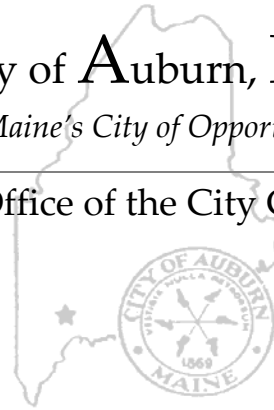


City of Auburn, Maine

"Maine's City of Opportunity"

Office of the City Clerk



Council Meeting Agenda Packet

September 8, 2009

This packet contains the City Council Agenda and supporting documents. The items in this packet are bookmarked in Adobe Acrobat .pdf format. You may need to click on the Bookmark tab on the left to open the Bookmark window. If you do not see a Bookmark tab on the left, you may need to select the Show/Hide Navigation Pane button in your icon toolbar above or update your version of the Adobe Reader. You can download the free Adobe Reader application at www.adobe.com.



City Council Meeting and Workshop September 8, 2009

"While your responsibility may
be individual, your authority is
collective" ¹

Agenda

5:30 p.m. Workshop

- A. Discussion: Lynn Lockwood, Director, Public Library (25 min)
- B. Discussion: Amendments to the Electrical Ordinance – Charlie DeAngelis (20 min)
- C. Discussion: Property Maintenance Code – David Galbraith (20 min)
- D. Discussion: Ingersoll Arena Bylaws and Advisory Committee – Peter Bushway (15 min)

7:00 p.m. City Council Meeting

I. Consent Items—All items listed with an asterisk (*) are considered as routine and will be approved in one motion. There will be no separate discussion of these items unless a Councilor or citizen so requests. If requested, the item will be removed from the consent agenda and considered in the order it appears on the agenda.

* Minutes of August 17, 2009

* Communication from Auburn K of C Council #8742 Re: Waive fee for Permit

* Communication from Catholic Charities of Maine Re: Waive fee for Permit

II. Minutes

III. Reports

Mayor

City Councilors

- Michael Farrell: Water Dist., L/A Jt. City Council Planning, Audit and Procurement, Neighborhood Stabilization Program Advisory Committee
- Bob Hayes: Railroad, Library, Audit and Procurement
- Dan Herrick: MMWAC, Auburn Housing
- David Young: A-L Airport, L/A Joint City Council Planning, Cable TV Adv Board
- Ray Berube: LAEGC, Planning Board, L/A Joint City/School, ABDC, AVCOG, 9-1-1
- Bob Mennealy: Sewer District, University of Maine L-A,
- Ron Potvin: School Committee, LATC, L/A Joint City/School

City Manager

IV. Communications, Presentations and Recognitions

¹ Denis Culley, Attorney/Planning Board Member, Town of Mercer

V. Open Session – Members of the public are invited to speak to the Council about any issue directly related to City business which is *not* on this agenda.

VI. Unfinished Business

090809-01 Ordinance – Chapter 20, Article 1 – International Building Code and Article 2 – International Residential Code (2nd Reading)

090809-02 Resolve – Determination of a Presumption of Abandonment for a Portion of Elmwood Road (Tabled 8/17/09)

090809-03 Resolve – Determination of a Presumption of Abandonment for a Portion of Ryan's Way (Tabled 8/17/09)

VII. New Business

090809-04 Resolve – Accepting Certain Forfeited Funds (\$3,255)

VIII. Open Session - Members of the public are invited to speak to the Council about any issue directly related to City business which is *not* on the agenda.

IX. Future Agenda/Workshop Items

X. ADJOURNMENT

Executive Session: On occasion, the City Council discusses matters which are required or allowed by State law to be considered in executive session. Executive sessions are not open to the public. The matters that are discussed in executive session are required to be kept confidential until they become a matter of public discussion. In order to go into executive session, a Councilor must make a motion in public. The motion must be recorded, and 3/5 of the members of the Council must vote to go into executive session. An executive session is not required to be scheduled in advance as an agenda item, although when it is known at the time that the agenda is finalized, it will be listed on the agenda. The only topics which may be discussed in executive session are those that fall within one of the categories set forth in Title 1 M.R.S.A. Section 405. Those applicable to municipal government are:

1. Discussion of personnel issues
2. Discussion or consideration of the condition, acquisition, or the use of real or personal property or economic development if premature disclosure of the information would prejudice the competitive or bargaining position of the body or agency.
3. Discussion of labor contracts and proposals and meetings between a public agency and its negotiators.
4. Consultations between a body or agency and its attorney
5. Discussion of information contained in records made, maintained or received by a body or agency when access by the general public to those records is prohibited by statute.
6. Discussion or approval of the content of examinations administered by a body or agency for licensing, permitting or employment purposes
7. Consultations between municipal officers and a code enforcement officer relating to enforcement matter pending in District Court.

**CITY OF AUBURN
AUGUST 17, 2009
CITY COUNCIL MEETING**

PRESENT

Mayor John T. Jenkins, Councilors Michael J. Farrell, Robert P. Hayes, Daniel R. Herrick, David C. Young, Raymond C. Berube, Ronald W. Potvin, and Robert C. Mennealy, City Manager Glenn Aho, Assistant City Manager Laurie Smith, Finance Director Tracy Roy and City Clerk Mary Lou Magno. There were 13 people in the audience.

Mayor Jenkins called the meeting to order at 7:00 p.m. in the Council Chambers of the Auburn City Building with a salute to the flag.

CONSENT AGENDA

Councilor Berube moved to accept, approve and place on file the items marked with an asterisk. Seconded by Councilor Hayes. Vote: 7 Yeas.

***MINUTES OF AUGUST 3, 2009**

Approved under consent agenda.

REPORTS OF THE MAYOR

Mayor Jenkins noted several upcoming events and meetings.

PROCLAMATION – FAMILY DAY – A DAY TO EAT DINNER WITH YOUR CHILDREN

Mayor Jenkins read the above proclamation.

**COMMUNICATION FROM AUBURN WATER DISTRICT RE: APPOINTMENT TO LAKE
AUBURN WATERSHED PROTECTION COMMISSION**

Councilors suggested that Councilor Farrell be appointed to the Commission.

REPORTS OF CITY COUNCILORS

Councilors reported on the Council Committee Assignments

REPORTS OF THE CITY MANAGER

FINANCE REPORT – MONTH OF JULY

Councilor Hayes moved to accept and place on file the Finance Report for the month of July as presented by Tracy Roy, Finance Director. Seconded by Councilor Young. Vote: 7 Yeas.

COMMUNICATIONS, PRESENTATIONS, AND RECOGNITIONS

**COMMUNICATION FROM DEBORA CUSSON RE: RESIGNATION FROM COMMUNITY
DEVELOPMENT LOAN COMMITTEE**

Approved under consent agenda.

COMMUNICATION FROM SUPPORT SOLUTIONS RE: WAIVE FEE FOR PERMIT

Approved under consent agenda.

**CONTINUATION OF WORKSHOP ITEM D – INGERSOLL ARENA BY-LAWS AND
ADVISORY COMMITTEE**

**PRESENTATION BY JONATHAN LABONTE – GENERAL ACTIVITIES IN COUNTY
GOVERNMENT**

Mr. Labonte circulated a written general overview and update of county government.

OPEN SESSION

Mike Farrell, 145 Eastman Lane; Richard Trafton, representing Dan & Karen Stearns, regarding Church Street; and Larry Morrissette, PO Box 3036, Auburn.

CLOSED OPEN SESSION

UNFINISHED BUSINESS

**1. ORDINANCE – CHAPTER 29, AMENDMENTS TO SECTIONS 7.1 SITE PLAN REVIEW
AND 7.3 SUBDIVISIONS (2ND READING)**

Councilor Berube moved for acceptance of second reading and final passage. Seconded by Councilor Herrick. Vote: 7 Yeas.

Note: A communication from Attorney Elliott Epstein was made a part of the record.

NEW BUSINESS

**2. RESOLVE – AUTHORIZE TAX ASSESSOR TO ABATE TAXES RE: LITTLEFIELD
HYDRO COMPANY**

Councilor Berube moved for passage of the resolve. Seconded by Councilor Farrell. Glenn Aho, City Manager and Cheryl Dubois, Tax Assessor, answered Councilors questions. Vote: 7 Yeas.

**3. PUBLIC HEARING AND ACTION REGARDING DETERMINATION OF PRESUMED
ABANDONED ROADS FOR BROWN’S CROSSING RD, ELMWOOD RD, SOPERS
MILL RD, RANGE RD AND RYAN’S WAY**

**A. RESOLVE – DETERMINATION OF A PRESUMPTION OF ABANDONMENT
FOR A PORTION OF BROWNS CROSSING ROAD**

Councilor Berube moved for passage of the resolve. Seconded by Councilor Herrick. Mayor Jenkins opened the public hearing and the following people spoke: Calvin Beaumier; Gary Johnson, Assistant City Engineer; David Galbraith, Director of Planning and Permitting; and Glenn Aho, City Manager. Mayor Jenkins closed the public hearing. Vote: 6 Yeas with Councilor Potvin voting Nay.

B. RESOLVE – DETERMINATION OF A PRESUMPTION OF ABANDONMENT FOR A PORTION OF ELMWOOD ROAD

Councilor Hayes moved for passage of the resolve. Seconded by Councilor Berube. Mayor Jenkins opened the public hearing and the following people spoke: Arlana Davis; Terry Dailey; and Arthur Lagasse. Mayor Jenkins closed the public hearing. Councilor Farrell moved to table. Seconded by Councilor Berube. Vote: 5 Yeas with Councilors Hayes and Potvin voting Nay.

C. RESOLVE – DETERMINATION OF A PRESUMPTION OF ABANDONMENT FOR A PORTION OF SOPERS MILL ROAD

Councilor Berube moved for passage of the resolve. Seconded by Councilor Hayes. Mayor Jenkins opened the public hearing and the following people spoke: David Galbraith; Kathy Shaw; and Rene Bilodeau. Mayor Jenkins closed the public hearing. Vote: 7 Yeas.

D. RESOLVE – DETERMINATION OF A PRESUMPTION OF ABANDONMENT OF THE RANGE ROAD

Councilor Berube moved for passage of the resolve. Seconded by Councilor Herrick. Mayor Jenkins opened and closed the public hearing with no public comment. Vote: 7 Nays. **NOT PASSED**

E. RESOLVE – DETERMINATION OF A PRESUMPTION OF ABANDONMENT FOR A PORTION OF RYAN’S WAY

Councilor Herrick moved to suspend the rules in order to appoint a Mayor Pro Tempore for this item. Seconded by Councilor Potvin. Vote: 7 Yeas. Councilor Potvin moved to appoint Councilor Berube to serve as Mayor Pro Tempore for this item. Seconded by Councilor Farrell. Vote: 7 Yeas.

Councilor Mennealy moved for passage of the resolve. Seconded by Councilor Potvin. Mayor Pro Tempore Berube opened the public hearing and the following people spoke: Dan Bilodeau, 207 North Auburn Road; Kelly Turner, representing Lewiston-Auburn Watershed Protection Commission, circulated a communication from Bryan Dench; and John Jenkins.

Councilor Potvin moved to table. Seconded by Councilor Hayes. Vote: 5 Yeas with Councilor Farrell voting Nay. (Councilor Mennealy out of the room)

4. ORDINANCE – CHAPTER 20, ARTICLE 1 – INTERNATIONAL BUILDING CODE AND ARTICLE 2 – INTERNATIONAL RESIDENTIAL CODE (1ST READING)

Councilor Berube moved for acceptance of first reading. Seconded by Councilor Hayes. David Galbraith, Director of Planning and Permitting, gave a brief overview of the ordinance and answered Councilors questions. Vote: 6 Yeas, No Nays (Councilor Mennealy out of the room)

5. RESOLVE – AUTHORIZE CITY MANAGER TO ACCEPT \$5,000 FROM SPC TRUCKING RE: WEST HARDSCRABBLE ROAD IMPROVEMENTS

Councilor Farrell moved for passage of the resolve. Seconded by Councilor Young. Vote: 7 Yeas.

6. SIGN “CERTIFICATE OF SETTLEMENT” FOR 2008-2009 TAX YEAR

Councilor Berube moved to sign the Certificate of Settlement for 2008-2009 tax year. Seconded by Councilor Mennealy. Vote: 7 Yeas.

MOVE OPEN SESSION

Councilor Herrick moved to have “Open Session” prior to the Executive Session. Seconded by Councilor Farrell. Vote: 7 Yeas.

OPEN SESSION

Larry Pelletier, PO Box 3036, Auburn; and Dan Bilodeau, 207 North Auburn Road.

OPEN SESSION CLOSED

EXECUTIVE SESSION

Councilor Farrell moved to go into Executive Session (Title 1, Section 405, Subsection 6E) for the purpose of discussing eminent domain. Seconded by Councilor Berube. Vote: 6 Yeas, No Nays. (Councilor Mennealy out of the room)

Councilor Farrell moved to come out of Executive Session. Seconded by Councilor Berube. Vote: 5 Yeas, No Nays. (Councilors Young and Mennealy absent)

Councilor Berube moved that the City Manager be authorized to incur legal expenses for the purpose of the City acquiring property by eminent domain. Seconded by Councilor Berube. Vote: 4 Yeas, with Councilor Potvin voting Nay. (Councilors Young and Mennealy absent)

ADJOURNMENT – 10:55 P.M.

Councilor Farrell moved to adjourn. Seconded by Councilor Berube. Vote: 5 Yeas, No Nays. (Councilors Young and Mennealy absent).

