

10. Implementation

Preamble

This chapter contains policies addressing development standards for all Generalized Future Land Use Map designations and zones, as well as statements regarding the implementation of policies through the Town's Land Use By-law.

Previous chapters of this Strategy outlined specific designation and zone provisions, whereas this chapter deals primarily with general designation and zone criteria, providing a consistent base by which all applications may be evaluated. This chapter also contains policies and criteria for the evaluation of proposals which are considered through the Development Agreement process. Again, these policies may be in addition to criteria previously outlined for specific designation and zone proposals.

Policies concerning such things as developments fronting on public streets, the provision of parking and the regulation of access from lots to public streets are provided to ensure the successful integration of new developments. The regulation of temporary uses and signage is relevant to all types of development and are addressed in the By-law provisions applicable to all zones.

Rezoning

The following are Council's policies with respect to implementing rezonings, Development Agreements, amendments and other general designation and zone provisions:

Policy 10.1 It shall be the intention of Council that all sections of this document, as well as all appendices, schedules and associated maps attached here to constitute the Town of Yarmouth Municipal Planning Strategy.

Policy 10.2 It shall be the intention of Council that the Town of Yarmouth's Municipal Planning Strategy be the prime policy document providing the framework by which the Town encourages, coordinates and regulates future growth and the delivery of public services.

Policy 10.3 It shall be the intention of Council that the Town of Yarmouth's Land Use By-law be prepared concurrently with this

Municipal Planning Strategy and be the means used for implementing land use policies contained within this Municipal Planning Strategy.

Policy 10.4 It shall be the intention of Council subject to Implementation Policy 10.7 that an amendment to this Municipal Planning Strategy shall be required where any policy is to be changed, where any amendment to the Land Use By-law would violate the Generalized Future Land Use Map or where the Municipal Planning Strategy is in conflict with any applicable provincial land use policies, statements of provincial interest or regulations. All Municipal Planning Strategy amendments shall be carried out in accordance with the *Municipal Government Act*.

Policy 10.5 It shall be the intention of Council to establish all boundaries for the Generalized Future Land Use designations as either, "hard" and be represented on the Generalized Future Land Use Map by a solid line, or "soft" and be represented by a broken line.

Policy 10.6 It shall be the intention of Council that areas immediately adjacent to a land use designation with a "soft" boundary on the Generalized Future Land Use Map may be considered by amendment to the Land Use By-law for development of a use permitted in the adjacent land use designation without amending the Municipal Planning Strategy provided all other relevant Municipal Planning Strategy policies are satisfied. This provision shall not apply where the land use designation on the Generalized Future Land Use Map is established as "hard".

Policy 10.7 It shall be the intention of Council when considering amendments to the Land Use By-law, in addition to all other criteria in the various policies of this Municipal Planning Strategy, to have regard for the following matters:

- (1) That the proposal conforms to the intent of this Strategy;**
- (2) That the proposal is compatible with adjacent or nearby land uses and the existing development form (built environment) in the neighborhood in terms of its use, height, bulk, scale and lot coverage;**
- (3) That the proposal is compatible with adjacent or nearby**

land uses in terms of traffic generation, access to and egress from the site, parking, open storage and outdoor displays;

- (4) That the proposal incorporates adequate buffering, landscaping, storm water management, screening and access controls where incompatibilities with adjacent and nearby uses are anticipated;**
- (5) That the proposal is located so as not to obstruct, alter or fill any natural drainage channels or watercourses or cause any contamination, erosion or sedimentation of any watercourses;**
- (6) That the proposed location is suitable in terms of steepness of grades, soil and geological conditions, marshes, swamps, or bogs and proximity of highway intersections and other nuisance factors;**
- (7) That the proposal is located so as not to cause any damage to or destruction of historic buildings and sites;**
- (8) That the proposal is not premature or inappropriate due to the creation of a “leap frog”, scattered or ribbon development pattern as opposed to orderly compact development; and,**
- (9) That a written analysis of the proposal is provided by staff to determine if the proposal is premature or inappropriate by reason of:**
 - a) The financial capability of the Town to absorb any costs relating to the development while at the same time recognizing the potential increase in tax revenue as a direct result of the proposed development;**
 - b) The adequacy of sewer and water services to support the proposed development;**
 - c) The adequacy of fire protection services to support the proposed development;**
 - d) The adequacy and proximity of school, recreation and other community facilities;**
 - e) The adequacy of road networks in, adjacent to, or leading to the development; and,**

- f) The adequacy of on-site traffic circulation, parking areas, loading areas, access controls, drive-thru services and the site to accommodate expected traffic volumes.

