

# Administrative Code of the Town of Boothbay



**Adopted May 2, 2005**  
**Amended May 1, 2006**  
**Amended May 7, 2007**  
**Amended May 5, 2008**  
**Amended May 2, 2011**  
**Amended May 7, 2012**

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## **SECTION 1. INTRODUCTION**

### **1.1 Purpose**

These General Ordinances (Sections 1 through 7 of the Administrative Code) repeal and replace the Bylaws of the Town of Boothbay adopted March 6, 1950 and as amended.

### **1.2 Construction**

These General Ordinances shall be liberally construed so as to give them effect consistent with the ordinary and reasonable meaning of their provisions and with the provisions of any general or special laws then in effect adopted by the State of Maine. No provisions of these General Ordinances shall be construed to limit the powers and duties of Municipal Officers, Boards and Committees imposed upon them by applicable provisions of the general or special laws of the State of Maine or the Boothbay Town Manager Plan. Unless the wording or context clearly dictates a different result, the provisions of any General Ordinance so far as they are the same as provisions of an Ordinance or Bylaw heretofore in force, shall be construed as a continuation thereof and not as a change thereof.

### **1.3 Amendment and/or Repeal**

These General Ordinances shall not be construed to repeal any other existing Bylaws or Ordinances; provided, however, that where a provision of these General Ordinances conflict with or is inconsistent with another provision of these General Ordinances or any other ordinance, regulation or statute, the more restrictive provision shall control.

These General Ordinances may be amended or repealed at any Annual or Special Town Meeting by a majority vote of those present and voting at said Meeting, provided that an Article or Articles for that purpose shall have been inserted in the Warrant for said Meeting. The amendment or repeal of any General Ordinance shall not affect any act done, nor any right accrued or established, nor any action, suit or proceeding commenced or had in a civil case, nor affect any punishment, penalty or forfeiture incurred under such General Ordinance.

### **1.4 Enforcement**

Any person who violates any provision of these General Ordinances shall be punished by fines as specified in the Boothbay Fee Schedule, as established by order of the Board of Selectmen and as amended by the Board of Selectmen from time to time.

### **1.5 Severability**

In the event any section, subsection or provision of any of these General Ordinances shall be held to be unconstitutional or invalid, such invalidity shall not affect the validity or constitutionality of any other section, subsection or provision.

## **1.6 Definitions**

All definitions shall be consistent with State law as it may be amended from time to time.

**1.6.1 Municipal Officer** – A member of the Board of Selectmen, as defined in the Title 30-A of the Maine Revised Statutes Annotated (M.R.S.A.) § 2001(10).

**1.6.2 Municipal Official** – Any elected or appointed member of the municipal government, as defined in 30-A M.R.S.A. § 2001(11).

**1.6.3 Town Manager Plan** – Shall be as defined in 30-A M.R.S.A. § 2631.

## **SECTION 2. TOWN MEETINGS**

**2.1 ANNUAL TOWN MEETING:** The Annual Town Meeting shall be held on the first Monday of May of each year at a time and place specified in the Warrant. All reports required by law to be printed shall be ready for distribution at least three (3) weeks before the annual meeting.

**2.2 SPECIAL TOWN MEETINGS:** Special Town Meetings may be called by a majority vote of the Board of Selectmen. If the Board of Selectmen unreasonably refuse to call a Town Meeting, a notary public may call a Town Meeting on the written petition of a number of voters equal to at least ten percent (10%) of the number of votes cast in the Town at the last gubernatorial election, but in no case fewer than ten (10) voters.

**2.3 WARRANT:** All Town Meetings must be called and announced by publishing a copy of the Warrant, attested to by a Constable, in a locally published newspaper, or if there is no locally published newspaper, by posting the Warrant by means required by State law, at least two (2) weeks prior to the meeting date. The Warrant must state the time and place of the meeting, and the business to be acted upon at the meeting in distinct articles. The Warrant shall be posted, and a return on the Warrant shall be made, in accordance with State law. Except as otherwise provided by law, the warrant shall be prepared by the Board of Selectmen and must be signed by a majority of the Selectmen.

**2.4 PETITION FOR WARRANT ARTICLE:** On the written petition of a number of voters equal to at least ten percent (10%) of the number of votes cast in the Town at the last gubernatorial election, but in no case fewer than ten (10) voters, the Board of Selectmen shall either insert a particular article in the next warrant issued or shall within sixty (60) days call a special Town Meeting for its consideration.