A TRUE RECORD

ATTEST: _____
CITY CLERK

MEMO

To : Mayor Jenkins and the Auburn City Council

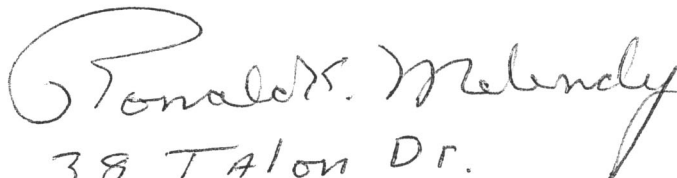
From: Ronald K. Melendy, representing the -
Knights of Columbus, Andy Valley Council #8742
of Auburn.

Re: Request to waive lawn sale fee.

Date: 8/19/09

The Auburn K. of C., Council #8742 respectfully requests a waiver of the lawn sale fee of \$10.00 for a sale to be held at Sacred Heart Church, 8 Sacred Heart Place, Auburn, Maine on Friday and Saturday, September 11 and 12. The funds realized from this sale will be used to defray the costs associated with wheelchair refurbishing for use by Father James Morrison.

Thank you for your consideration of this request.


38 Talon Dr.
Auburn, Me
Tel - 689-3941

Bishop Richard J. Malone, Th.D.
President

Jack McCormack
Chair

Steve Letourneau
Chief Executive Officer

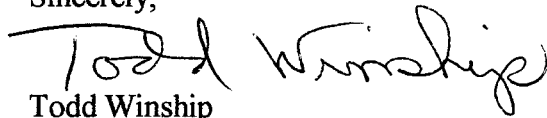
Todd Winship
Director of Operations

8-27-09

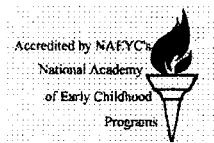
Dear Mary Lou Magon,

I am requesting a fee waiver on the permit for the yard sale we are holding at the St. Joseph Child Dev't Center on 9-16-09. We are selling items that are no longer needed for the center and using the money we generate from that sale for improving the facility (paint/a new rug in our entryway). St. Joseph is a non-profit center and we want to utilize all the proceeds we raise to support this cause. I hope you will honor this request-Thank You!

Sincerely,



Todd Winship
Operations Director



City Council

Agenda Information Sheet

Council Meeting Date: 8/17/2009 Agenda Item No. 1

SUBJECT:

**ORDINANCE – CHAPTER 20, ARTICLE 1 – INTERNATIONAL BUILDING
CODE AND ARTICLE 2 – INTERNATIONAL RESIDENTIAL CODE
(2nd READING)**

INFORMATION:

Staff is proposing the adoption of the 2003 edition of the International Building Code (IBC) and International Residential Code (IRC). Currently the City is operating under the 1999 edition of the Building Officials and Code Administrators (BOCA) Building Code. The State of Maine and the City of Lewiston are both currently operating under the 2003 IBC & IRC and Staff is recommending that we adopt the same code for a variety of reasons. Adopting the 2003 IRC & IBC will provided the requested consistency for the building community, the new code incorporates construction materials and practices that were not around when we adopted the 1999 BOCA code, and as the 2003 IBC & IRC are more user friendly for Staff and our clients.

Staff discussed this ordinance at the August 3rd City Council Workshop.
City Council approved first reading at the August 17th City Council Meeting.

STAFF COMMENTS/RECOMMENDATION:

The City Manager recommends approval of second reading and final passage.

REQUESTED ACTION:

Motion for acceptance of second reading and final passage.

VOTE:

City of Auburn

City Council, Auburn, Maine

Date: August 17, 2009

**TITLE: ORDINANCE – CHAPTER 20, ARTICLE 1 – INTERNATIONAL
BUILDING CODE AND ARTICLE 2 – INTERNATIONAL
RESIDENTIAL CODE**

Be It Ordained by the Auburn City Council that the current wording in Chapter 20 be deleted in its entirety and substituting therefore the attached Article 1 – International Building Code and Article 2 – International Residential Code.

Motion for acceptance of first reading: Raymond Berube Seconded by: Robert Hayes

Vote: 6 Yeas, No Nays (Councilor Mennealy out of the room)

Motion for acceptance of second reading and final passage:

Seconded by:

Vote:

Action by the City Council:

Date:

Attest:

City Clerk

Chapter 20
Article I. International Building Code

Sec. 1.1 Adoption of building code.

There is hereby adopted by the city for the purpose of establishing rules and regulations for the construction, alteration, removal, demolition and insurance coverage, use and occupancy, equipment, location and maintenance of building and structures, including permits and penalties, that certain building code known as the 2003 International Building Code, save and except such portions as are in this article deleted, modified or amended. No fewer than one (1) copy of such code have been and now are filed in the office of the city clerk and such copies are hereby adopted and incorporated as fully as if set out at length in this article.

Sec. 1.2 Amendments to the building code.

The building code adopted in Chapter 20 is amended and changed as follows:

Chapter 1 is repealed in its entirety.

Chapter 1 ADMINISTRATION. is enacted to read as follows:

Chapter 1
ADMINISTRATION

SECTION 101
GENERAL

101.1 Title. These regulations shall be known as the *Building Code* of the City of AUBURN, Maine, hereinafter referred to as “this code.”

101.2 Scope. The provisions of the code shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use, and occupancy, location, maintenance, removal, and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures.

Exceptions:

1. Detached one-and two-family dwellings and attached single-family dwellings (town houses) not more than three stories above grade in height with a separate means of egress and their accessory structures shall comply with the *International Residential Code*.

101.2.1 Appendices. Provision in the appendices shall not apply unless specifically adopted.

101.3 Intent. The purpose of this code is to establish the minimum requirements to safeguard the public health, safety and general welfare through structural strength, means of egress facilities,

stability, adequate light and ventilation, energy conservation, and safety to life and property from fire and other hazards attributed to the built environment and to provide safety to fire fighters and emergency responders during emergency operations.

101.4 Referenced codes. The other codes listed in Section 101.4.1 through 101.4.7 and referenced elsewhere in this code shall be considered part of the requirements of this code to the prescribed extent of each such reference.

101.4.1 Electrical. The provisions of the Chapter 9, Article I. Section 1.4 NATIONAL ELECTRICAL CODE of the Code of Ordinances of the City of AUBURN shall apply to the installation of electrical systems, including alterations, repairs, replacement, equipment, appliances, fixtures, fittings and appurtenances thereto. All references to the ICC *Electrical Code* are hereby deleted in favor of the applicable section(s) of the *National Electrical Code* as adopted.

101.4.2 Gas. The provisions of Chapter 21, FIRE CODE of the aforementioned Code of Ordinances shall apply to the installation of gas piping from the point of delivery, gas appliances and related accessories as covered in this code. All references to the *International Gas Code* are hereby deleted in favor of the applicable section(s) of the *National Fire Codes* as adopted.

101.4.3 Mechanical. The provisions of the *International Mechanical Code* shall apply to the installation, alterations, repairs and replacement of mechanical systems, including equipment, appliances, fixtures, fittings and/or appurtenances, including ventilating, heating, cooling, air-conditioning and refrigeration systems, incinerators and other energy-related systems.

101.4.4 Plumbing. The provisions of Chapter 20A, Article 7. MINIMUM STANDARD FOR PLUMBING of the aforementioned Code of Ordinances shall apply to the installation, alteration, repair and replacement of plumbing systems, including equipment, appliances, fixtures, fittings and appurtenances, and where connected to a water or sewerage system. The provisions of the *Maine Subsurface Waste Water Disposal Rules* shall apply to private sewage disposal systems. All references to the *International Plumbing Code* and *International Private Sewage Disposal Code* are hereby deleted in favor of the applicable section(s) of these regulations.

101.4.5 Property Maintenance. is hereby deleted and reserved.

101.4.6 Fire prevention. The provisions of Chapter 21, FIRE CODE of the aforementioned Code of Ordinances shall apply to matters affecting or related to structures, processes and premises from the hazard of fire and explosion arising from the storage, handling or use of structures, materials or devices; from conditions hazardous to life, property or public welfare in the occupancy of structures or premises; and from the construction, extension, repair, alteration or removal of fire suppression and alarm systems or fire hazards in the structure or on the premises from occupancy or operation. All references to the *International Fire Code* are hereby deleted in favor of the applicable section(s) of the *National Fire Codes* as adopted.

101.4.7 Energy. The provisions of the *Maine Guide to Energy Efficient Construction: A Manual of Accepted Practice* (third edition) shall apply to all habitable residential buildings and structures. The provisions of ASHRAE 90B shall be applicable to all occupiable nonresidential

buildings and structures. All references to the *International Energy Conservation Code* are hereby deleted.

SECTION 102 **APPLICABILITY**

102.1 General. Where, in any specific case, different sections of this code specify different materials, methods of construction or other requirements, the most restrictive shall govern. Where there is a conflict between a general requirement and a specific requirement, shall be applicable.

102.2 Other Laws. The provisions of this code shall not be deemed to nullify any provisions of local, state and federal law.

102.3 Application of references. References to chapter or section numbers, or to provisions specifically identified by number, shall be construed to refer to such chapter, section or provision of this code.

102.4 Referenced codes and standards. The codes and standards referenced in this code shall be considered part of the requirements of this code to be prescribed extent of each such reference. Where differences occur between provisions of this code and referenced codes and standards, the provisions of this code shall apply.

102.5 Partial invalidity. In the event any part or provision of this code is held to be illegal or void, this shall not have the effect of making void or illegal any of the other parts of the provisions.

102.6 Existing structures. The legal occupancy of any structure existing on the date of adoption of this code shall be permitted to continue without change, except as is specifically covered in this code, the currently adopted *Property Maintenance Code*, or as is deemed necessary by the building official for the general safety and welfare of the occupants and the public.

SECTION 103 **DEPARTMENT OF CODE ENFORCEMENT**

103.1 Building official. The code enforcement division is hereby charged with the administration and enforcement of this code. The director of code enforcement and the building inspector, acting under the direction of the director of code enforcement, shall be designated as the municipal building officials for the purpose of administration and enforcement of the code.

103.2 Qualifications of building official. To be eligible for appointment, the candidate for the position shall have had experience as an architect, structural engineer, building inspector, foreman or superintendent of building construction. He shall be in good health, physically capable of making the necessary examinations and inspections. He shall not have any interest whatever, directly or indirectly, in the sale or manufacture of any material, process, or device entering into or used in or in connection with building construction, alteration, removal and demolition.

103.3 Deputies. In accordance with the prescribed procedures of this jurisdiction and with the concurrence of the appointing authority, the director of code enforcement shall have the authority to appoint a deputy building official, the related technical officers, inspectors, plan examiners and other employees. Such employees shall have powers as delegated by the building official.

SECTION 104 **DUTIES AND POWERS OF BUILDING OFFICIALS**

104.1 General. The building official is hereby authorized and directed to enforce the provisions of this code. The building official shall have the authority to render interpretations of this code and to adopt policies and procedures in order to clarify the applications of its provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of this code. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this code.

104.2 Applications and permits. The building officials shall receive applications, review construction documents and issue permits for the erection, and alteration, demolition and moving of building and structures, inspect the premises for which such permits have been issued and enforce compliance with the provisions of this code.

104.3 Notices and orders. The building official shall issue all necessary notices and orders to ensure compliance with this code.

104.4 Inspections. The building official shall make all of the required inspections, or the building official shall have the authority to accept reports of inspection by approved agencies or individuals. Reports of such inspections shall be in writing and be certified by a responsible officer of such approved agency or by the responsible individual. The building official is authorized to engage such expert opinion as deemed necessary to report upon unusual technical issues that arise, subject to the approval of the appointing authority.

104.5 Identification. The building official shall carry proper identification when inspecting structures or premises in the performance of duties under this code.

104.6 Right of entry. Where it is necessary to make an inspection to enforce the provisions of this code, or where the building official has reasonable cause to believe that there exists in a structure or upon premises a condition which is contrary to or in violation of this code which makes the structure or premises unsafe, dangerous or hazardous, the building official is authorized to enter the structure at reasonable times to inspect or to perform the duties imposed by this code, provided that if such structure or premises be occupied that credentials be presented to the occupant and entry requested. If such structure or premises be unoccupied, the building official shall first make reasonable effort to locate the owner or other person having charge or control of the structure or premises and request entry. If entry is refused, the building official shall have recourse to the remedies provided by the law to secure entry.

104.7 Department records. The building official shall keep official records of applications received, permits and certificates issued, fees collected, reports of inspections, and notices and

orders issued. Such records shall be retained in the official records for the period required for retention of public records.

104.8 Liability. The building official or other employee or appointee charged with the enforcement of this code, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be rendered liable personally and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of act or omission in the discharge of official duties. Any suit instituted against an officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be defended by legal representative of the jurisdiction until the final termination of the proceedings. The building official or any subordinate shall not be liable for cost in any action, suit or proceeding that is instituted in pursuance of the provisions of this code.

104.9 Approved materials and equipment. Materials, equipment and devices approved by the building official shall be constructed and installed in accordance with such approval.

104.9.1 Used materials and equipment. The use of used materials which meet the requirements of this code for new materials is permitted. Used equipment and devices shall not be reused unless approved by the building official.

104.10 Modifications. Wherever there are practical difficulties involved in carrying out the provisions of this code, the building official shall have the authority to grant modifications for individual cases, upon application of the owner or the owner's representative, provided the building official shall first find that special individual reason makes the strict letter of this code impractical and the modification is in compliance with the intent and purpose of this code at that such modification does not lessen health, accessibility, life and fire safety, or structural requirements. The details of action granting modifications shall be recorded and entered in the files of the department of building safety.

104.11 Alternative materials, design and methods of construction and equipment. The provisions of this code are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by this code, provided that any such alternative has been approved. An alternative material, design or method of construction shall be approved where the building official finds the proposed design is satisfactory and complies with the intent of the provisions of this code, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code in quality, strength, effectiveness, fire resistance, durability and safety.