Policy 10.8 It shall be the intention of Council when considering any Development Agreement enabled by various policies contained in this Municipal Planning Strategy to review the proposal's conformity with criteria contained in Implementation Policy 10.7 in light of the applicant's submission of a site plan drawing(s) showing the following:

- a) Physical characteristics of the proposed site, including lot dimension, elevations, natural drainage, existing watercourses and shorelines and any existing structures and vegetation;
- b) Adjacent public streets and rights-of-way;
- c) Existing municipal sewer and water infrastructure, distribution lines as well as any other adjacent public utility facility such as fire hydrants;
- d) Proposed location and use of all buildings or structures to be constructed or utilized;
- e) Proposed storm drainage management plan showing by how water will be directed from the site and to where;
- f) Proposed sewer and water provisions;
- g) Proposed loading, parking and outdoor facilities including driveways, aisles and ramps as well as any exterior signage or lighting; and,
- h) Proposed buffering, landscaping, screening and access controls to reduce potential incompatibility with adjacent and nearby uses.

Policy 10.9 It shall be the intention of Council that any Development Agreement entered into pursuant to Implementation Policy 10.8 shall contain such terms and conditions which Council feels are necessary to ensure that the development is consistent with the Municipal Planning Strategy and to this end, an agreement shall include some or all of the following provisions where applicable:

- (1) The specific use, size and location of the structure, either new or an expansion of an existing structure;**
- (2) The percentage of lands that may be built upon and the sizes of yards, courts or other open spaces;**
- (3) Ingress to and egress from the site to abutting streets including the location, size and number of driveways, parking and loading facilities;**
- (4) Buffering or landscaping including fencing and exterior lighting;**
- (5) Open storage or outdoor displays;**
- (6) Signage or public display of advertising;**
- (7) Time limits for the initiation of construction; and,**
- (8) All other matters enabled by Sections 225 and 227 of the *Municipal Government Act*.**

Policy 10.10 It shall be the intention of Council that any Development Agreement entered into pursuant to Residential Policy 4.22 have regard for the following matters:

- (1) That any registered heritage building covered by the agreement shall not be altered in any way to diminish its heritage value;**
- (2) That any development must maintain the integrity of any registered heritage property, streetscape or conservation area of which it is a part;**
- (3) That the Development Agreement meets the following requirements:**
 - a) That the dwelling be occupied as a residence by the user, except for an inn;**
 - b) That not more than two (2) assistants whom are not residents in the dwelling may be employed, except for an inn;**
 - c) That not more than 37.2m² (400 ft²) of the dwelling or not more than four hundred 37.2m² (400 ft²) of an accessory building is devoted to the non-residential use, except for an inn;**
 - d) That no open storage or outdoor displays be**

permitted;

- e) That at least two (2) independent parking spaces be provided in addition to the parking space(s) required for the occupant and any other use, except for an inn which shall have a minimum of one (1) on-site parking space per rental room in addition to one (1) for staff;
 - f) That all on-site parking be located at the side or rear of the main building; and,
 - g) That the hours of operation be limited to normal business hours such that they do not create a land use conflict, except for an inn.
- (4) That any adjacent use, particularly any adjacent residential use, not be unduly disrupted as a result of traffic generation, noise, hours of operation, parking and such other land use impacts as may be required as part of the development;
- (5) That any development substantially complies with the policies of this plan and in particular the objectives and policies as they relate to heritage resources; and,
- (6) An inn shall not have any main or accessory use licensed pursuant to the *Liquor Control Act*, R.S.N.S. 1989, other than a temporary special occasion license, provided such license ceases to exist between the hours of 12:00 a.m. and 10:00 a.m. so as to minimize any potential negative effects on adjacent and nearby uses. In addition, no gaming VLT's shall be permitted.

