

07-105 **STATE PLANNING OFFICE** (*obsolete; the rule chapter has been reassigned to 01 - Department of Agriculture, Conservation and Forestry*)

Chapter 210: ZONING ORDINANCE REVIEW CRITERIA RULE

SUMMARY: This chapter establishes the criteria the State Planning Office uses to review municipal zoning ordinances for consistency with the goals and guidelines of the *Comprehensive Planning and Land Use Regulation Act* (30-A M.R.S.A. §4312 *et seq.*). The Office uses this rule to review and comment on proposed zoning ordinances under §4347 of the Act, and to review the zoning ordinance component of local growth management programs for which certification has been requested under §4348.

SECTION 1. PURPOSE

The primary purpose of this rule is to establish the criteria the State Planning Office (hereinafter "the office") uses to review municipal zoning ordinances under the *Comprehensive Planning and Land Use Regulation Act* (30-A M.R.S.A. §4312 *et seq.*). The objective of this review is to judge whether a municipality's zoning ordinance is consistent with the Act. The office uses this rule to review and comment on proposed zoning ordinances submitted to the Office under the provisions of §4347 of the Act, and pursuant to the Office's Procedural Rule for Submission and Review of Comprehensive Plans and Zoning Ordinances (Chapter 201). If a municipality requests certification of its local growth management program under §4348 of the Act, the Office also uses this rule to review the zoning ordinance component of that program.

SECTION 2. DEFINITIONS

The following definitions shall apply when interpreting the provisions in this chapter:

- A. **Act:** "Act" means the *Comprehensive Planning and Land Use Regulation Act* (30-A M.R.S.A. §4312 *et seq.*).
- B. **Comprehensive plan:** "Comprehensive plan" means a document or interrelated documents developed by a municipality in accord with the procedural provisions of §4324 of the Act and with the intent of complying with the substantive requirements of §4326, sub-§1 to sub-§4 of the Act. As used in this rule, "comprehensive plan" or "plan" shall mean the municipal comprehensive plan which has been reviewed and commented on by the Office in accordance with the Act, and which is designated by the submitting municipality as the comprehensive plan upon which the proposed zoning ordinance is based.
- C. **Performance standard:** A land use or development requirement which establishes allowed effects or characteristics of a land use or activity, rather than prescribing the allowed uses or activities themselves. For the purposes of this rule, the term "performance standard" includes those standards that set a more general performance objective (i.e. storm drainage shall be provided to minimize flood hazards) as well as more detailed design guidelines (i.e. specifications for vegetative buffers or new road construction).

NOTE: For example, to regulate development in a tight industrial district, a "performance standard" would specify the allowed effects of any industrial use in terms of noise, emissions, traffic and visual impact, in contrast to specifying the types of industrial uses (e.g. warehousing, research and development, etc.) allowed in the district. Zoning ordinances - they indicate allowed uses in each district and they establish "performance standards" for those uses.

- D. **Zoning ordinance:** A new or revised land use ordinance of general applicability-in a municipality which:
1. (a) divides a municipality into districts and prescribes the reasonable application of different regulations in each district, and/or
 - (b) uses alternative techniques to encourage orderly growth and development and implement a municipality's designation of growth and rural areas and other relevant goals and policies in its comprehensive plan; and
 2. has been developed by the municipality in accordance with the procedural provisions of §4324 of the Act, and with the intent of complying with the substantive requirements of §4326 of the Act and any rules pursuant thereto.

NOTE: The broad definition of a zoning ordinance used in this rule recognizes that municipalities may use unconventional zoning techniques (i.e. performance zoning, point system based on suitability criteria, requirements affecting the rate, timing, or maximum amount of growth allowed, etc.) to meet the requirements of §4326, particularly sub-§3(A) (designation of growth and rural areas) of the Act.]

SECTION 3. CONSISTENCY WITH THE ACT

In order to be deemed consistent with the Act, a zoning ordinance must be determined to be:

- A. Consistent with the municipality's comprehensive plan which has been deemed by the Office to be consistent with the Act;
- B. Consistent with the goals and guidelines of the Act (§4312, sub-§3, and §4326, sub-§3(A)-(I), respectively); and
- C. Consistent with other state laws which impose limitations on local zoning authority. Such laws include, but may not be limited to, the following:
 1. *Forest Practices Act* (12 M.R.S.A. §§ 8867-8869);
 2. *Mandatory Shoreland Zoning Act* (38 M.R.S.A. §§ 435-449);
 3. *Mobile Home Park Law* (30-A M.R.S.A. §4358); and
 4. *Zoning Ordinances* (30-A M.R.S.A. §4352).

SECTION 4. CONSISTENCY WITH THE PLAN

- A. **Content:** In order to be deemed consistent with the comprehensive plan, the zoning ordinance must contain those provisions which, as specified in the plan, were to be included in the ordinance. Provisions contained in the zoning ordinance must be derived from and supported by the plan.
- B. **Standard:** The provisions of the ordinance must be consistent with the approach identified in the comprehensive plan and must be no less effective in promoting the policies and strategies committed to in the plan than those implementing provisions specified in the plan.

NOTE: In most instances, a municipality's proposed zoning ordinance should be more detailed, specific and comprehensive in land use matters than the plan. Moreover, it is recognized that in the actual drafting of the ordinance minor adjustments to the provisions of the plan may be reasonably expected. The review Standard noted above is intended to accommodate such adjustments. However, it is also intended to respect and maintain the integrity of the plan, which is of primary importance. For example, a zoning ordinance will not be consistent if it represents a different approach to managing growth than was called for in the plan, even if it may be more effective in promoting the goals and guidelines of the Act than the original concept. The Plan, or the ordinance, will need to be revised.