104.11.1 Research reports. Supporting data, where necessary to assist in the approval of materials or assemblies not specifically provided for in this code, shall consist of valid research reports from approved sources.

104.11.2 Test. Whenever there is insufficient evidence of compliance with the provisions of this code, or evidence that a material or method does not conform to the requirements of this code, or in order to substantiate claims for alternative materials or methods, the building official shall have the authority to require tests as evidence of compliance to be made at no expense to the

jurisdiction. Test methods shall be as specified or by other recognized and accepted test standards. In the absence of recognized and accepted test methods, the building official shall approve the test procedures. Tests shall be performed by an approved agency. Reports of such tests shall be retained by the building official for the period required for retention of public records.

SECTION 105 **PERMITS**

105.1 Required. Any owner or authorized agent who intends to construct, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permits.

105.2 Work exempt from permit. Exemptions from permit requirements for this code shall not be deemed to grant authorization for any work to be done in any manner in violations of the provisions of this code or any other laws or ordinances of this jurisdiction. Permits shall not be required for the following:

1. Repairs, in accordance with Section 105.2.2.
2. Re roofing, where no structural repairs or improvements are involved.
3. Siding of existing buildings or structures, where no structural repairs or improvements are involved.
4. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.
5. Temporary motion picture, television and theater stage sets and scenery.
6. Prefabricated swimming pools, accessory to a Groups R-2 and R-3 occupancies, which have less than 36 inches (915 mm) of water depth capacity and are installed entirely above ground.
7. Shade cloth structures constructed for nursery or agricultural purposes and not including service systems.
8. Swings and other playground equipment accessory to one- and two-family dwellings.
9. Window awnings supported by an exterior wall of Group R-3, as applicable in Section 101.2, and Group U occupancies.
10. Movable cases, counters and partitions not over 5 feet 9 inches (1753 mm) in height.

105.2.1 Emergency repairs. When equipment replacements and repairs must be performed in an emergency situation, the permit application shall be submitted within the next working business day to the building official.

105.2.2 Repairs. Application or notice to the building official is not required for ordinary repairs to structures, replacement of lamps or the connection of approved portable electrical equipment to approved permanently installed receptacles. Such repairs shall not include the cutting away of any structural beam or load-bearing support, or the removal or change of any required means of egress, or rearrangement of parts of a structure affecting the egress requirements.

105.3 Application for permit. To obtain a permit, the applicant shall first file an application thereof in writing on a form furnished by the department of building safety for that purpose. Such application shall:

1. Identify and describe the work to be covered by the permit for which application is made.
2. Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.
3. Indicate the use and occupancy for which the proposed work is intended.
4. Be accompanied by construction documents and other information as required in Section 106.3.
5. State the valuation of the proposed work.
6. Be signed by the applicant, or the applicant's authorized agent.
7. Give such other data and information as required by the building official.

105.3.1 Action on application. The building official shall examine or cause to be examined applications for permits and amendments thereto within a reasonable time after filing. If the application or the construction documents do not conform to the requirements of pertinent laws, the building shall reject such application in writing, stating the reasons therefore. If the building official is satisfied that the proposed work conforms to the requirements of this code and laws and ordinances applicable thereto, the building official shall issue a permit therefore as soon as practicable.

105.3.2 Time limitation of application. An application for a permit for any proposed work shall be deemed to have been abandoned 180 days after the date of filing, unless such application has been pursued in good faith or a permit has been issued; except that the building official is authorized to grant one or more extensions of time for additional periods not exceeding 90 days each. The extension shall be requested in writing and justifiable cause demonstrated.

105.4 Validity of permit. The issuance or granting of a permit shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this code or of any other ordinance of the jurisdiction. Permits presuming to give authority to violate or cancel the provisions of this code or other ordinances of the jurisdiction shall not be valid. The issuance of a permit based on construction documents and other data shall not prevent the building official from requiring the correction of errors in the construction documents and other data. The building official is also authorized to prevent occupancy or use of a structure where in violation of this code or of any other ordinances of this jurisdiction.

105.5 Expiration. Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The building official is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.

105.6 Suspension or revocation. The building official is authorized to suspend or revoke a permit issued under the provisions of this code wherever the permit is issued in error or on the

basis of incorrect, inaccurate or incomplete information, or in violation of any ordinance or regulation or any of the provisions of this code.

105.7 Placement of permit. The building permit or copy shall be kept on the site of the work until the completion of the project.

SECTION 106 **CONSTRUCTION DOCUMENTS**

106.1 Submittal documents. Construction documents, special inspection and structural observation programs, and other data shall be submitted in one or more sets with each application for a permit. The construction documents shall be prepared by a registered design professional where required by the statutes of the jurisdiction in which the project is to be constructed. Where special conditions exist, the building official is authorized to require additional construction documents to be prepared by a registered design professional.

Exception: The building official is authorized to waive the submission of construction documents and other data not required to be prepared by a registered design professional if it is found that the nature of the work applied for is such that reviewing of construction documents is not necessary to obtain compliance with this code.

106.1.1 Information on construction documents. Construction documents shall be dimensioned and drawn upon suitable material. Electronic media documents are permitted to be submitted when approval by the building official. Construction documents shall be of sufficient clarity to indicate the location, nature and extent of the work proposed and show in detail that it will conform to the provisions of this code and relevant laws, ordinances, rules and regulations, as determined by the building official.

106.1.1.1 Fire protection system shop drawings. Shop drawings for the fire protection system(s) shall be submitted to indicate conformance with this code and the construction documents and shall be approved prior to the start of system installation. Shop drawings shall contain all information as required by the referenced installation standards in Chapter 9.

106.1.2 Means of egress. The construction documents shall show in sufficient detail the location, construction, size and character of all portions of the means of egress in compliance with the provisions of this code. In other than occupancies in Groups R-2 and R-3 as applicable in Section 101.2 and I-1, the construction documents shall designate the number of occupants to be accommodated on every floor, and in all rooms and spaces.

106.1.3 Exterior wall envelope. Construction documents for all building shall describe the exterior wall envelope in sufficient detail to determine compliance with this code. The construction documents shall provide details of the exterior wall envelope as required, including flashing, intersections with dissimilar materials, corners, end details, control joints, intersections at roof, eaves, or parapets, means of drainage, water-resistive membrane, and details around openings. Construction documents shall include manufacturing installation instructions that provide supporting documentation that the proposed penetration and opening details described in

the construction documents maintain the weather resistance of the exterior wall envelope. The supporting documentation shall fully describe the exterior wall system which was tested, where applicable, as well as the test procedure used.

106.2 Site plan. The construction documents submitted with the application for permit shall be accompanied by a site plan showing to scale the size and location of new construction and existing structures on the site, distances from lot lines, the established street grades and the proposed finished grades, as applicable, flood hazard areas, floodways, and design flood elevations; and it shall be drawn in accordance with an accurate boundary line survey. In the case of demolition, the site plan shall show construction to be demolished and the location and size of existing structures and construction that are to remain on the site or plot. The building official is authorized to waive or modify the requirement for a site plan when the application for permit is for alteration or repair or when otherwise warranted.

106.3 Examination of documents. The building official shall examine or cause to be examined the accompanying construction documents and shall ascertain by such examinations whether the construction indicated and described is in accordance with the requirements of this code and other pertinent laws or ordinances.

106.3.1 Approval of construction documents. When the building official issues a permit, The construction documents shall be approved, in writing or by stamp, as “Reviewed for Code Compliance.” One set of construction documents so reviewed shall be retained by the building official. The other set shall be returned to the applicant, shall be kept at the site of work and shall be open to inspection by the building official or his authorized representative.

106.3.2 Previous approvals. The code shall not require changes in the construction documents, construction or designated occupancy of a structure for which a lawful permit has been heretofore issued or otherwise lawfully authorized, and the construction or which has been pursued in good faith within 180 days after the effective date of this code and has not been abandoned.

106.3.3 Phased approval. The building official is authorized to issue a permit for the construction of foundations or any other part of a building or structure before the construction documents for the whole building or structure have been submitted, provided the adequate information and detailed statements have been filed complying with pertinent requirements of this code. The holder of such permit for the foundation or other parts of a building or structure shall proceed at the holder’s own risk with the building operation and without assurance that a permit for the entire structure will be granted.

106.3.4 Design professional in responsible charge.

106.3.4.1 General. When it is required that documents be prepared by a registered design professional, the building official shall be authorized to require the owner to engage and designate on the building permit application a registered design professional who shall act as the registered design professional in responsible charge. If the circumstances require, the owner shall designate a substitute registered design professional in responsible charge who shall perform the duties required of the original registered design professional in responsible

charge. The building official shall be notified in writing by the owner if the registered design professional in responsible charge is changed or is unable to continue to perform the duties.

The registered design professional in responsible charge shall be responsible for reviewing and coordinating submittal documents prepared by others, including phased and deferred submittal items, for compatibility with the design of the building.

Where structural observation is required by Section 1709, the inspection program shall name the individual or firms who are to perform structural observation and describe the stages of construction at which structural observation is occur. See also duties specified in Section 1704.

106.3.4.2 Deferred submittals. For the purposes of this section, deferred submittals are defined as those portions of the design that are not submitted at the time of the application and that are to be submitted to the building official within a specified period.

Deferral of any submittal items shall have the prior approval of the building official. The registered design professional in responsible charge shall list the deferred submittals on the construction documents for review by the building official.

Documents for deferred submittal items shall be submitted to the registered design professional in responsible charge who shall review them and forward them to the building official with a notation indicating that the deferred submittal documents have been reviewed and that they have been found to be in general conformance with the design of the building. The deferred submittal items shall not be installed until their design and submittal documents have been approved by the building official.

106.4 Amended construction documents. Work shall be installed in accordance with the reviewed construction documents, and any changes made during construction that are not in compliance with the approved construction documents shall be resubmitted for approval as an amended set of construction documents.

106.5 Retention of construction documents. One set of approved construction documents shall be retained by the building official for a period of not less than 180 days from date of completion of the permitted work, or as required by state or local laws.

SECTION 107 **TEMPORARY STRUCTURES AND USES**

107.1 General. The building official is authorized to issue a permit for temporary structures and temporary uses. Such permits shall be limited as to time of service, but shall not be permitted for more than 180 days. The building official is authorized to grant extensions for demonstrated cause.

107.2 Conformance. Temporary structures and uses shall conform to the structural strength, fire safety, means of egress, accessibility, light, ventilation and sanitary requirements of this code as necessary to ensure the public health, safety and general welfare.

107.3 Temporary power. The building official is authorized to give permission to temporarily supply and use power in part of an electric installation before such installation has been fully completed and the final certificate of completion has been issued. The part covered by the temporary certificate shall comply with the requirements specified for temporary lighting, heat or power in the ICC *Electrical Code*.

107.4 Termination of approval. The building official is authorized to terminate such permit for a temporary structure or use and to order the temporary structure or use to be discontinued.

SECTION 108 **FEES**

108.1 Payment of fees. A permit shall not be valid until the fees prescribed by law have been paid. Nor shall an amendment to a permit be released until the additional fee, if any, has been paid.

108.2 Schedule of permit fees. On buildings, structures, or alterations requiring a permit, a fee for each permit shall be paid as required, in accordance with the schedule as established by the applicable governing authority.

108.3 Building permit valuations. The applicant for a permit shall provide an estimated permit value at time of application. Permit valuations shall include total value of work, including materials and labor, for which the permit is being issued, such as electrical, gas, mechanical, plumbing equipment and permanent systems. If, in the opinion of the building official, the valuation is underestimated on the application, final building permit valuation shall be set by the building official utilizing *Means Square Foot Costs* or similar documents, unless the applicant can show detailed estimates to meet the approval of the building official.

108.4 Work commencing before permit issuance. Any person, who commences any work on a building or structure, before obtaining the necessary permit, shall be subject to an additional fee established by the building official that shall be in addition to the required permit fees.

108.5 Related fees. The payment of the fee for the construction, alteration, removal or demolition for work done in connection with or concurrently with the work authorized by a building permit shall not relieve the applicant or holder of the permit from the payment of other fees that are prescribed by law.

108.6 Refunds. The building official is authorized to establish a refund policy.

SECTION 9 **INSPECTIONS**

109.1 General. Construction or work for which a permit is required shall be subject to inspection by the building official and such construction or work shall remain accessible and exposed for inspection purposes until approved. Approval as a result of an inspection shall not

be construed to be an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction. Inspections presuming to give authority to violate or cancel the provisions of this code or of other ordinances of the jurisdiction shall not be valid. It shall be the duty of the permit applicant to cause the work to remain accessible and exposed for inspection purposes. Neither the building official nor the jurisdiction shall be liable for expense entailed in the removal or replacement of any material required to allow inspection.

109.2 Preliminary inspection. Before issuing a permit, the building official is authorized to examine or cause to be examined buildings, structures and sites for which an application has been filed.

109.3 Required inspections. Upon notification in accordance with 109.5 or upon his own volition, the building official shall from time to time conduct inspections of the work for which the permit has been issued. These may include, but are not limited to, the inspections set forth in Sections 109.3.1 and 109.3.10.

109.3.1 Footing or foundation inspection. Footing and foundation inspections shall be made after excavations for footings are complete and any required reinforcing steel is in place. For concrete foundations, any required forms shall be in place prior to inspection. Materials for the foundation shall be on the job, except where concrete is ready mixed in accordance with ASTM C 94; the concrete need not be on the job.

109.3.2 Concrete slab or under-floor inspection. Concrete slab and under-floor inspections shall be made after in-slab or under-floor reinforcing steel and building service equipment, conduit, piping accessories and other ancillary equipment items are in place, but before any concrete is placed or floor sheathing installed, including the subfloor.