Policy 10.11 It shall be the intention of Council when considering site plan approvals enabled by the Comprehensive Development (CD) policies contained in this Municipal Planning Strategy to review the proposal's conformity with criteria contained in Implementation Policy 10.7 in light of the applicant's submission of a site plan(s) showing the following:

- a) Physical characteristics of the proposed site, including lot dimension, elevations, natural drainage, existing watercourses and shorelines and any existing structures and vegetation;
- b) Adjacent public streets and rights-of-way;

- c) Existing municipal sewer and water infrastructure, distribution lines as well as any other adjacent public utility facility such as fire hydrants;
- d) Proposed location and use of all buildings or structures to be constructed or utilized;
- e) Proposed storm drainage management and sewer and water requirements;
- f) Any proposed streets, walkways, or active transportation routes;
- g) Proposed buffering, landscaping, screening and access controls to reduce potential incompatibility with adjacent and nearby uses; and,
- h) Proposed plan of subdivision in accordance with the Subdivision By-law.

Non-Conforming Structures and Uses

Non-conforming structures and non-conforming uses are aspects which for one reason or another do not conform to provisions of the Land Use By-law. The following are Council's policies with respect to regulating non-conforming structures and non-conforming uses:

Policy 10.12 It shall be the intention of Council to regulate non-conforming uses and non-conforming structures pursuant to Sections 238, 239, 240, 241 and 242 of the *Municipal Government Act*.

Policy 10.13 Notwithstanding Policy 10.12, it shall be the intention of Council to enable non-conforming structures which are damaged or destroyed through no fault of the owner to be rebuilt, repaired or renovated provided the structure is substantially the same as it was before the damage or destruction and used for a purpose permitted by the Land Use By-law.

Policy 10.14 Notwithstanding Policy 10.12, it shall be the intention of Council to enable non-conforming structures to be enlarged, reconstructed, repaired or renovated provided that:

- (1) The enlargement, reconstruction, repair or renovation does not further reduce the front yard, side yard, rear yard, flanking yard or any combination thereof or any separation distance that does not conform to the Land Use By-law;

- (2) The use conforms with the Land Use By-law; and,
- (3) All other applicable provisions of the Land Use By-law are satisfied.

Policy 10.15 Notwithstanding Policy 10.12, it shall be the intention of Council to enable non-conforming structures within the Institutional (I-1) Zone to expand in height provided that:

- (1) The expansion does not further increase the height beyond the height of the existing building;
- (2) The use conforms with the Land Use By-law; and,
- (3) All other applicable provisions of this By-law are satisfied.

Policy 10.16 Notwithstanding Policy 10.12, it shall be the intention of Council to enable structures containing non-conforming uses which are damaged or destroyed through no fault of the owner to be rebuilt, repaired or renovated within one (1) year of the date of the damage or destruction provided the structure is substantially the same as it was before the damage or destruction and used for a purpose permitted by the Land Use By-law or otherwise has not changed its non-conforming use.

Policy 10.17 Unless otherwise required through specific rezoning criteria, it shall be the intention of Council to enable the use of land or building existing on a lot on the effective date of this By-law to be changed to a permitted use where one or more of the following: minimum lot frontage, lot area, front yard, flanking yard, rear yard or side yards are waived for developments as specified in the Land Use By-law.

Policy 10.18 It shall be the intention of Council to include in the Land Use By-law a schedule listing "existing" and "non-conforming" uses (Schedule "C") at the time of the coming into force of this Municipal Planning Strategy and provisions regulating their continued operations or expansion.

Policy 10.19 (A) It shall be the intention of Council to consider amending Schedule "C" where it can be shown that such "existing" or "non-conforming" uses were inadvertently omitted from the Schedule.

Policy 10.19 (B) It shall be the intention of Council to include in the Land Use By-law a provision relaxing the restrictions of Section 241

of the *Municipal Government Act* by enabling a structure containing a non-conforming use the ability to expand provided the addition shall not at any time be used for the purpose of the non-conforming use.