- C. **Scope/Limitation:** The zoning ordinance need not accomplish all of the growth management policies and strategies of the plan. A zoning ordinance which is consistent with a consistent plan, but which may not be effective alone in meeting the goals and guidelines of the Act (i.e. other commitments in the Plan, to be implemented by means other than the zoning ordinance, justify plan consistency), may be deemed consistent. However, the provisions of the zoning ordinance must not conflict with those other policies and strategies.

SECTION 5. EFFECTIVENESS AND INTERNAL CONSISTENCY OF THE ZONING ORDINANCE

- A. **Standard:** The zoning ordinance must be internally consistent and sufficiently complete to allow it to function in a manner which will effectively promote the policies and strategies of the plan.
- B. **Elements Required:** The zoning ordinance must contain enough information to allow the Office to determine whether the ordinance will effectively promote the policies and strategies of the plan. The zoning ordinance must contain at least the elements listed below. However, an ordinance based on alternative techniques, as described in the zoning ordinance definition of this rule (Section 2(D)(1)(b)), must include the elements listed below to the extent they are required by a comprehensive plan deemed to be consistent by the office.
1. **Zoning districts and map(s):** Zoning districts must be established and district boundaries must be shown on the zoning map(s) for all of the land areas within

the municipality's boundaries. The zoning ordinance must indicate how district boundaries are to be interpreted in the event of uncertainty or conflict between the map and the ordinance.

Specially regulated areas, such as overlay zones and shoreland zones, must also be described and represented on the zoning map(s). Other features which must be represented on the map(s) include municipal boundaries, major roads, and major water bodies. The map(s) must have a scale and a legend.

NOTE: Municipalities should note that Title 30-A, §4352, sub-§3 requires that, "a zoning map describing each zone established or modified must be adopted as part of the zoning ordinance or incorporated in the ordinance. Any conflict between the zoning map and a description by metes and bounds shall be resolved In favor of the description by metes and bounds."]

2. **Permitted uses by districts:** All uses to be permitted and conditionally permitted (if any) within each zoning district must be indicated in the zoning ordinance.
3. **Development standards:** The zoning ordinance must address the following types of standards:
 - a. Density/intensity for residential/non-residential uses, respectively
 - b. Building or Structure Height
 - c. Setbacks or yard requirements
 - d. Access (How access to a property may or may not be achieved; e.g., from new or existing, arterial or local roads)
 - e. Frontage along roads and water bodies (i.e. lot width)
 - f. Performance standards

NOTE: The Office recognizes that in some consistent comprehensive plans, municipalities explicitly chose not to establish a minimum requirement for some of the standards listed above (i.e. setbacks, frontage, building height). For example, in village areas, some communities may require zero (0) setback or frontage requirements as a way to encourage growth. For these cases, the zoning ordinance should simply indicate that there is no minimum. The office also recognizes, however, that in some consistent comprehensive plans, municipalities simply did not set minimum requirements for standards such as setback or yard requirements or building height, but will be including such standards in the zoning ordinance. For these situations, the Office strongly recommends that the municipality revise its comprehensive plan, as appropriate, to provide support for such zoning standards.]

4. **Other Provisions:** Any other land use requirement or zoning technique specified in the plan that falls within the definition of a zoning ordinance as used in this rule.
5. **Permit review and approval procedures:** Permit application, review, approval, appeal, and enforcement procedures, and a description of the roles and responsibilities of the various administrative, review and enforcement officials must be included in the zoning ordinance.
6. **Definitions:** All terms that are critical to effective implementation of the zoning ordinance must be defined.
7. **Effective date:** The effective date of the zoning ordinance must be indicated.

NOTE: The above list of required elements is not intended to prescribe a specific format or organization for the zoning ordinance; however, all of the above elements must be clearly reflected, in saw manner, in the zoning ordinance.

SECTION 6. SCOPE OF REVIEW

The scope of the Office's review, and of this rule, is limited to those aspects of a zoning ordinance which are relevant to the substantive provisions of the plan and to the goals and guidelines of the Act. It is not the purpose of the Office's review to provide a comprehensive determination of legal sufficiency. Outside of the purview of the office's review for consistency are a variety of provisions (penalty provisions, statement of statutory authority, severability clause, etc.) which may be necessary in order for the zoning ordinance to be legally valid, but which are not directly related to the goals and guidelines of the Act and are less likely to have a direct bearing on the issue of effectiveness in implementing the policies and strategies in the plan. The municipality remains responsible for these matters of form and legal sufficiency, and for the overall integrity and enforceability of the zoning ordinance.

Notwithstanding the Office's limited scope of review, extensive omissions and weaknesses which would affect the enforceability of the ordinance, and hence its effectiveness in implementing the plan, may provide a basis for a finding of inconsistency with the Act. In addition, the Office in its findings may comment on any apparent omission, weakness or questionable provision, and may suggest that the municipality reconsider such provisions, or seek the advice of legal counsel.

STATUTORY AUTHORITY: 30-A M.R.S.A. §4312(4)

EFFECTIVE DATE:
May 25, 1993

EFFECTIVE DATE (ELECTRONIC CONVERSION):
May 22, 1996

NON-SUBSTANTIVE CORRECTIONS:
December 1, 2010 – format, agency names, statutory citations