109.3.3 Lowest floor elevation. In flood hazard areas, upon placement of the lowest floor, including the basement, and prior to further vertical construction, the elevation certification required in Section 1612.5 shall be submitted to the building official.

109.3.4 Frame inspection. Framing inspections shall be made after the roof deck or sheathing, all framing, fire blocking and bracing are in place and pipes, chimneys and vents to be concealed are complete and the rough electrical, plumbing, heating wires, pipes and ducts are approved.

109.3.5 Lath or gypsum board inspection. Lath and gypsum board inspections shall be made after lathing and gypsum board, interior and exterior, is in place, but before any plastering is applied or before gypsum board joints and fasteners are taped and finished.

Exception: Gypsum board that is not part of a fire resistive assemble or a shear assembly.

109.3.6 Fire-resistant penetrations. Protection of joints and penetrations in fire-resistance-rated assemblies shall not be concealed from view until inspected and approved.

109.3.7 Other inspections. In addition to the inspections specified above, the building official is authorized to make or require other inspections of any construction work to

ascertain compliance with the provisions of this code and other laws that are enforced by the department of building safety.

109.3.8 Special inspections. For special inspections, see Section 1704.

109.3.9 Final inspection. The final inspection shall be made after all work required by the building permit is completed.

109.4 Inspection agencies. The building official is authorized to accept reports of approved inspection agencies, provided such agencies satisfy the requirements as to qualifications and reliability.

109.5 Inspection requests. It shall be the duty of the holder of the building permit or their duly authorized agent to notify the building official when work is ready for inspection. It shall be the duty of the permit holder to provide access to and means for inspection of such work for any inspections that are required by this code.

109.6 Approval required. Work shall not be done beyond the point indicated in each successive inspection without first obtaining the approval of the building official. The building official, upon notification, shall make the requested inspections and shall either indicate the portion of the construction that is satisfactory as completed, or shall notify the permit holder or an agent of the permit holder wherein the same fails to comply with this code. Any portions that do not comply shall be corrected and such portion shall not be covered or concealed until authorized by the building official.

SECTION 110 **CERTIFICATE OF OCCUPANCY**

110.1 Use and occupancy. No building or structure shall be used or occupied, and no change in the existing occupancy classification of a building or structure or portion thereof shall be made until the building official has issued a certificate of occupancy there for as provided herein. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction.

110.2 Change in use. Changes in the character or use of an existing structure shall not be made except as specified in Chapter 34.

110.3 Certificate issued. After the building official inspects the building or structure and finds no violations of the provisions of this code or other laws that are enforced by the department of building safety, the building official shall issue a certificate of occupancy that shall contain the following:

1. The building permit number.
2. The address of the structure.
3. The name and address of the owner.
4. A description of that portion of the structure for which the certificate is issued.

5. A statement that the described portion of the structure has been inspected for compliance with the requirements of this code for the occupancy and division of occupancy and the use for which the proposed occupancy is classified.
6. The name of the building official.
7. The edition of the code under which the permit was issued.
8. The use and occupancy, in accordance with the provisions of Chapter 3.
9. The type of construction as defined in Chapter 6.
10. The design occupant load.
11. If an automatic sprinkler system is provided, whether the sprinkler system is required.
12. Any special stipulations and conditions of the building permit.

110.4 Temporary occupancy. The building official is authorized to issue a temporary certificate of occupancy before the completion of the entire work covered by the permit, provided that such portion or portions shall be occupied safely. The building official shall set a time period during which the temporary certificate of occupancy is valid.

110.5 Revocation. The building official is authorized to, in writing, suspend or revoke a certificate of occupancy or completion issued under the provisions of this code wherever the certificate is issued in error, on the basis of incorrect information supplied, or where it is determined that the building or structure or portion thereof is in violation of any ordinance or any regulation or any of the provisions of this code.

SECTION 111 **SERVICE UTILITIES**

111.1 Authority to disconnect service utilities. The building official shall have the authority to authorize disconnection of utility service to the building, structure or system regulated by this code and the codes referenced in case of emergency where necessary to eliminate an immediate hazard to life or property. The building official shall notify the serving utility, and wherever possible the owner and occupant of the building, structure or service system of the decision to disconnect prior to taking such action. If not notified prior to disconnection, the owner or occupant of the building, structure or service system shall be notified in writing, as soon as practical thereafter.

SECTION 112 **BOARD OF APPEALS**

112.1 General. The board of appeals hearing matters related to the building code shall be the board of appeals established by Article IV, Section 4.06 of the City Charter. The rules and regulations governing said board shall apply.

SECTION 113 **VIOLATIONS**

113.1 Unlawful acts. It shall be unlawful for any person, firm, or corporation to erect, construct, alter, extend, repair, remove, demolish, use, or occupy any building or structure or equipment

regulated by this code, or cause same to be done, in conflict with or in violation of any of the provisions of this code.

113.2 Notice of violation. The building official is authorized to serve a notice of violation or order on the person responsible for the erection, construction, alteration, extension, repair, moving, removal, demolition, or occupancy of a building or structure in violation of the provisions of this code, or in violation of a detail statement or a plan approved thereunder, or in violation of a permit or certificate issued under the provisions of this code. Such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.

113.2.1 Service of notice of violation. A notice of violation or order may be served in hand to the violator or left with a person of suitable age and discretion at the residence place of business of the violator or mailed by certified mail, return receipt requested, to the last known address. If the return receipt is not returned, the notice shall be conclusively presumed to have been served if it is also sent by regular mail, postage prepaid, which is not returned as undeliverable by the postal service.

113.2.2 Request for appeal. Any person served an order, pursuant to this section, may request a hearing before the board of appeals by filing a written petition for said hearing at the code enforcement office within ten (10) days of the date of service for the order. The board of appeals may sustain, modify, or withdraw such order. The decision of the board of appeals may be further appealed pursuant to the provisions of Rule 80B of the Maine Rules of Civil Procedure.

113.3 Prosecution of violation. If the notice of violation is not complied with promptly, the building official is authorized to request the legal counsel of the jurisdiction to institute the appropriate proceeding at law or in equity to restrain, correct, or abate such violation, or to require the removal or termination of the unlawful occupancy of the building or structure in violation of the provisions of this code or of the order or direction made pursuant thereto.

113.4 Violation penalties. Any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof, or shall erect, construct, alter or repair a building or structure in violation of an approved plan or directive of the building official, or of a permit or certificate issued under the provisions of this Code, shall be liable for a fine as set forth in Chapter 1, Section 1-8 and Chapter 50, Section 50-36 of the Code of Ordinances of the City of AUBURN.

SECTION 114 **STOP-WORK ORDER**

114.1 Authority. Whenever the building official finds any work regulated by this code being performed in a manner contrary to the provisions of this code or in a dangerous or unsafe manner, the building official is authorized to issue a stop work order.

114.2 Issuance. The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work. Upon issuance of a

stop work order, the cited work shall immediately cease. The stop work order shall state the reason for the order, and the conditions under which the cited work will be permitted to resume.

114.3 Unlawful continuance. Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of not less than \$350.00 or more than \$2000.00

SECTION 115 **UNSAFE STRUCTURES AND EQUIPMENT**

115.1 Conditions. Structures or existing equipment that are or hereafter become unsafe, unsanitary or deficient because of inadequate means of egress facilities, inadequate light and ventilation, or which constitute a fire hazard, or are otherwise dangerous to human life or the public welfare, or which involve illegal or improper occupancy or inadequate maintenance, shall be deemed an unsafe condition. Unsafe structures shall be taken down and removed or made safe, as the building official deems necessary and as provided for in this section. A vacant structure that is not secured against entry shall be deemed unsafe.

115.2 Record. The building official shall cause a report to be filed on an unsafe condition. The report shall state the occupancy of the structure and the nature of the unsafe condition.

115.3 Notice. If an unsafe condition is found, the building official shall serve on the owner, agent or person in control of the structure, a written notice that describes the condition deemed unsafe and specifies the required repairs or improvements to be made to abate the unsafe condition, or that requires the unsafe structure to be demolished within a stipulated time. Such notice shall require the person thus notified to declare immediately to the building official acceptance or rejection of the terms of the order.

115.4 Method of service. Such notice shall be deemed properly served if a copy there of is (a) delivered to the owner personally; (b) sent by certified or registered mail addressed to the owner at the last known address with the return receipt requested; or (c) delivered in any other manner as prescribed by local law. If the certified or registered letter is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the structure affected by such notice. Service of such notice in the foregoing manner upon the owner's agent or upon the person responsible for the structure shall constitute service of notice upon the owner.

115.5 Restoration. The structure or equipment determined to be unsafe by the building official is permitted to be restored to a safe condition. To the extent that repairs, alterations or additions are made or a change of occupancy occurs during the restoration of the structure, such repairs, alterations, additions or change of occupancy shall comply with the requirements of Section 105.2.2 and Chapter 34.

SECTION 116 **EMERGENCY MEASURES**

116.1 Imminent danger. When in the opinion of the code official, there is imminent danger of failure or collapse of a building that endangers life, or when any building or part of a building has fallen and life is endangered by the occupation of the building, or when there is actual or potential danger to the building occupants of those in the proximity of any structure because of explosives, explosive fumes or vapors, or the presence of toxic fumes, gases, or materials, or operation of defective or dangerous equipment, the code official is hereby authorized and empowered to order and require the occupants to vacate the premises forthwith. The code official shall cause to be posted at each entrance to such structure a notice reading as follows: “This Structure Is Unsafe and Its Occupancy Has Been Prohibited by the Code Official.” It shall be unlawful for any person to enter such structure except for the purpose of securing the structure, making the required repairs, removing the hazardous condition, or of demolishing the same.

116.2 Temporary safeguards. Notwithstanding other provisions of this code, whenever, in the opinion of the code official, there is imminent danger due to an unsafe condition, the code official shall order the necessary work to be done, including the boarding up of openings, to render such structure temporarily safe whether or not the legal procedure herein described has been instituted; and shall cause such other action to be taken as the code official deems necessary to meet such emergency.

116.3 Closing streets. When necessary for public safety, the code official shall temporarily close structures and close or order the authority having jurisdiction to close sidewalks, streets, public ways, and places adjacent to unsafe structures, and prohibit the same from being utilized.

116.4 Emergency repairs. For the purposes of this section, the code official *may* employ the necessary labor and materials to perform the required work as expeditiously as possible.

116.5 Cost of emergency repairs. Costs incurred in the performance of emergency work shall be paid by the jurisdiction. The legal counsel of the jurisdiction shall institute appropriate action against the owner of the premises where the unsafe structure is or was located for the recovery of such costs.

116.6 Hearings. Any person ordered to take emergency measures shall comply with such order forthwith. Any affected person shall thereafter, upon petition directed to the appeals board be afforded a hearing as described in this code.

SECTION 117 **DEMOLITION**

117.1 General. The code official shall order the owner of any premises upon which is located any structure that in the code official’s judgment is so old, dilapidated, or has become so out of repair as to be dangerous, unsafe, insanitary, or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary or to demolish and remove at the owner’s option; or where there has been a

cessation of normal construction of any structure for a period of more than two years, to demolish and remove such structure.

117.2 Notices and orders. All notices and orders shall comply with Section 113.

117.3 Failure to comply. If the owner of a premises fails to comply with a demolition order within the time prescribed, the code official shall cause the structure to be demolished and removed, either through an available public agency or by contract or arrangement with private persons, and the cost of such demolition and removal shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.

117.4 Salvage materials. When any structure has been ordered demolished and removed, the governing body or other designated officer under said contract or arrangement aforesaid shall have the right to sell the salvage and valuable materials at the highest price obtainable. The new proceeds of such sale, after deducting the expenses of such demolition and removal, shall be promptly remitted with a report of such sale or transaction, including the items of expense and the amounts deducted, for the person who is entitled thereto, subject to any order of a court. If such a surplus does not remain to be turned over, the report shall so state.

CHAPTER 2 DEFINITIONS

SECTION 201 GENERAL

Section 201.3 is hereby deleted:

Section 201.3 is hereby created as follows:

201.3 Terms defined in other codes. Where conflicts exist regarding definitions of like terms in this chapter and other chapters of this code of ordinances, each definition shall be applied only within the scope of each chapter and shall not be construed to be contradictory. Terms not defined in this code and are defined in other codes shall have the meanings ascribed to them as in those codes.

CHAPTER 3 USE AND OCCUPANCY CLASSIFICATION

305.2 Day care. The use of a building or structure, or portion thereof, for educational, supervision or personal care services for more than ~~five~~ two children older than 2 ½ years of age, which is not accessory to a residential use, shall be classified as a Group E occupancy.

308.2 Group I-1. This occupancy shall include buildings, structures or parts thereof housing more than ~~46~~ eight persons, on a 24-hour bases, who because of age, mental disability or other reasons, live in a supervised residential environment that provides personal care services. The occupants are capable of responding to an emergency situation without physical assistance from staff. This group shall include, but not be limited to, the following:

Residential board and care facilities
Assisted living facilities
Halfway houses
Group homes
Congregate care facilities
Social rehabilitation facilities
Alcohol and drug centers
Convalescent facilities

A facility such as the above with ~~five~~ eight or fewer persons shall be classified as a ~~Group R-3~~ Residential Group R or shall comply with the *International Residential Code* on accordance with Section 101.2. ~~A facility such as above, housing at least six and not more than 16 persons, shall be classified as Group R-4.~~

308.3 Group I-2 This occupancy shall include buildings and structures used for medical, surgical, psychiatric, nursing or custodial care on a 24-hour basis of more than five persons who are not capable of self-preservation. This group shall include, but not be limited to, the following:

Hospitals
Nursing homes (both intermediate-care facilities and skilled nursing facilities)
Mental hospitals
Detoxification facilities

A facility such as the above with ~~five~~ eight or fewer persons shall be classified as Group R-3 or shall comply with the *International Residential Code* in accordance with Section 101.2.