Miscellaneous

The following are Council's policies concerning such things as development frontage on public streets, alteration of land levels, temporary uses, signage, access, parking and loading requirements, accessory uses and accessory buildings, seasonal retail trade, setbacks from floodplain and environmentally sensitive areas, automatic zoning for new lands created abutting Yarmouth harbour, standards for commercial drive-thrus and a provision prohibiting the use of permanent transportation vehicles and/or containers as main or accessory buildings in residential zones.

Policy 10.20 It shall be the intention of Council to require all developments to front on a public street except on Baker's Island. All developments on Baker's Island shall have water frontage.

Policy 10.21 It shall be the intention of Council to include in the Land Use By-law provisions regulating the alteration of land levels by means of filling or excavation activities which address amongst other things storm drainage and the quality of material used, so as to ensure that such filling or excavating activities do not negatively impact on adjacent uses or pose potential problems for the future redevelopment and use of the site.

Policy 10.22 It shall be the intention of Council to include in the Land Use By-law provisions regulating the temporary use of land for fairs and holiday events and for the temporary use of buildings or structures required during the construction of a development; and to establish a length of time for which such temporary uses and buildings shall be permitted so as to ensure that they do not become permanent.

Policy 10.23 It shall be the intention of Council to include in the Land Use By-law provisions for the general regulation of signage (including the type, nature, size, location and description) in all zones within the Town including a prohibition on certain types of signs and specific provisions for signs in Residential, Institutional, Open Space and Floodplain zones; specific provisions for flat fixed wall signs, ground, projecting wall, canopy and awning, and

banner signs in Commercial and Industrial zones; specific provisions for temporary signs and off-site signs; special provisions for banner and poster style signs for service stations; and signs incidental to construction.

Policy 10.24 It shall be the intention of Council to include in the Land Use By-law minimum development standards for the location, size and number of accesses from a lot to a street as well as for on-site and off-site parking areas, loading spaces and ratios for the required number of parking spaces.

Policy 10.25 It shall be the intention of Council to enable, through a site plan approval process, a wider entranceway than the standard applied by the Land Use By-law for commercial and/or industrial uses provided the terms as specifically addressed in the Land Use By-law are satisfied.

Policy 10.26 It shall be the intention of Council to include in the Land Use By-law provisions for the general regulation of accessory uses and accessory buildings.

Policy 10.27 It shall be the intention of Council to include in the Land Use By-law provisions for the general regulation of seasonal retail trade in commercial zones with respect to the following: access & egress standards, period of time that they may be established, yard set-back standards, signage standards and open storage and outdoor displays standards.

Policy 10.28 It shall be the intention of Council to include in the Land Use By-law a special set-back requirement for developments adjacent to a Floodplain (O-2) Zone or an Environmentally Sensitive (E-S) Zone.

Policy 10.29 It shall be the intention of Council to zone those lands above the high water mark created by infilling activities along Yarmouth's Harbour to be zoned according to the zone of the directly abutting land and such zoning shall be intended to extend along the prolongation of the property's side lot lines so that the boundaries of such zones run perpendicular to the land abutting Yarmouth harbour.

Policy 10.30 It shall be the intention of Council to include in the Land Use By-law a provision regulating outdoor furnaces and small accessory wind turbines due to their potential to adversely affect

adjoining and nearby properties.

Policy 10.31 It shall be the intention of Council to include in the Land Use By-law drive-thru standards for any drive-thru permitted by the Land Use By-law.

Policy 10.32 It shall be the intention of Council to include in the Land Use By-law a provision requiring a notification of a public hearing to be sent to all property owners within 30 metres (100 ft.) of a subject property that is to be considered for a site specific amendment or for a Development Agreement or for an amendment to an existing Development Agreement.

Errors or Omissions

In order to enable Council to correct any errors or omissions on the Zoning Map (Schedule “A” of the Land Use By-law) that may have been inadvertently adopted as part of the Plan’s review, Council has included a policy that will enable them to rezone the property back to its intended zone by amendment to the Land Use By-law. The policy enabling this type of rezoning is outlined below:

Policy 10.33 It shall be the intention of Council to consider amending the Land Use By-law, in particular the Zoning Map, Schedule “A”, where it can be shown that such zones were inadvertently omitted or inadvertently zoned incorrectly during the Plan’s review. For the sake of clarity, this provision shall only be used to revert the zoning status of a particular property back to its previous zone prior to the implementation of the revised Municipal Planning Strategy and Land Use By-law if it can be shown that such zoning was done in error.

