



# TOWN COUNCIL – AGENDA REQUEST FORM

THIS FORM WILL BECOME PART OF THE BACKGROUND INFORMATION USED BY THE COUNCIL AND PUBLIC

Please submit Agenda Request Form, **including back up information, 8 days prior** to the requested meeting date. **Public Hearing requests must be submitted 20 days prior to requested meeting date to meet publication deadlines** (exceptions may be authorized by the Town Manager, Chairman/Vice Chair).

## MEETING INFORMATION

Date Submitted: August 26, 2015

Date of Meeting: September 10, 2015

Submitted by: Community Development Director Tim Thompson

Department: Community Development

Time Required: 10 minutes

Speakers:

Background Info. Supplied: Yes:  No:

## CATEGORY OF BUSINESS (PLEASE PLACE AN "X" IN THE APPROPRIATE BOX)

Appointment:	<input type="checkbox"/>	Recognition/Resignation/ Retirement:	<input type="checkbox"/>
<b>Public Hearing:</b>	<input type="checkbox"/>	Old Business:	<input type="checkbox"/>
New Business:	<input type="checkbox"/>	Consent Agenda:	<input checked="" type="checkbox"/>
Nonpublic:	<input type="checkbox"/>	Other:	<input type="checkbox"/>

## TITLE OF ITEM

Proposed Zoning Ordinance Amendments [Final Reading]

## DESCRIPTION OF ITEM

The Town Council to consider the final approval of the proposed amendments to the Zoning Ordinance (Secgions 1, 2 and 17), pursuant to RSA 675:6 & RSA 675:7 and Charter Article V, Section 5-4.

## REFERENCE (IF KNOWN)

RSA: 675:6 & 675:7 Warrant Article: \_\_\_\_\_  
 Charter Article: V, Section 5-4 Town Meeting: \_\_\_\_\_  
 Other: N/A

## EQUIPMENT REQUIRED (PLEASE PLACE AN "X" IN THE APPROPRIATE BOX)

Projector:	<input type="checkbox"/>	Grant Requirements:	<input type="checkbox"/>
Easel:	<input type="checkbox"/>	Joint Meeting:	<input type="checkbox"/>
Special Seating:	<input type="checkbox"/>	Other:	<input type="checkbox"/>
Laptop:	<input type="checkbox"/>	None:	<input type="checkbox"/>

## CONTACT INFORMATION

Name: Tim Thompson Address: 6 Baboosic Lake Road  
 Phone Number: 424-3531 Email Address: tthompson@merrimacknh.gov

## APPROVAL

Town Manager: Yes  No:  Chair/Vice Chair: Yes  No:





# 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 20, 2015  
**To:** Nancy Harrington, Chair, & Members, Town Council  
**From:** Timothy J. Thompson, AICP, Community Development Director  
**Subject:** **Planning Board Recommendation - 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 introduced at the July 16, 2015 Town Council meeting.

Following a public hearing held on August 18, 2015, the Planning Board unanimously recommends the proposed Zoning Amendments (see packet information and ordinance language posted on July 17, 2015) be approved by the Town Council with the following modifications:

- *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. Based on the advice of Legal Counsel, the Planning Board recommends that this phrase does not need to be included since the purpose is expressly limited to medical cannabis.*
- *In Section 2.02.2 (D)(3)(a), the language has been revised to read "An Alternative Treatment Center shall not be located within a pre-existing designated drug free school zone." This modification is based on the updated language of RSA 126-X:8, II (which passed the legislature as part of Senate Bill 22, was signed by the Governor, and became effective on August 11, 2015).*
- *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. The Planning Board and Legal Counsel recommend this modification in addition to the 2 listed above.*

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



| SECTION 1 - PURPOSE AND DEFINITIONS [revised 9/10/15]

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.

**Section 1.03 Definitions (cont):**

5. Alternative Treatment Center: An "alternative treatment center" as defined in RSA 126-X:1, 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:1, 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.. Deleted: 6
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. Deleted: 8
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. Deleted: 9

**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 a 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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**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.

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~~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.

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~~28.~~ Home Owner: The owner of record of any land and residential and accessory structures located thereon.

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~~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.

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~~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.

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~~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.

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~~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.

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~~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.

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~~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.

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**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.

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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.

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

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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.

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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.

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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.

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**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.

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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.

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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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**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.

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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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Zosctn1

**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

<SNIPPED>

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 therapeutic cannabis to patients who qualify to obtain, possess, and use cannabis 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 a pre-existing 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.



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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SECTION 17 - SIGNS [revised 9/10/15]

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.

**17.12 - Site Plan Review**

A building permit for any ground sign at a nonresidential or multi-family site shall be issued only after approval by the Planning Board in accordance with the Site Plan Review regulations of the Town of Merrimack.

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