308.5 Group I-4, day care facilities. This group shall include buildings and structures occupied by persons of any age who receive custodial care for less than 24 hours by individuals other than parents or guardians, relatives by blood, marriage or adoption and in a place other than the home of the person cared for. A facility such as the above with ~~five~~ twelve or fewer persons accessory to a dwelling unit shall be classified as a ~~Group R-3~~ residential use or shall comply with the *International Residential Code* in accordance with Section 101.2. Places of worship during religious functions are not included.

308.5.1 Adult care facility. A facility that provides accommodations for less than 24 hours for more than ~~five~~ eight unrelated adults and provides supervision and personal care services shall be classified as Group I-4.

Exception: A facility where occupants are capable of responding to an emergency situation without physical assistance from the staff shall be classified as Group A-3.

308.5.2 Child care facility. A facility that provides supervision and personal care on less than a 24-hour basis for more than ~~five~~ two children ~~2-1/2~~ 15 years of age or less shall be classified as Group I-4.

Exception: A child day care facility that provides care for more than ~~five~~ two but no more than 100 children ~~2-1/2~~ 15 years or less of age, when the rooms where such children are cared for are located on the level of exit discharge and each of these child care rooms has an exit door directly to the exterior, shall be classified as Group E.

SECTION 310 RESIDENTIAL GROUP R

310.1 Residential Group R. Residential Group R includes, among others, the use of a building or structure, or a portion thereof, for sleeping purposes when not classified as an Institutional Group I. Residential occupancies shall include the following:

R-1 Residential occupancies where the occupants are primarily transient in nature including:

- Boarding houses (transient)
- Hotels (transient)
- Motels (transient)

R-2 Residential occupancies containing sleeping units or more than two dwelling units where the occupants are primarily permanent in nature, including:

- Apartment houses
- Boarding houses (not transient)
- Convents
- Dormitories
- Fraternities and sororities
- Monasteries
- Vacation timeshare properties
- Hotels (not transient)
- Motels (not transient)

R-3 Residential occupancies where the occupants are primarily permanent in nature and not classified as R-1, R-2, R-4, or I and where buildings do not contain more than two dwelling units as applicable in Section 101.2, or adult and child care facilities that provide accommodations for ~~five~~ twelve or fewer persons of any age for less than 24 hours. Adult and child care facilities that are within a single -family home are permitted to comply with the *International Residential Code* in accordance with Section 101.2.

R-4 Residential occupancies shall include buildings arranged for occupancy as residential care/assisted living facilities including not more than ~~five~~ eight ~~but not more than 16~~ occupants, excluding staff.

Group R-4 occupancies shall meet the requirements for construction as defined in Group R-3 except as otherwise provided for in this code or shall comply with the *International Residential Code* in accordance with Section 101.2.

SECTION 312

UTILITY AND MISCELLANEOUS GROUP U

312.1 General. Buildings and structures of an accessory character and miscellaneous structures not classified in any specific occupancy shall be constructed, equipped and maintained to conform to the requirements of this code commensurate with the fire and life hazard incidental to their occupancy. Group U shall include, but not be limited to, the following:

- Agricultural buildings
- Aircraft hangars, accessory to a one-or two-family residence (see Section 412.3)
- Barns
- Carports
- Fences ~~more than 6 feet (1829 mm) high~~
- Grain silos, accessory to a residential occupancy
- Greenhouses
- Livestock shelters
- Private garages
- Retaining walls
- Sheds
- Stables
- Swimming pools
- Tanks
- Towers

CHAPTER 11

ACCESSIBILITY is hereby deleted.

CHAPTER 11

ACCESSIBILITY

SECTION 1101

GENERAL

1101.1 Applicable standard. The standard for accessible buildings and facilities shall be the Maine Human Rights Act, Title 5 MRSA Section 4551 et seq, and applicable building and facilities shall be constructed in accordance with ANSI A117.1 - 1986 for residential uses and the Americans with Disabilities Act Accessibility Guidelines for non-residential uses.

CHAPTER 12

INTERIOR ENVIRONMENT

SECTION 1204

TEMPERATURE CONTROL is hereby deleted.

CHAPTER 13

ENERGY EFFICIENCY is hereby deleted.

SECTION 1805 FOOTINGS AND FOUNDATIONS

1805.2 Depth of footing. The minimum depth of footings below the undisturbed ground surface shall be 12 inches (305 mm). Where applicable, the depth of footings shall also conform to Sections 1805.2.1 through 1805.2.3.

1805.2.1 Frost protection. Except where otherwise protected from frost, foundation walls, piers and other permanent supports of buildings and structures shall be protected from frost by one or more of the following methods:

1. Extending at least four feet to the bottom of the footing/ pier;
2. Constructing in accordance with ASCE-32; or
3. Erecting on solid rock.

Footing shall not bear on frozen soil unless such frozen condition is of a permanent character.

Exception: Free-standing buildings meeting all of the following conditions shall ~~not be required to be protected~~ be permitted to be constructed on a monolithic slab with integral footing:

1. Classified in Importance Category I or II;
2. Classified as Use Group B, F, M, H, S, or U;
3. Be of Type V construction;
4. Be one story and not more than 20 feet in height, measured to the eave;and.
5. Be not more than 2500 square feet in area;

Where permitted, the slab installation shall conform to the following:

- a. Structural loads shall be uniformly distributed along the length of the slab. Point loads shall be supported in accordance with Section 1805.2.1;
- b. Unless the existing soil is of a similar porosity as the required fill, original soil shall be removed and replaced with structural fill material that is a minimum depth of 24 inches of uniform, compacted, permeable aggregate such as crushed stone or gravel.
- c. The minimum width of the integral footing shall be 12 inches and exterior footings shall extend at least 12 inches below grade. Mid-span footings shall be a minimum of 12 inches wide and 8 inches thick.

- d. The minimum slab thickness shall be 4 inches.
- e. A row of # 4 rebar shall be placed in the lower and upper third of the exterior footing, not less than 3 inches from the surface of the footing. The slab shall be reinforced with either 6" x 6" wire mesh or fiber reinforcement.
- f. Finish grade shall be a minimum of 6 inches below the top of the slab.

CHAPTER 27
ELECTRICAL is hereby deleted.

CHAPTER 28
MECHANICAL SYSTEMS is hereby deleted.

CHAPTER 29
PLUMBING SYSTEMS is hereby deleted.

SECTION 3109
SWIMMING POOL ENCLOSURES AND SAFETY DEVICES

3109.2 Definition. The following word and term shall, for the purposes of this section and as used elsewhere in this code, have the meaning shown herein.

SWIMMING POOLS. Any structure intended for swimming, recreational bathing or wading that contains water over ~~24 inches (610 mm)~~ 36 inches (915) deep. This includes in-ground, above-ground and on-ground pools; hot tubs; spas and fixed-in-place wading pools.

CHAPTER 32
ENCROACHMENTS INTO THE PUBLIC RIGHT-OF-WAY is hereby deleted.

CHAPTER 33
SAFEGUARDS DURING CONSTRUCTION

SECTION 3303
DEMOLITION

3304.4 Vacant lot. Where a structure has been demolished or removed, the vacant lot shall be filled to grade with sand, gravel, or other approved inert fill material and the entire site shall be stabilized to prevent wind and water erosion. Any existing curb cuts shall be barricaded to prevent vehicular access.

3303.7 Insurance coverage. No permit for the demolition, destruction, or wrecking of any building or structure shall be issued unless the building official shall have first been furnished with satisfactory evidence of the fact that the applicant has secured a policy of liability insurance indemnifying the applicant for any liability incurred arising out of said demolition, destruction, or wrecking of a building or structure.

3303.7.1 Insurance limits. This insurance policy shall be in the amount of five hundred thousand dollars (\$500,000.00) per occurrence and one million dollars (\$1,000,000.00) aggregate.

3303.7.2 Waiver. The building official may waive the insurance requirements hereunder, provided that after personal inspection, the building official determines that there exists no reasonable danger or likelihood of injury as the result of said demolition, destruction, or wrecking. In no event shall such a waiver be granted if the building or structure to be demolished, destroyed, or wrecked is located within twenty (20) feet of the public street or sidewalk.

SECTION 3305 SANITATION

3305.1 Facilities required. Sanitary facilities shall be provided during construction, remodeling or demolition activities in accordance with Title 29, Part 1926, Section 51 of the Code of Federal Regulations (29 CFR 1926.51).

CHAPTER 34 EXISTING STRUCTURES

[EB] SECTION 3401 GENERAL

3401.3 Compliance with other codes. Alterations, repairs, additions and changes of occupancy shall comply with the provisions for alterations, repairs, additions and changes of occupancy in the currently adopted editions of the following: *National Fire Codes, State of Maine Internal Plumbing Rules, BOCA/ICC Property Maintenance Code, Maine Subsurface Waste Water Disposal Rules, and National Electrical Code.*

[EB] SECTION 3409.

ACCESSIBILITY FOR EXISTING BUILDINGS is hereby deleted.

[EB] SECTION 3409 ACCESSIBILITY FOR EXISTING BUILDINGS

3409.1 Applicable standard. Accessibility requirements for existing buildings and facilities shall be determined by the Maine Human Rights Act, Title 5 MRSA Section 4551 et seq, and

applicable building and facilities shall be constructed in accordance with ANSI A117.1 - 1986 for residential uses and the Americans with Disabilities Act Accessibility Guidelines for non-residential uses.

Chapter 20
Article II. International Residential Code

Sec. 2.1. Adoption of residential code.

There is hereby adopted by the city for the purpose of establishing rules and regulations for the construction, alteration, removal, demolition and insurance coverage, use and occupancy, equipment, location and maintenance of building and structures, including permits and penalties, that certain residential building code known as the 2003 International Residential Code for One- and Two-Family Dwellings, save and except such portions as are in this article deleted, modified or amended. No fewer than one copy of such code have been and now are filed in the office of the city clerk and such copies are hereby adopted and incorporated as fully as if set out at length in this article.

Sec. 2.2. Amendments to the residential code.

The residential code adopted in section 2.1 is amended and changed as follows:
Chapter 1 is repealed in its entirety.

Chapter 1 ADMINISTRATION. is enacted to read as follows:

CHAPTER 1
ADMINISTRATION

SECTION R101
GENERAL

R101.1 Title. These provisions shall be known as the Residential Code for One- and Two-Family Dwellings of the City of Auburn, Maine, and shall be cited as such and will be referred to herein as “this code.”

R101.2 Scope. The provisions of the International Residential Code for One- and Two-Family Dwellings shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use, and occupancy, location,, removal, and demolition of detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height with a separate means of egress and their accessory structures.

R101.3 Purpose. The purpose of this code is to provide minimum requirements to safeguard the public safety, health and general welfare, through affordability, structural strength, means of egress facilities, stability, sanitation, light and ventilation, energy conservation, and safety to life and property from fire and other hazards attributed to the built environment..

SECTION R102 **APPLICABILITY**

R102.1 General. Where, in any specific case, different sections of this code specify different materials, methods of construction or other requirements, the most restrictive shall govern. Where there is a conflict between a general requirement and a specific requirement. The specific requirement shall be applicable.

R102.2 Other Laws. The provisions of this code shall not be deemed to nullify any provisions of local, state and federal law.

R102.3 Application of references. References to chapter or section numbers, or to provisions specifically identified by number, shall be construed to refer to such chapter, section or provision of this code.

R102.4 Referenced codes and standards. The codes and standards referenced in this code shall be considered part of the requirements of this code to be prescribed extent of each such reference. Where differences occur between provisions of this code and referenced codes and standards, the provisions of this code shall apply.

R101.4 Referenced codes. The other codes listed in Section 101.4.1 through 101.4.7 and referenced elsewhere in this code shall be considered part of the requirements of this code to the prescribed extent of each such reference.

Exception: Where the enforcement of a code provision would violate the conditions of the listing of the equipment or appliance, the conditions of the listing and manufacturer's instructions shall apply.

R101.4.1 Electrical. The provisions of the Chapter 9, Article I. Section 1.4 NATIONAL ELECTRICAL CODE of the Code of Ordinances of the City of AUBURN shall apply to the installation of electrical systems, including alterations, repairs, replacement, equipment, appliances, fixtures, fittings and appurtenances thereto. All references to the ICC *Electrical Code* are hereby deleted in favor of the applicable section(s) of the *National Electrical Code* as adopted.

R101.4.2 Gas. The provisions of Chapter 21, FIRE CODE of the aforementioned Code of Ordinances shall apply to the installation of gas piping from the point of delivery, gas appliances and related accessories as covered in this code. All references to the *International Gas Code* are hereby deleted in favor of the applicable section(s) of the *National Fire Codes* as adopted.

R101.4.3 Mechanical. The provisions of the *International Mechanical Code* shall apply to the installation, alterations, repairs and replacement of mechanical systems, including equipment, appliances, fixtures, fittings and/or appurtenances, including ventilating, heating, cooling, air-conditioning and refrigeration systems, incinerators and other energy-related systems.

R101.4.4 Plumbing. The provisions of Chapter 20A, Article 7. MINIMUM STANDARD FOR PLUMBING of the aforementioned Code of Ordinances shall apply to the installation, alteration, repair and replacement of plumbing systems, including equipment, appliances, fixtures, fittings and appurtenances, and where connected to a water or sewerage system. The provisions of the *Maine Subsurface Waste Water Disposal Rules* shall apply to private sewage disposal systems. All references to the *International Plumbing Code* and *International Private Sewage Disposal Code* are hereby deleted in favor of the applicable section(s) of these regulations.