Enabling of General Land Use By-law Provisions

It is Council’s intent to regulate the following matters in the Land Use By-law:

Policy 10.34 It shall be the intention of Council to include in the Land Use By-law a provision requiring driveway entrances to be separated by a minimum separation distance from any existing driveway entrance even though said minimum separation distance transcend property boundary lines.

Policy 10.35 It shall be the intention of Council to include in the Land Use By-law a provision enabling driveway entrances to be

shared with directly abutting lots provided that the Land Use By-law specifies a minimum and maximum width of said driveway entrance even through the width of said entrance way transcends a property boundary line.

Policy 10.36 It shall be the intention of Council to include in the Land Use By-law a provision restricting access to specified streets from corner lots provided at least one (1) access driveway is available along another street.

Policy 10.37 It shall be the intention of Council to enable the development of public and private trails, public and private walkways, and public streets complete with accessory structures such as, but not limited to, benches, garbage and recycling facilities, lights, washroom facilities, wayfinding signage, and similar related structures in any zone. In addition, it shall be the intention of Council to limit the use of public and private trails; and, public and private walkways to non-motorized equipment unless otherwise explicitly enabled through the approval of the Town's Traffic Authority.

Policy 10.38 It shall be the intention of Council to include in the Land Use By-law provisions for the regulation of community markets with respect to the following: on-site parking requirements, signage, outdoor storage, outdoor displays, minimum front, side, flanking and rear yard set-backs, height, driveway entrances (access and egress standards) and removal of the community market when not operational.

Policy 10.39 It shall be the intention of Council to include in the Land Use By-law provisions for the general regulation respecting top-soil removal in all zones including a prohibition on top-soil removal in the Floodplain (O-2) Zone and the Environmentally Sensitive (E-S) Zone that is not in conjunction with a permitted development and the general regulation respecting the removal or filling in of any material within the Floodplain (O-2) Zone that is not in conjunction with a permitted development.

Adult Entertainment

It is Council's intent to regulate the establishment of live adult entertainment uses by limiting them to the General Commercial (C-2) Zone and to enable them to be established in the General Commercial (C-2) Zone

only through the Development Agreement process. Therefore, it shall be the intention of Council to include a special provision in the Land Use By-law applicable to all zones that would prohibit the establishment of a live adult entertainment use as a main use or as an accessory use except in specified zones that enable the use to be established through the Development Agreement process.

Policy 10.40 It shall be the intention of Council to include a special provision in the Land Use By-law applicable to all zones that would prohibit the establishment of a live adult entertainment use as a main use or as an accessory use except in specified zones that enable the use to be established through the Development Agreement process.

Home Based Businesses

Council enables the establishment of non-residential uses (home based businesses) in residential dwelling units throughout the Residential Designation as evident in the text and policy provisions of Chapter 4 of this Municipal Planning Strategy. However, there are several zones outside of the Residential Designation that permit the establishment of residential dwelling units. The following policy is intended to enable the establishment of non-residential (home based business) uses outside of the Residential Designation in commercially zoned areas that permit the establishment of a residential dwelling. This will enable those living in commercially designated areas the ability to establish a non-residential (home based business) use in a similar fashion as those that are located within the Residential Designation.

Policy 10.41 It shall be the intention of Council to include a provision in the Land Use By-law that enables the establishment of the following nonresidential (home based businesses) within a residential dwelling unit located in the Downtown Commercial (C-1) Zone, the General Commercial Main Street (C-2M) Zone, the Secondary Commercial (C-3) Zone, the Local Commercial (C-4), the Waterfront Commercial Industrial (WCI-5) Zone, the Commercial Holding (C-H) Zone and the Downtown Transition (DTZ) Zone:

- (1) Child or Adult Nurseries;**
- (2) Domestic and Household Arts; (3) Home Based Offices;**
- (3) Mobile-Home Based Businesses;**
- (4) Home Based Aesthetic Practices; and,**

(5) Internet Web Site Development.

