrial District
- I-2. Industrial District
- I-3. Industrial District
- W. Wetland Conservation District
- F. Flood Hazard Conservation District
- E. Elderly Zoning District
- PRD. Planned Residential District
- A. Aquifer Conservation District
- SP. Shoreland Protection District

The location and boundaries of districts are and shall be as shown on the Zoning Map, the Wetlands Conservation District Map, the Flood Hazard Conservation District Map, the Soils Limitation District Photo Maps, the Elderly Zoning District Map, and the Planned Residential District Map which are hereby declared to be a part of this ordinance.

**2.01.1 - Industrial District - Metes and Bounds, I-1, I-2, I-3**

- A. From Souhegan River North to Bedford line from Merrimack River to 200 feet west of the railroad tracks and the extension of the industrial zone in the area of the B&M Railroad at the northerly side of the Souhegan River as mapped [including all of Tax Map Parcels 6D-1/75 except for that portion of the parcel south and west of the southwesterly property line of Tax Map Parcel 6D-1/76 and north and west of a line drawn from the southwestern corner of Tax Map Parcel 6D-1/76 to a point at a jog in the southwesterly boundary line of Tax Map Parcel 6D-1/75, said point being approximately 249 feet east of the Front Street Right-of-Way, and all of Tax Map Parcels 6D-1/76, 6E-2/60 and 6E-2/61 but excluding all of Tax Map Parcels 6D-1/69 and 75-4, 6E-1/5, 7, 8, 9, 10, 10-1, 11, 12, 13, 38, 37, 36, 35, 34, 33 and 6E-2/39.
- B. Beginning at a point at the intersection of the westerly right-of-way line of Camp Sargent Road and the southerly right-of-way line of Continental Boulevard; thence
  - 1. Westerly along the said southerly right-of-way line of Continental Boulevard, a distance of seven hundred ninety (790) feet, more or less, to a point at the most westerly corner of Lot 4D/54-4 and the most northerly corner of Lot 3D/3; thence
  - 2. Southeasterly along the southwesterly line of said line of said Lot 4D/54-4 and Lot 4D/53 and the northeasterly line of said Lot 3D/3, a distance of three hundred sixty-nine (369) feet, more or less, to a point on the westerly line of Lot 3D/18; thence

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TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

**Section 2.02.2 - District C-1, Limited Commercial - Permitted Uses (continued)**

- b) Cafes,
  - c) Residential (other than a Planned Unit Development), and
  - d) Accessory uses as defined herein;
2. Provided that it finds that all of the following conditions are met:
- a) The specific site is an appropriate location for such a use or uses in terms of overall community development.
  - b) The use as developed will not adversely affect the neighborhood.
  - c) There will be no nuisance or serious hazard to vehicles or pedestrians.
  - d) Adequate and appropriate facilities will be provided for the proper operation of the proposed use or uses.

D. Conditional Use Permits:

- 1. Pursuant to the authority provided in RSA 674:21, the Planning Board may grant a Conditional Use Permit for Alternative Treatment Centers (Non-Cultivation Location) within the C-1 District.
- 2. Purpose & Intent: The purpose of this Section is to implement NH RSA 126-X, authorizing the use of therapeutic cannabis and to regulate the locations and operations of Alternative Treatment Center uses, so as to promote and protect the public health, safety, and welfare of the residents of Merrimack. The intent of this Section is to:
  - a) Provide for the safe sale and distribution of medical marijuana to patients who qualify to obtain, possess, and use marijuana for medical purposes under RSA 126-X and as managed by the New Hampshire Department of Health & Human Services; and
  - b) Protect public health and safety through reasonable limitations on business operations as they relate to noise, air and water quality, food safety, building safety, neighborhood and patient safety, security for the business and its personnel and other health safety concerns.
- 3. The following criteria must be satisfied in order for the Planning Board to grant a Conditional Use Permit for Alternative Treatment Centers (Non-Cultivation Location):
  - a) An Alternative Treatment Center shall not be located within one thousand (1,000) feet of the property line of a public or private elementary or secondary school or designated drug free school zone; and