R101.4.5 Energy. The provisions of the *Maine Guide to Energy Efficient Construction: A Manual of Accepted Practice* (third edition) shall apply to all habitable residential buildings and structures. The provisions of ASHRAE 90B shall be applicable to all occupiable nonresidential buildings and structures. All references to the *International Energy Conservation Code* are hereby deleted.

R102.5 Appendices. Provision in the appendices shall not apply unless specifically referenced on the adopting ordinance.

R102.6 Partial invalidity. In the event any part or provision of this code is held to be illegal or void, this shall not have the effect of making void or illegal any of the other parts of the provisions.

R102.7 Existing structures. The legal occupancy of any structure existing on the date of adoption of this code shall be permitted to continue without change, except as is specifically covered in this code, the currently adopted *Property Maintenance Code*, or as is deemed necessary by the building official for the general safety and welfare of the occupants and the public.

R102.7.1 Additions, alterations, or repairs. Additions, alterations, or repairs to any structure shall conform to that required for a new structure without requiring the existing structure to comply with all the requirements to this code, unless otherwise stated. Additions, alterations, and repairs shall not cause an existing structure to become unsafe or adversely affect the performance of the building.

SECTION R103
DEPARTMENT OF CODE ENFORCEMENT

R103.1 Building official. The code enforcement division is hereby charged with the administration and enforcement of this code. The director of code enforcement and the building inspector, acting under the direction of the director of code enforcement, shall be designated as the municipal building officials for the purpose of administration and enforcement of the code.

R103.2 Qualifications of building official. To be eligible for appointment, the candidate for the position shall have had experience as an architect, structural engineer, building inspector, foreman or superintendent of building construction. He shall be in good health, physically capable of making the necessary examinations and inspections. He shall not have any interest whatever, directly or indirectly, in the sale or manufacture of any material, process, or device entering into or used in or in connection with building construction, alteration, removal and demolition.

R103.3 Deputies. In accordance with the prescribed procedures of this jurisdiction and with the concurrence of the appointing authority, the director of code enforcement shall have the authority to appoint a deputy building official, the related technical officers, inspectors, plan examiners and other employees. Such employees shall have powers as delegated by the building official.

SECTION R104 **DUTIES AND POWERS OF BUILDING OFFICIALS**

R104.1 General. The building official is hereby authorized and directed to enforce the provisions of this code. The building official shall have the authority to render interpretations of this code and to adopt policies and procedures in order to clarify the applications of its provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of this code. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this code.

R104.2 Applications and permits. The building officials shall receive applications, review construction documents and issue permits for the erection, and alteration, demolition and moving of building and structures, inspect the premises for which such permits have been issued and enforce compliance with the provisions of this code.

R104.3 Notices and orders. The building official shall issue all necessary notices and orders to ensure compliance with this code.

R104.4 Inspections. The building official shall make all of the required inspections, or the building official shall have the authority to accept reports of inspection by approved agencies or individuals. Reports of such inspections shall be in writing and be certified by a responsible officer of such approved agency or by the responsible individual. The building official is authorized to engage such expert opinion as deemed necessary to report upon unusual technical issues that arise, subject to the approval of the appointing authority.

R104.5 Identification. The building official shall carry proper identification when inspecting structures or premises in the performance of duties under this code.

R104.6 Right of entry. Where it is necessary to make an inspection to enforce the provisions of this code, or where the building official has reasonable cause to believe that there exists in a structure or upon premises a condition which is contrary to or in violation of this code which makes the structure or premises unsafe, dangerous or hazardous, the building official is authorized to enter the structure at reasonable times to inspect or to perform the duties imposed by this code, provided that if such structure or premises be occupied that credentials be presented to the occupant and entry requested. If such structure or premises be unoccupied, the building official shall first make reasonable effort to locate the owner or other person having charge or control of the structure or premises and request entry. If entry is refused, the building official shall have recourse to the remedies provided by the law to secure entry.

R104.7 Department records. The building official shall keep official records of applications received, permits and certificates issued, fees collected, reports of inspections, and notices and orders issued. Such records shall be retained in the official records for the period required for retention of public records.

R104.8 Liability. The building official or other employee or appointee charged with the enforcement of this code, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be rendered liable personally and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of act or omission in the discharge of official duties. Any suit instituted against an officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be defended by legal representative of the jurisdiction until the final termination of the proceedings. The building official or any subordinate shall not be liable for cost in any action, suit or proceeding that is instituted in pursuance of the provisions of this code.

R104.9 Approved materials and equipment. Materials, equipment and devices approved by the building official shall be constructed and installed in accordance with such approval.

R104.9.1 Used materials and equipment. The use of used materials which meet the requirements of this code for new materials is permitted. Used equipment and devices shall not be reused unless approved by the building official.

R104.10 Modifications. Wherever there are practical difficulties involved in carrying out the provisions of this code, the building official shall have the authority to grant modifications for individual cases, upon application of the owner or the owner's representative, provided the building official shall first find that special individual reason makes the strict letter of this code impractical and the modification is in compliance with the intent and purpose of this code at that such modification does not lessen health, accessibility, life and fire safety, or structural

requirements. The details of action granting modifications shall be recorded and entered in the files of the department of building safety.

R104.10.1 Areas prone to flooding. The building official shall not grant modifications to any provision related to areas prone to flooding as established by Table R301.2(1) without the granting of a variance to such provisions by the board of appeals.

R104.11 Alternative materials, design and methods of construction and equipment. The provisions of this code are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by this code, provided that any such alternative has been approved. An alternative material, design or method of construction shall be approved where the building official finds the proposed design is satisfactory and complies with the intent of the provisions of this code, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code in quality, strength, effectiveness, fire resistance, durability and safety.

R104.11.1 Test. Whenever there is insufficient evidence of compliance with the provisions of this code, or evidence that a material or method does not conform to the requirements of this code, or in order to substantiate claims for alternative materials or methods, the building official shall have the authority to require tests as evidence of compliance to be made at no expense to the jurisdiction. Test methods shall be as specified in this code or by other recognized and accepted test standards. In the absence of recognized and accepted test methods, the building official shall approve the test procedures. Tests shall be performed by an approved agency. Reports of such tests shall be retained by the building official for the period required for retention of public records.

SECTION R105 **PERMITS**

R105.1 Required. Any owner or authorized agent who intends to construct, enlarge, alter, repair, remove, move, demolish, or change the occupancy of a building or structure, or erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permits.

R105.2 Work exempt from permit. Exemptions from permit requirements for this code shall not be deemed to grant authorization for any work to be done in any manner in violations of the provisions of this code or any other laws or ordinances of this jurisdiction. Permits shall not be required for the following:

1. Repairs, in accordance with Section 105.2.2.
2. Reroofing, where no structural repairs or improvements are involved.
3. Siding of existing buildings or structures, where no structural repairs or improvements are involved.

4. Painting, papering, tiling, carpeting, cabinets, counter tops and similar work.
5. Prefabricated swimming pools, accessory to one- and two-family dwellings, which have less than 36 inches (915 mm) of water depth capacity and are installed entirely above ground.
6. Swings and other playground equipment accessory to one- and two-family dwellings.
7. Window awnings supported by an exterior wall of one- and two-family dwellings.

R105.2.1 Emergency repairs. When equipment replacement and building repairs must be performed in an emergency situation, the permit application shall be submitted within the next working business day to the building official.

R105.2.2 Repairs. Application or notice to the building official is not required for ordinary repairs to structures, replacement of lamps or the connection of approved portable electrical equipment to approved permanently installed receptacles. Such repairs shall not include the cutting away of any structural beam or load-bearing support, or the removal or change of any required means of egress, or rearrangement of parts of a structure affecting the egress requirements.

R105.3 Application for permit. To obtain a permit, the applicant shall first file an application thereof in writing on a form furnished by the department of building safety for that purpose. Such application shall:

1. Identify and describe the work to be covered by the permit for which application is made.
2. Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.
3. Indicate the use and occupancy for which the proposed work is intended.
4. Be accompanied by construction documents and other information as required in Section 106.1.
5. State the valuation of the proposed work.
6. Be signed by the applicant, or the applicant's authorized agent.
7. Give such other data and information as required by the building official.

R105.3.1 Action on application. The building official shall examine or cause to be examined applications for permits and amendments thereto within a reasonable time after filling. If the application or the construction documents do not conform to the requirements of pertinent laws, the building shall reject such application in writing, stating the reasons therefore. If the building official is satisfied that the proposed work conforms to the requirements of this code and laws and ordinances applicable thereto, the building official shall issue a permit therefore as soon as practicable.

R105.3.1.1 Substantially improved or substantially damaged existing buildings and structures. For applications for reconstruction, rehabilitation, addition or other improvement of existing buildings or structures located in a area prone to flooding as established by Table R301.2(1), the building official shall examine or cause to be

examined the construction documents and shall prepare a finding with regard to the value of the proposed work. For buildings that have sustained damage of any origin, the value of the proposed work shall include the cost to repair the building or structure to its predamaged condition. If the building official finds that the value of the proposed work equals or exceeds 50 percent of the market value of the building or structure, the building or structure shall be brought into conformance with the requirements of Article XII, Section 4 of Appendix A - Zoning and Land Use Code of the City of Auburn.

R105.3.2 Time limitation of application. An application for a permit for any proposed work shall be deemed to have been abandoned 180 days after the date of filing, unless such application has been pursued in good faith or a permit has been issued; except that the building official is authorized to grant one or more extensions of time for additional periods not exceeding 90 days each. The extension shall be requested in writing and justifiable cause demonstrated.

R105.4 Validity of permit. The issuance or granting of a permit shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this code or of any other ordinance of the jurisdiction. Permits presuming to give authority to violate or cancel the provisions of this code or other ordinances of the jurisdiction shall not be valid. The issuance of a permit based on construction documents and other data shall not prevent the building official from requiring the correction of errors in the construction documents and other data. The building official is also authorized to prevent occupancy or use of a structure where in violation of this code or of any other ordinances of this jurisdiction.

R105.5 Expiration. Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The building official is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.

R105.6 Suspension or revocation. The building official is authorized to suspend or revoke a permit issued under the provisions of this code wherever the permit is issued in error or on the basis of incorrect, inaccurate or incomplete information, or in violation of any ordinance or regulation or any of the provisions of this code or other municipal ordinance.

R105.7 Placement of permit. The building permit or copy shall be kept on the site of the work until the completion of the project.

R105.8 Responsibility. It shall be the duty of every person who performs work for the installation, construction, or repair of a building or structure, for which this code is applicable, to comply with this code.

SECTION R106
CONSTRUCTION DOCUMENTS

R106.1 Submittal documents. Construction documents, special inspection and structural observation programs, and other data shall be submitted in one or more sets with each application for a permit. The construction documents shall be prepared by a registered design professional where required by the statutes of the jurisdiction in which the project is to be constructed. Where special conditions exist, the building official is authorized to require additional construction documents to be prepared by a registered design professional.

Exception: The building official is authorized to waive the submission of construction documents and other data not required to be prepared by a registered design professional if it is found that the nature of the work applied for is such that reviewing of construction documents is not necessary to obtain compliance with this code.

R106.1.1 Information on construction documents. Construction documents shall be dimensioned and drawn upon suitable material. Electronic media documents are permitted to be submitted when approval by the building official. Construction documents shall be of sufficient clarity to indicate the location, nature and extent of the work proposed and show in detail that it will conform to the provisions of this code and relevant laws, ordinances, rules and regulations, as determined by the building official.

R106.1.2 Manufacturer's installation instructions. Manufacturer's installation instructions, as required by this code, shall be available on the job site at the time of inspection.

R106.1.3 Information for construction in areas prone to flooding. For buildings and structures in the flood hazard areas as established by Table 301.2(1), construction documents shall include:

1. Delineation of flood hazard areas, floodway boundaries, and flood zones, and the design flood elevation, as appropriate;
2. The elevation of the proposed lowest floor, including basement; in areas of shallow flooding (AO zones), the height of the proposed lowest floor, including basement, above the highest adjacent grade; and
3. If design flood elevations are not included on the community's Flood Insurance 'Rate Map (FIRM), the building official and the applicant shall obtain and reasonably utilize any design flood elevation and floodway data available from other sources.

R106.2 Site plan. The construction documents submitted with the application for permit shall be accompanied by a site plan showing to scale the size and location of new construction and existing structures on the site and distances from lot lines. In the case of demolition, the site plan shall show construction to be demolished and the location and size of existing structures and

construction that are to remain on the site or plot. The building official is authorized to waive or modify the requirement for a site plan when the application for permit is for alteration or repair or when otherwise warranted.

R106.3 Examination of documents. The building official shall examine or cause to be examined construction documents for code compliance.

R106.3.1 Approval of construction documents. When the building official issues a permit, the construction documents shall be approved, in writing or by stamp, as “Reviewed for Code Compliance.” One set of construction documents so reviewed shall be retained by the building official. The other set shall be returned to the applicant, shall be kept at the site of work and shall be open to inspection by the building official or his authorized representative.

R106.3.2 Previous approvals. The code shall not require changes in the construction documents, construction or designated occupancy of a structure for which a lawful permit has been heretofore issued or otherwise lawfully authorized, and the construction of which has been pursued in good faith within 180 days after the effective date of this code and has not been abandoned.

R106.3.3 Phased approval. The building official is authorized to issue a permit for the construction of foundations or any other part of a building or structure before the construction documents for the whole building or structure have been submitted, provided the adequate information and detailed statements have been filed complying with pertinent requirements of this code. The holder of such permit for the foundation or other parts of a building or structure shall proceed at the holder’s own risk with the building operation and without assurance that a permit for the entire structure will be granted.

R106.4 Amended construction documents. Work shall be installed in accordance with the reviewed construction documents, and any changes made during construction that are not in compliance with the approved construction documents shall be resubmitted for approval as an amended set of construction documents.

R106.5 Retention of construction documents. One set of approved construction documents shall be retained by the building official as required by state or local laws.