Policy 10.42 It shall be the intention of Council to include in the Land Use By-law provisions for the regulation of non-residential uses permitted within residential dwelling units in the Downtown Commercial (C-1) Zone, the General Commercial Main Street (C-2M) Zone, the Secondary Commercial (C-3) Zone, the Local Commercial (C-4), the Waterfront Commercial Industrial (WCI-5) Zone, the Commercial Holding (C-H) Zone and the Downtown Transition (DTZ) Zone with respect to the following: requirement for operator occupancy, maximum commercial floor area, maximum number of nonresidential uses, maximum number of employees, signage, outdoor storage and display and a special provision prohibiting non-residential uses that create objectionable noise, vibration, glare, fumes, odours, dust, air pollutants, traffic generation, or electrical interference.

Convenience Stores, Personal Service Shops and Restaurants

As outlined in Chapter 4, “Commercial Development”, Council has established the Local Commercial (C-4) Zone as a means of recognizing existing convenience stores in the residential designation. As outlined in the residential development chapter, Council does not intend to permit a broad range of commercial uses within the Residential designation and does not support the intrusion of commercial and industrial developments into healthy residential areas due to their potential impacts. In this regard rezoning to Local Commercial (C-4) for new commercial developments shall be prohibited. However, Council does recognize that there is a need to serve certain residential areas with commercial services and to this end will consider convenience stores, personal services shops and restaurants (eat-in only) up to a maximum combined area of 278.7m² (3,000 sq. ft.) within any designation by Development Agreement. These developments will be limited to those locations that have direct access and egress onto “collector” or “arterial” classified streets. In this fashion, the potential traffic impacts on local streets will be minimized. Through the Development Agreement process, Council has the ability to address potential impacts on the surrounding areas on a case by case nature.

Policy 10.43 Notwithstanding Policy 4.21, it shall be the intention of Council to consider proposals for convenience stores, personal service shops and restaurants (eat-in only) uses up to a maximum combined area of 278.7m² (3,000 ft²) in gross commercial floor

area within any Designation by Development Agreement pursuant to Section 225 of the *Municipal Government Act* provided:

- (1) that the lot directly fronts and abuts a “collector” or “arterial” classified street;
- (2) that all access and egress driveways are limited to a “collector” or “arterial” classified street (access and egress driveways to a “local” classified street shall be prohibited);
- (3) that drive-ins and drive-thrus are prohibited (only eat-in shall be permitted); and,
- (4) that the proposed development conforms with the following minimum requirements:

Minimum permitted dimensions for Convenience Stores, Personal Service Shops and Restaurants

Lot Area	3,716m ² (40,000 sq. ft.)
Lot Frontage	60.9m (200 ft.)
Front Yard Set-back	12.2m (40 ft.)
Flanking Yard Set-back	12.2m (40 ft.)
Side Yard Set-back	9.2m (30 ft.)
Rear Yard Set-back	12.2m (40 ft.)

Maximum permitted dimensions

Height of Main Building	10.67m (35 ft.)
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- (5) that one (1) on-site parking space shall be provided and maintained for each 18.58m² (200 ft²) or fraction thereof of gross commercial floor area in addition to any residential parking space requirement;
- (6) that any residential Development Permitted by various provisions of this Strategy (by zoning or by Development Agreement) conforms to the applicable residential requirements pursuant to the zoning and designation that the property is located;
- (7) that Council considers the appropriateness of the neighbourhood context in terms of the development’s potential impacts; and,

(8) that the proposal conforms to criteria contained in Implementation Policies 10.8 and 10.9 [old 7.8 and 7.9].

Urban Agriculture and Beekeeping

Council wishes to encourage agricultural practices that contribute to a reduction on food imports. To that effect it encourages urban agriculture with certain limitations.

Policy 10.44 It shall be the intention of Council to include in the Land Use By-law a range of prohibited agricultural uses in any zone.

In an effort to enhance local honey production and the local bee population, Council wishes to enable the establishment of urban beekeeping throughout the Town in all zones with certain restrictions. Council's policy to enable this is outlined below:

Policy 10.45 It shall be the intention of Council to include provisions in the Land Use By-law regulating the establishment of urban beekeeping in the general provision for all zones.