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

**Section 2.02.2 - District C-1, Limited Commercial - Permitted Uses (continued)**

- b) The Alternative Treatment Center shall be located in a permanent structure and may not be located in a trailer, manufactured home, cargo container, or any structure that has axles with wheels. Drive-Thru services at an Alternative Treatment Center are prohibited; and
- c) The Alternative Treatment Center shall provide for the proper disposal of cannabis remnants or byproducts, which remnants or byproducts shall not be placed in the facility's exterior refuse containers; and
- d) The applicant shall provide a detailed narrative and floor plan, as well as any other relevant documentation, describing how the Alternative Treatment Center shall be secured. The security plan must take into account the measures that will be taken to ensure the safe delivery of any product to the facility (including permitted times for delivery), how the product will be secured on site, and how patient transactions will be facilitated in order to ensure safety. The security plan shall be reviewed and approved by the Merrimack Police Department; and
- e) The use of cannabis on the premises is prohibited; and
- f) The Alternative Treatment Center shall emit no cannabis related fumes, vapors or odors which can be smelled or otherwise perceived from beyond the lot lines of the property where the facility is located.

E. A buffer shall be erected and maintained to screen between commercial and existing residential uses. Buffers may be fence screens, dense plantings of suitable trees and shrubbery, or naturally occurring shrubs and trees.

**2.02.3 - District C-2, General Commercial - Permitted Uses**

A. In recognition of the demand created by Merrimack's strategic location and continuing growth, commercial areas are hereby designated allowing for the establishment of retail businesses.

A criterion in their location must be readily accessible to high traffic volume carrying facilities to allow not only for the stores and facilities themselves but also for parking, landscaping, and ancillary requirements as well. The primary function of this district use would be to serve a regional and/or local shopping and service need.

B. Only the following uses are permitted in the general commercial district. Such uses shall be primarily conducted inside a building:

1. Stores for sale of goods at retail or performance of regional customary personal services, or services clearly incidental to retail sales including services and construction materials, but no fabrication or manufacturing except incidental to, and on the same premises with, such retail sales, provided such incidental fabrication is conducted entirely within a building and does not occupy more than 20% of the floor area used for business purposes. Specifically excluded are "big box", single user retail stores greater than 75,000 square feet.
2. Business, professional, or banking offices.

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TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

**Section 2.02.3 - District C-2, General Commercial - Permitted Uses (continued)**

- 7) Twice yearly inspections and bonding required: a) the structural integrity of all towers, whether in use, abandoned or unused, shall be inspected at least twice a year; b) copies of inspection reports shall be filed with the Community Development Department within thirty (30) days of the inspection; c) all owners of commercial wireless telecommunication towers shall obtain and maintain a bond to cover the cost of removal of abandoned, unused towers or portions of towers. d) the amount of said bond shall be reviewed by the Town every five (5) years to ensure the amount of security is adequate and may be increased if necessary; e) failure to file the required biannual inspection report with the Community Development Department within the specified time-frame shall constitute sufficient grounds to cause the bond to be called.
- 8) Permit Required: a) building permits shall be obtained for all towers, accessory structures and antennae; b) the number of users and the total number of antennae on any individual tower shall not exceed that which is permitted under the site plan approved by the Merrimack Planning Board.
- c) Written evidence demonstrating that no existing structure can accommodate the applicant's proposed antenna if the applicant is proposing to build a new tower. This evidence can consist of an analysis of the location, height, strength, potential interference, and co-location costs which would make co-location impractical.

D. Conditional Use Permit: Pursuant to the authority provided in RSA 674:21, the Planning Board may grant a Conditional Use Permit for Alternative Treatment Centers (Non-Cultivation Location) and Self-Storage Facilities within the C 2 District.

1. Alternative Treatment Centers (Non-Cultivation Location): Subject to the requirements of Section 2.02.2.D, Subsections 2 and 3.

2. Self Storage Facilities

- a) Purpose & Intent: Self-Storage Facilities have characteristics in common with both commercial uses and industrial uses. This subsection provides regulations to appropriately site Self-Storage Facilities in the C-2 District while maintaining the desired character and function of those zones. In general, Self-Storage Facilities generate low levels of vehicular and pedestrian activity and typically do not contribute to the vitality of a commercial area compared to other commercial uses. Historically self-storage facilities have visually resembled industrial facilities, but some trends in the industry have featured designs compatible with higher quality commercial development. If designed appropriately as stand-alone structures that emulate the exterior architecture of residential or multi-family residential or as components located within larger commercial/ office developments, Self-Storage Facilities may be located without adversely impacting the intent of the C-2 District or surrounding neighborhoods, provided the criteria below are satisfied.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

**Section 2.02.3 - District C-2, General Commercial - Permitted Uses (continued)**

b) \_\_\_\_\_ The following criteria must be satisfied in order for the Planning Board to grant a Conditional Use Permit for Self-Storage Facilities:

- 1) Granting of the application would meet some public need or convenience;
- 2) Granting of the application is in the public interest;
- 3) The property in question is reasonably suited for the use requested;
- 4) The use requested would not have a substantial adverse effect on the rights of the owners of surrounding properties;
- 5) There must be appropriate provision for access facilities adequate for the estimated traffic from public streets and sidewalks, so as to assure public safety and to avoid traffic congestion;
- 6) Electrical service to storage units shall be for lighting and climate control only. No electrical outlets are permitted inside individual storage units. Lighting fixtures and switches shall be of a secure design that will not allow tapping the fixtures for other purposes;
- 7) If the facility abuts residentially zoned property, the facility loading bays, docks or doors shall not be visible from the residential property or from public rights-of-way;
- 8) In order to promote visual compatibility with commercial development allowed in commercial zones, Self-Storage Facility buildings shall incorporate appropriate landscaping/screening and architectural and design features common to commercial and/or multifamily development. (Examples of such architectural and design features include: massing; proportion; facade modulation; exterior building materials and detailing; varied roofline; pedestrian scale; fenestration; repetition; etc.).

E. General Requirements:

Site Plan Review: In each case where a building or use is proposed in this district other than a single-family residence, the Building Official shall refer the site plan of the proposal to the Planning Board for its review in accordance with its subdivision and/or site review regulations. Such Board shall determine that all requirements of this ordinance have been met, and buffer protection provided to adjacent residential uses and, after holding a public hearing on each application, shall approve, approve with modifications, or disapprove said site plan. In modifying or disapproving any site plan, the Board shall enter its reasons for such actions in its records.

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TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

**Section 2.02.4 - District I-1 & I-2, Industrial - Permitted Uses (continued)**

- 3) The antenna(s) and supporting electrical and mechanical equipment shall be a neutral color that is the same as the color as the supporting structure so as to make the antenna(s) and related equipment as visually unobtrusive as possible.
- 4) All utility buildings and structures accessory to the antenna(s) shall be screened from view by suitable vegetation from any adjacent residentially zoned property or public roads.

C. Alternative Treatment Centers Permitted in the I-1 District by Conditional Use Permit

1. Pursuant to the authority provided in RSA 674:21, the Planning Board may grant a Conditional Use Permit for Alternative Treatment Centers (both Cultivation and Non-Cultivation Locations) within the I-1 District, subject to the requirements of Section 2.02.2.D, Subsections 2 and 3.

D. Mixed Use Developments Permitted in the I-1 District by Conditional Use Permit

Deleted: Uses

Pursuant to the authority provided in RSA 674:21, the Planning Board may grant a Conditional Use Permit for mixed uses on parcels in the I-1 District consisting of a minimum of 50 acres provided there is compliance with the terms of this section.

1. Purpose

The purpose of this section is to permit mixed uses which allow the creative integration of industrial, commercial and residential housing developments based on a master site development plan that permits flexibility in the design and integration of the permitted uses contained therein. The permitted mixed uses are intended to be complementary, so as to provide for the appropriate use of the land, fiscally beneficial development, the efficient provision of public services, and expanded opportunities for a diversity of residential development outside the traditional residential districts.

Conditional Use Permits are limited to single consolidated tracts of land situated in the I-1 Industrial District that:

- a. Are a minimum of 50 acres in size;
- b. Are serviced by municipal sewer;
- c. Are serviced by the Merrimack Village District or Pennichuck Water Works;
- d. Have 500 (five hundred) feet of continuous frontage on the State maintained portions of Daniel Webster Highway located south of Star Drive to the Nashua City Line, or north of Bedford Road to the Bedford Town Line.

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TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

**Section 2.02.4 - District I-1 & I-2, Industrial - Permitted Uses (continued)**

E. Special Exceptions

The Zoning Board of Adjustment may grant a special exception for the following uses of lands within the Industrial Districts I-1 & I-2:

1. Accessory uses as defined herein.
2. Other industrial uses except waste disposal sites and dumps, upon the approval by the Board of Adjustment such uses are of the same general character as those permitted and which will not be detrimental to the other uses within the district or to the adjoining land uses, shall be permitted. This may include the conversion of existing residential uses to commercial or industrial uses as are allowed and provided for in paragraph B. of this section.
3. On-site caretakers lodges or residences.
4. For the purpose of determining whether an applicant shall be granted a special exception as provided in this section, the Zoning Board of Adjustment shall use the special exception criteria set forth in a-d only, subsection B.1, Special Exceptions, Section 2.02.1 District R, Residential Zone.