SECTION R107 **TEMPORARY STRUCTURES AND USES**

R107.1 General. The building official is authorized to issue a permit for temporary structures and temporary uses. Such permits shall be limited as to time of service, but shall not be permitted for more than 180 days. The building official is authorized to grant extensions for demonstrated cause.

R107.2 Conformance. Temporary structures and uses shall conform to the structural strength, fire safety, means of egress, accessibility, light, ventilation and sanitary requirements of this code as necessary to ensure the public health, safety and general welfare.

R107.3 Temporary power. The building official is authorized to give permission to temporarily supply and use power in part of an electric installation before such installation has been fully completed and the final certificate of completion has been issued. The part covered by the temporary certificate shall comply with the requirements specified for temporary lighting, heat or power in the ICC *Electrical Code*.

R107.4 Termination of approval. The building official is authorized to terminate such permit for a temporary structure or use and to order the temporary structure or use to be discontinued.

SECTION R108 **FEES**

R108.1 Payment of fees. A permit shall not be valid until the fees prescribed by law have been paid. Nor shall an amendment to a permit be released until the additional fee, if any, has been paid.

R108.2 Schedule of permit fees. On buildings, structures, or alterations requiring a permit, a fee for each permit shall be paid as required, in accordance with the schedule as established by the applicable governing authority.

R108.3 Building permit valuations. The applicant for a permit shall provide an estimated permit value at time of application. Permit valuations shall include total value of work, including materials and labor, for which the permit is being issued, such as electrical, gas, mechanical, plumbing equipment and permanent systems. If, in the opinion of the building official, the valuation is underestimated on the application, final building permit valuation shall be set by the building official utilizing *Means Square Foot Costs* or similar documents, unless the applicant can show detailed estimates to meet the approval of the building official.

R108.4 Work commencing before permit issuance. Any person who commences any work on a building or structure, before obtaining the necessary permit, shall be subject to an additional fee established by the building official that shall be in addition to the required permit fees.

R108.5 Related fees. The payment of the fee for the construction, alteration, removal or demolition for work done in connection with or concurrently with the work authorized by a building permit shall not relieve the applicant or holder of the permit from the payment of other fees that are prescribed by law.

R108.6 Refunds. The building official is authorized to establish a refund policy.

SECTION R109 INSPECTIONS

R109.1 Types of construction. For on-site construction, from time to time the building official, upon notification from the permit holder or his agent, shall make or cause to be made any necessary inspections and shall either approve that portion of the construction as completed or shall notify the permit holder or his or her agent wherein the same fails to comply with this code.

R109.1.1 Foundation inspection. Inspection of the foundation shall be made after poles or piers are set or trenches or basement areas are excavated and any required forms erected and any required reinforcing steel is in place and prior to the placing of concrete. The foundation inspection shall include excavations for thickened slabs for the support of bearing walls, partitions, structural supports, or equipment and special requirements for wood foundations.

R109.1.2 Plumbing, mechanical, gas, and electrical systems inspection. Rough inspection of plumbing, mechanical, gas, and electrical systems shall be made prior to covering and concealment, before fixtures or appliances are set or installed, and prior to framing inspections.

Exception: Ground-source heat pump loop systems tested in accordance with Section M2105.1 shall be permitted to be backfilled prior to inspection.

R109.1.3 Floodplain inspection. For construction permitted in areas prone to flooding as established by Table R301.2(1), upon placement of the lowest floor, including basement, and prior to further vertical construction, the building official shall require submission of documentation, prepared and sealed by a registered design professional, of the elevation of the lowest floor, including basement, as required in Section R323.

R109.1.4 Frame and masonry inspection. Inspection of framing and masonry construction shall be made after the roof, masonry, all framing, firestopping, draftstopping, and bracing are in place and after the plumbing, mechanical, and electrical rough inspections are approved.

R109.1.5 Other inspections. In addition to the called inspections above, the building department may make or require any other inspections to ascertain compliance with this code and other laws enforced by the building department.

R109.1.5.1 Fire-resistance-rated construction inspections. Where fire-resistance-rated construction is required between dwelling units or due to location on property, the building official shall require an inspection of such construction after all lathing and /or wallboard is in place, but before any plaster is applied, or before wallboard joints and fasteners are taped and finished.

R109.1.6 Final inspection. Final inspection shall be made after all the permitted work is complete and prior to occupancy.

R109.2 Inspection agencies. The building official is authorized to accept reports of approved inspection agencies, provided such agencies satisfy the requirements as to qualifications and reliability.

R109.3 Inspection requests. It shall be the duty of the person doing the work authorized by a permit to notify the building official that such work is ready for inspection. It shall be the duty of the person requesting any inspections required by this code to provide access to and means for inspection of such work for any inspections that are required by this code.

R109.4 Approval required. Work shall not be done beyond the point indicated in each successive inspection without first obtaining the approval of the building official. The building official, upon notification, shall make the requested inspections and shall either indicate the portion of the construction that is satisfactory as completed, or shall notify the permit holder or an agent of the permit holder wherein the same fails to comply with this code. Any portions that do not comply shall be corrected and such portion shall not be covered or concealed until authorized by the building official.

SECTION R110 **CERTIFICATE OF OCCUPANCY**

R110.1 Use and occupancy. No building or structure shall be used or occupied, and no change in the existing occupancy classification of a building or structure or portion thereof shall be made until the building official has issued a certificate of occupancy there for as provided herein. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction.

R110.2 Change in use. Changes in the character or use of an existing structure shall not be made except as specified in Sections 3405 and 3406 of the *International Building Code*.

R110.3 Certificate issued. After the building official inspects the building or structure and finds no violations of the provisions of this code or other laws that are enforced by the department of building safety, the building official shall issue a certificate of occupancy that shall contain the following:

1. The building permit number.
2. The address of the structure.
3. The name and address of the owner.
4. A description of that portion of the structure for which the certificate is issued.
5. A statement that the described portion of the structure has been inspected for compliance with the requirements of this code for the occupancy and division of occupancy and the use for which the proposed occupancy is classified.

6. The name of the building official.
7. The edition of the code under which the permit was issued.
8. The use and occupancy
9. The type of construction
10. Any special stipulations and conditions of the building permit.

R110.4 Temporary occupancy. The building official is authorized to issue a temporary certificate of occupancy before the completion of the entire work covered by the permit, provided that such portion or portions shall be occupied safely. The building official shall set a time period during which the temporary certificate of occupancy is valid.

R110.5 Revocation. The building official is authorized to, in writing, suspend or revoke a certificate of occupancy or completion issued under the provisions of this code wherever the certificate is issued in error, on the basis of incorrect information supplied, or where it is determined that the building or structure or portion thereof is in violation of any ordinance or any regulation or any of the provisions of this code.

SECTION R111 **SERVICE UTILITIES**

R111.1 Authority to disconnect service utilities. The building official shall have the authority to authorize disconnection of utility service to the building, structure or system regulated by this code and the codes referenced in case of emergency where necessary to eliminate an immediate hazard to life or property. The building official shall notify the serving utility, and wherever possible the owner and occupant of the building, structure or service system of the decision to disconnect prior to taking such action. If not notified prior to disconnection, the owner or occupant of the building, structure or service system shall be notified in writing, as soon as practical thereafter.

SECTION R112 **BOARD OF APPEALS**

R112.1 General. The board of appeals hearing matters related to the residential code shall be the board of appeals established by Article IV, Section 4.06 of the City Charter. The rules and regulations governing said board shall apply.

SECTION R113 **VIOLATIONS**

R113.1 Unlawful acts. It shall be unlawful for any person, firm, or corporation to erect, construct, alter, extend, repair, move, remove, demolish, or occupy any building, structure, or equipment regulated by this code, or cause same to be done, in conflict with or in violation of any of the provisions of this code.

R113.2 Notice of violation. The building official is authorized to serve a notice of violation or order on the person responsible for the erection, construction, alteration, extension, repair, moving, removal, demolition, or occupancy of a building or structure in violation of the provisions of this code, or in violation of a detail statement or a plan approved there under, or in violation of a permit or certificate issued under the provisions of this code. Such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.

R113.2.1 Service of notice of violation. A notice of violation or order may be served in hand to the violator or left with a person of suitable age and discretion at the residence of place of business of the violator or mailed by certified mail, return receipt requested, to the last known address. If the return receipt is not returned, the notice shall be conclusively presumed to have been served if it is also sent by regular mail, postage prepaid, which is not returned as undeliverable by the postal service.

R113.2.2 Request for appeal. Any person served an order, pursuant to this section, may request a hearing before the board of appeals by filing a written petition for said hearing at the code enforcement office within ten (10) days of the date of service of the order. The board of appeals may sustain, modify, or withdraw such order. The decision of the board of appeals may be further appealed pursuant to the provisions of Rule 80B of the Maine Rules of Civil Procedure.

R113.3 Prosecution of violation. If the notice of violation is not complied with in the time prescribed by such notice, the building official is authorized to request the legal counsel of the jurisdiction to institute the appropriate proceedings at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the building or structure in violation of the provisions of this code or of the order or direction made pursuant thereto.

R113.4 Violation penalties. Any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof, or shall erect, construct, alter or repair a building or structure in violation of an approved plan or directive of the building official, or of a permit or certificate issued under the provisions of this Code, shall be liable for a fine as set forth in Chapter 1, Section 1-8 and Chapter 50, Section 50-36 of the Code of Ordinances of the City of Auburn.

SECTION R114 **STOP WORK ORDER**

R114.1 Notice to owner. Upon notice from the building official that work on any building or structure is being prosecuted contrary to the provisions of this code or in an unsafe and dangerous manner, such work shall be immediately stopped. The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work; and shall state the conditions under which work will be permitted to resume.

R114.2 Unlawful continuance. Any person who shall continue any work in or about the structure after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to penalties as prescribed by law.

**CHAPTER 2
DEFINITIONS**

R201.3 Terms defined in other codes. Where conflicts exist regarding definitions of like terms in this chapter and other chapters of this code of ordinances, each definition shall be applied only within the scope of each chapter and shall not be construed to be contradictory. Terms not defined in this code that are defined in other referenced codes shall have the meanings ascribed to them as in those codes.

**CHAPTER 3
BUILDING PLANNING**

Table R301.2(1)
Climatic and Geographic Design Criteria

<u>Ground Snow Load</u>	<u>80 psf</u>
<u>Wind Speed</u>	<u>90 mph</u>
<u>Seismic Design Category</u>	<u>B</u>
<u>Subject to Damage from:</u>	
<u>Weathering</u>	<u>Severe</u>
<u>Frost Line Depth</u>	<u>4"-0"</u>
<u>Termites</u>	<u>None to Slight</u>
<u>Decay</u>	<u>None to Slight</u>
<u>Winter Design Temperature</u>	<u>-5</u>
<u>Ice Shield Underlayment Required</u>	<u>Yes</u>
<u>Flood Hazards:</u>	
<u>a. Date of adoption of 1st flood management ordinance</u>	<u>10/31/1972</u>
<u>b. Date of currently effective FIRM map</u>	<u>10/18/1995</u>
<u>Air Freezing Index</u>	<u>1500</u>
<u>Mean annual temperature</u>	<u>45.8 degrees</u>

Part IV-----Energy Conservation

Chapter 11 ENERGY EFFICIENCY is hereby deleted.

Part VI-----Fuel Gas

Chapter 24 FUEL GAS is hereby deleted.

Part VII-----Plumbing

Chapter 25 PLUMBING ADMINISTRATION is hereby deleted.

Chapter 26 GENERAL PLUMBING REQUIREMENTS is hereby deleted.

Chapter 27 PLUMBING FIXTURES is hereby deleted.

Chapter 28 WATER HEATERS is hereby deleted.

Chapter 29 WATER SUPPLY AND DISTRIBUTION is hereby deleted.

Chapter 30 SANITARY DRAINAGE is hereby deleted.

Chapter 31 VENTS is hereby deleted.

Chapter 32 TRAPS is hereby deleted.

Part VIII-----Electrical

CHAPTER 33 GENERAL REQUIREMENTS is hereby deleted.

E3301.1 Applicability. The provisions of the currently adopted edition of the *National Electrical Code (NFPA 70)* shall cover the installation of electrical systems, equipment and components indoors and outdoors that are within the scope of the aforementioned *Electrical Code*, including services, power distribution systems, fixtures, appliances, devices and appurtenances.

CHAPTER 34 ELECTRICAL DEFINITIONS is hereby deleted.

CHAPTER 35 SERVICES is hereby deleted.

CHAPTER 36 BRANCH CIRCUIT AND FEEDER REQUIREMENTS is hereby deleted.

CHAPTER 37 WIRING METHODS is hereby deleted.

CHAPTER 38 POWER AND LIGHTING DISTRIBUTION is hereby deleted.

CHAPTER 39 DEVICES AND LUMINAIRES is hereby deleted.

CHAPTER 40 APPLIANCE INSTALLATION is hereby deleted.

CHAPTER 41 SWIMMING POOL is hereby deleted.

CHAPTER 42 CLASS 2 REMOTE-CONTROL, SIGNALING AND POWER-LIMITED CIRCUITS is hereby deleted.

City Council

Agenda Information Sheet

Council Meeting Date: 9/8/09

Agenda Item No. 2

SUBJECT:

**RESOLVE – DETERMINATION OF A PRESUMPTION OF ABANDONMENT
FOR A PORTION OF ELMWOOD ROAD**

INFORMATION:

A portion of Elmwood Road, as described in the attached resolve, has not been kept passable for motor vehicles at public expense for a period of 30 or more consecutive years. By operation of 23 M.R.S.A. § 3028, this portion of Elmwood Road is presumed abandoned. The Maine Municipal Association, in it's' "Municipal Roads Manual," recommends that after research and a public hearing, a notice of the determination of the presumption of abandonment be recorded at the Registry of Deeds.

This item was tabled at the August 17th Council Meeting.

STAFF COMMENTS/RECOMMENDATION:

The City Manager recommends removing this item from the table and allow public discussion. (Please see communication from Terry Dailey, 1011 North River Road) After discussion place item back on the table to allow abutters an opportunity to proceed with a petition for discontinuance.

REQUESTED ACTION:

See above.

VOTE:

City of Auburn

City Council, Auburn, Maine

Date: August 17, 2009

**TITLE: RESOLVE – DETERMINATION OF A PRESUMPTION OF ABANDONMENT
FOR A PORTION OF ELMWOOD ROAD**

Be It Resolved by the Auburn City Council that, having met in public session and after public hearing and deliberation, we have determined that Elmwood Road from one thousand six hundred (1600) feet east of Oak Hill Road, easterly two thousand six hundred seventy five (2675) feet, more or less, to two hundred (200) feet westerly of North River Road, is presumed abandoned pursuant to 23 M.R.S.A. § 3028.

This determination is based upon investigation and report by city staff indicating that said portion of Elmwood Road has not been kept passable for the use of motor vehicles at City expense for a period of at least 30 consecutive years commencing February 1940.

August 17, 2009 – Councilor Farrell moved to table. Seconded by Councilor Berube. Vote: 5 Yeas with Councilors Hayes and Potvin voting Nay.

Motion for acceptance: Robert Hayes

Seconded by: Raymond Berube

Vote:

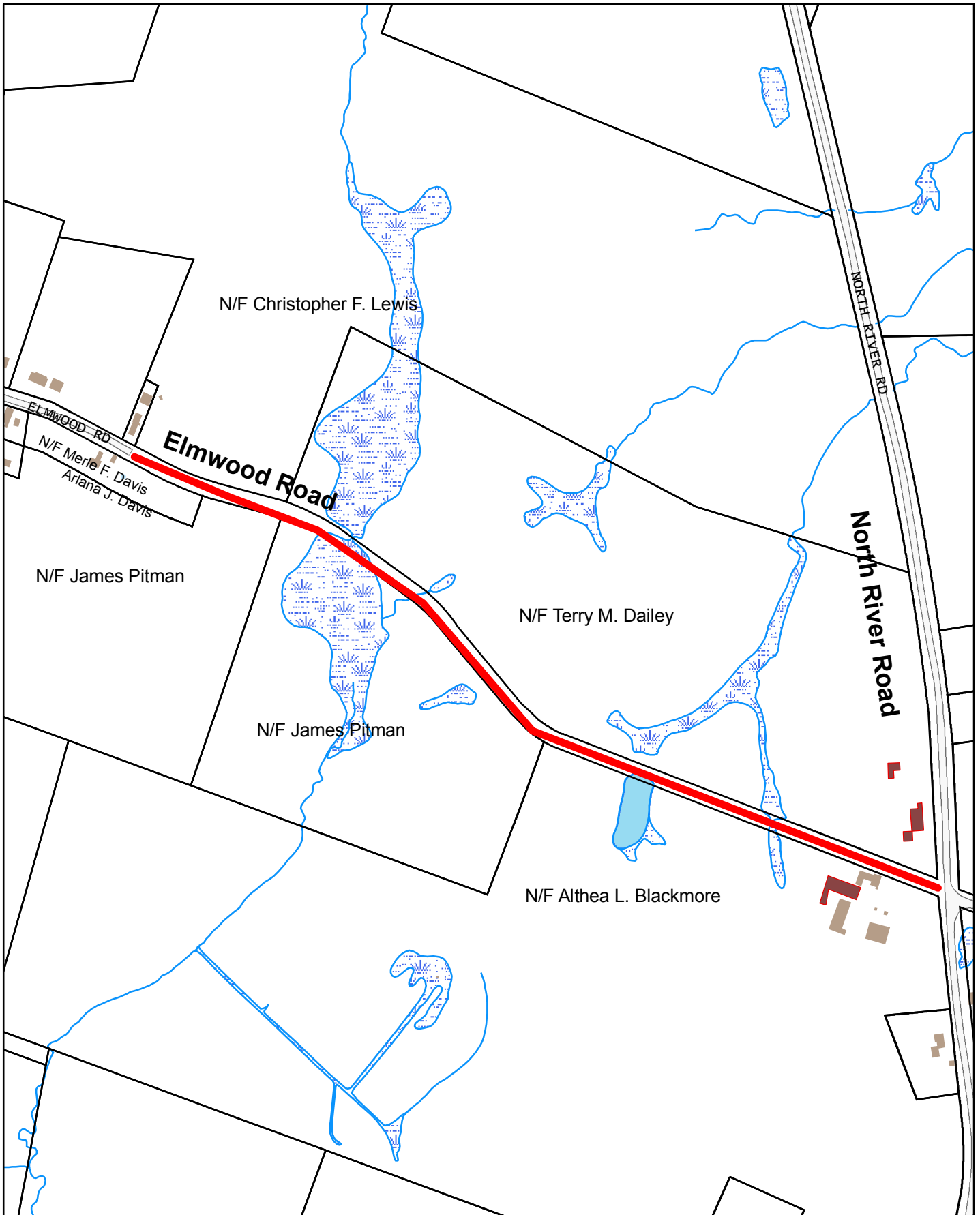
Action by the City Council:

Date:

ATTEST:

CITY CLERK

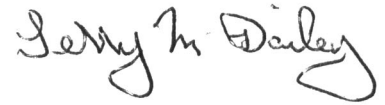
Elmwood Road



Section Presumed Abandoned

To: Mayor John Jenkins and Member of the City Council

From: Terry M. Dailey, 1011 North River Road, Auburn, Me 04210



Subj: Elmwood Road "Presumption of Abandonment"

Date: September 2, 2009

On behalf of myself and several of the abutters to the portion of Elmwood Road regarding the tabled "Resolve – Determination of a Presumption of Abandonment for a Portion of Elmwood Road" that was considered at the August 17th City Council Meeting and tabled, we are requesting that the City Council not take action on this item at this time. The reason this request is being made is due to the fact that the abutters are considering petitioning the City for discontinuance as a town way and as a public easement.

Myself and several of the abutters will be present at the City Council Meeting on September 8th and will answer any questions of the City Council.

Thank you for your consideration of this request.

City Council

Agenda Information Sheet

Council Meeting Date: 9/8/09

Agenda Item No. 3

SUBJECT:

**RESOLVE – DETERMINATION OF A PRESUMPTION OF ABANDONMENT
OF THE RYANS WAY**

INFORMATION:

Ryans Way, as described in the resolve, has not been kept passable for motor vehicles at public expense for a period of 30 or more consecutive years. By operation of 23 M.R.S.A. § 3028, Ryans Way is presumed abandoned. The City of Auburn discontinued the road in 1960 in an attempt to clarify the status. However, that discontinuance was ineffective because the City never filed a certificate of the discontinuance at the Registry of Deeds. At issue is whether a public easement would remain because the 30 years of non-maintenance occurred prior to September 3, 1965. Maine Municipal Association's Municipal Roads Manual indicates there would be no public easement. There are attorneys who disagree. This action will not result in a resolution to that issue. Only through a discontinuance or a declaratory judgment in Superior Court will do so.

This item was tabled at the August 17th Council Meeting

STAFF COMMENTS/RECOMMENDATION:

The City Manager recommends this item remain on the table.

REQUESTED ACTION:

VOTE:

City of Auburn

City Council, Auburn, Maine

Date: August 17, 2009

**TITLE: RESOLVE – DETERMINATION OF A PRESUMPTION OF ABANDONMENT
FOR A PORTION OF RYANS WAY**

Be It Resolved by the Auburn City Council that, having met in public session and after public hearing and deliberation, we have determined that a portion of a road known as Ryans Way from four hundred twenty (420) feet northeasterly of the North Auburn Road, northeasterly two thousand eight hundred (2800) feet, more or less, to the discontinued portion of the Whitman Spring Road, is presumed abandoned pursuant to 23 M.R.S.A. § 3028.

This determination is based upon investigation and report by city staff indicating that said portion of Ryans Way has not been kept passable for the use of motor vehicles at City expense for a period of at least 30 consecutive years commencing prior to 1930.

August 17, 2009 – Councilor Potvin moved to table. Seconded by Councilor Hayes. Vote: 5 Yeas with Councilor Farrell voting Nay. (Councilor Mennealy out of the room)

Motion for acceptance: Robert Mennealy

Seconded by: Ronald Potvin

Vote:

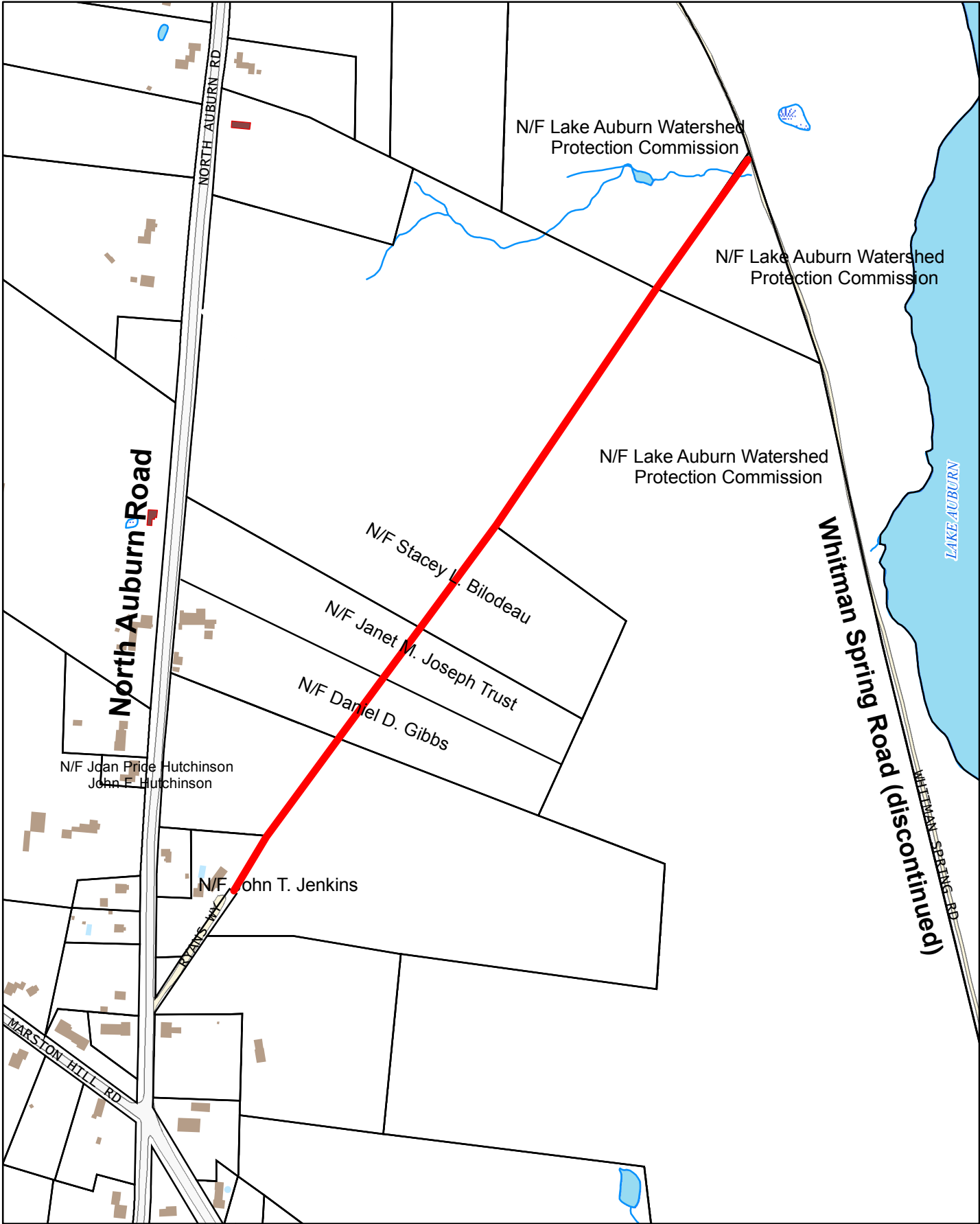
Action by the City Council:

DATE:

ATTEST:

CITY CLERK

Ryans Way



Section Presumed Abandoned

City Council

Agenda Information Sheet

Council Meeting Date 9/8/2009 Agenda Item No. 4

SUBJECT:

RESOLVE – ACCEPTING CERTAIN FORFEITED FUNDS (\$3,255)

INFORMATION:

Federal Forfeiture Law permits the forfeiture of currency/property used to facilitate drug trafficking or which exists as the result of being the proceeds of drug trafficking. The law further permits the United States to distribute up to 90% of the value of forfeited property to State and local law enforcement agencies who participate in the underlying investigation. Justice Department policy dictates that local law enforcement agencies must use the monies for “law enforcement purposes”. The funds being forfeited are \$3,255.

STAFF COMMENTS/RECOMMENDATION:

The City Manager recommends passage of the resolve.

REQUESTED ACTION:

Motion for passage of the resolve.

VOTE:

CITY OF AUBURN

CITY COUNCIL, AUBURN, MAINE

DATE: September 8, 2009

TITLE: RESOLVE – ACCEPTING CERTAIN FORFEITED FUNDS (\$3,255)

Be It Resolved by the Auburn City Council, that the City of Auburn agrees to accept \$3,255. in connection with drug enforcement matters. The funds in question shall be made available to the Auburn Police Department for use in their law enforcement purposes.

Motion for passage:

Seconded by:

Vote:

ACTION BY COUNCIL:

DATE:

ATTEST:

CITY CLERK