F. Alternative Treatment Centers Permitted in the I-2 District by Conditional Use Permit

1. Pursuant to the authority provided in RSA 674:21, the Planning Board may grant a Conditional Use Permit for Alternative Treatment Centers (both Cultivation and Non-Cultivation Locations) within the I-2 District, subject to the requirements of Section 2.02.2.D, Subsections 2 and 3.

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G. General Requirements

Site Plan Review: In each case where a building or use is proposed in these districts other than a single-family residence, the Building Official shall refer the site plan of the proposal to the Planning Board for its review in accordance with Subdivision Regulations. The Planning Board shall determine that all requirements of this Ordinance have been met, including appropriate conditions and safeguards with respect to the adequacy of traffic access, circulation and parking, landscaping and screening. After holding a public hearing on each application, the Planning Board shall approve, approve with modification, or disapprove said site plan. In modifying or disapproving any site plan, the Board shall enter its reasons for such action in its records.

**2.02.5 - District I-3, Industrial - Permitted Uses**

A. District Objectives

This district shall allow for establishment of manufacturing employment opportunities in the community and take into consideration the proximity of the town water supply wells and established residential uses adjacent to this district.

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TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

**SECTION 17 - SIGNS** [revised *TBD*]

Deleted: 5/14/15

**17.01 - Purpose**

The purpose of this article is to encourage the effective use of signage to direct movement, advertise, and inform the public while protecting public safety, preserving neighborhood character and minimizing visual clutter.

**17.02 - Governmental Signs and Signs Required By Law**

Nothing in this section shall prevent the erection, location or construction of signs on private property where such erection, construction or location is required by any law or ordinance enacted by the local, state or federal governments, nor shall any village district or municipally operated utility be prohibited from erecting signs on private property when otherwise permitted.

**17.03 - Permit Required**

No sign shall be erected or affixed to any building exterior or placed freestanding on any premises or altered or moved, without a permit issued by the Building Official and approved by Planning/Zoning Administrator except as otherwise exempted in this ordinance.

**17.04 - Definitions**

The following definitions shall apply throughout these regulations.

1. *Awning*: a removable shelter of canvas, plastic, metal or some other material, extending over a doorway or window and providing shelter from rain or sun.
2. *Awning Sign*: a sign affixed to the surface of an awning but not extending above below or beyond the awning surface.
3. *Banner Sign*: a temporary sign of lightweight material (paper, plastic or fabric) hung either with or without frames. Flags and insignias containing only markings of any government, corporation or business are not considered to be banners.
4. *Building Face or Wall*: all window and wall area of a building in one plane or elevation.
5. *Changeable Copy Sign*: a sign on which message copy can be changed through use of attachable letters and numerals excluding electronic switching of lamps or illuminated tubes to form words and numerals. *Changeable copy sign* includes a sign which has automatic switching, limited to time and temperature.
6. *Construction or Project Sign*: a sign erected on a project site prior to or during a construction project.
7. *Directional Sign*: a sign identifying site locations, entrances, exits, parking areas,

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

**Section 17.10 - Commercial and Industrial Districts (continued)**

Section 11.10 Subdivision Regulations of the Town of Merrimack; and

- d) The owner/installer of Electronic Message Displays shall certify as part of the application that signs will not exceed the brightness levels specified in Section 11.10 Subdivision Regulations of the Town of Merrimack.

12. Signage Requirements for Alternative Treatment Centers

- a) In addition to the requirements of Section 17.10, Alternative Treatment Centers that have received a Conditional Use Permit and Site Plan approval from the Planning Board shall be subject to the applicable requirements of the NH Health & Human Services Department (DHHS) Administrative Rules (He-C 400, as most recently published or amended by DHHS) pertaining to Advertising Restrictions.

**17.11 - Off-Premise Advertising Signs**

Off premise advertising signs may be erected on parcels of real estate within, and only within, the Commercial and Industrial zones. Off premise advertising signs shall be limited to Ground Signs conforming to the regulations provided in Section 17.10.3.

A premise may display either an On-Premise sign or an Off-Premise sign, but not both, unless it has enough frontage to display two signs (as described in 17.10.3) in which case one sign may be devoted to on-premise advertising and one sign devoted to off-premise advertising.

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