**2.5 CONDUCT OF MEETINGS:** Every voter registered to vote in the Town may vote at Town Meetings. All meetings shall be opened by the Town Clerk's calling for the election of a Moderator by written ballot, counting the votes for Moderator, and swearing in the Moderator. The Moderator shall preside over and supervise voting

at Town Meetings. No business may be acted upon at Town Meetings unless specifically included in the warrant.

**2.6 ELECTIONS:** At the Annual Town Meeting, elections by secret ballot shall be held for the offices of Moderator, Selectmen, Members of the Boothbay-Boothbay Harbor Community School District School Committee and Board of Trustees, Trustees of the Boothbay Region Water District, and Trustees of the Boothbay Region Cemetery District. A candidate for elected Town office must be a citizen of the United States, at least eighteen (18) years of age, and must be registered to vote in the Town.

Two (2) positions on the Board of Selectmen shall be up for election each year, with the exception that every three (3) years only one (1) position shall be up for election.

Terms for selectmen shall be three (3) years. The office of Selectman is governed by 30-A M.R.S.A. § 2526(3)(A).

One (1) position each on the Boothbay-Boothbay Harbor Community School District School Committee, the Boothbay-Boothbay Harbor Community School District Board of Trustees, the Boothbay Region Water District, and the Boothbay Region Cemetery District shall be up for election every year, for three (3) year terms.

Except as otherwise provided by law, nomination papers for Town office elections shall be available for forty (40) days before the filing deadline. Except as otherwise provided by law, the filing deadline is forty-five (45) days prior to election day.

Nomination papers must be signed by not less than twenty-five (25) voters registered in the Town of Boothbay.

**2.7 REFERENDUM QUESTIONS:** By order of the Board of Selectmen or on the written petition of a number of voters equal to at least ten percent (10%) of the number of votes cast in the Town at the last gubernatorial election, but in no case fewer than ten (10) voters, the Board of Selectmen shall have a particular article placed on the next printed ballot or shall call a special Town Meeting for its consideration. The Board of Selectmen shall hold a public hearing on the subject of the article at least ten (10) days before the date for voting.

## **SECTION 3: TOWN OFFICIALS, BOARDS, and COMMITTEES**

### **3.1 ELECTED OFFICIALS**

**3.1.1 Moderator.** The Moderator shall be the official elected by a Town Meeting to serve as chairperson at the Town Meeting. The Moderator's term of office shall be only for the duration of a Town Meeting. The Moderator shall be elected by written ballot, as the first order of business at a Town Meeting. The duties of the Moderator shall include presiding over and supervising the voting at a Town Meeting and the conduct of the meeting itself.

**3.1.2 Selectmen.** Five (5) Selectmen shall serve at any one time, to be elected at large to three (3)-year terms. Two (2) Selectmen shall be elected each year except that every three (3) years only one (1) shall be elected.

The Selectmen are the executive authority of the Town. Responsibilities shall include, but not be limited to, management of the Town finances, protecting the health, safety and welfare of the residents in accordance with federal, state and local laws and regulations, management of public property and personnel, and management of contracts and relations with other State and local agencies and the public.

**3.1.2.1 Overseers of the Poor.** The Board of Selectmen shall serve as a board of Overseers of the Poor. The Overseers of the Poor shall determine the eligibility of needy residents of the Town for assistance in meeting basic living expenses, and implement such assistance. Their actions shall be directed by Section 4.6, General Welfare/Assistance Provision of this Administrative Code.

**3.1.3 School Committee Members, Boothbay-Boothbay Harbor Community School District.** Three (3) members of the Boothbay-Boothbay Harbor Community School District School Committee shall be elected to staggered three (3)-year terms, one (1) each year. Powers and duties of School Committee Members shall be as specified in Chapter 156, Maine Private and Special Laws of 1953, as may be amended from time to time.

**3.1.4 Trustees, Boothbay-Boothbay Harbor Community School District.** Three (3) members of the Boothbay-Boothbay Harbor Community School District Board of Trustees shall be elected to staggered three (3)-year terms, one (1) each year. Powers and duties of the Trustees shall be as specified in Chapter 156, Maine Private and Special Laws of 1953, as may be amended from time to time.

**3.1.5 Trustees, Boothbay Region Water District.** Three (3) members of the Boothbay Region Water District shall be elected to staggered three (3)-year terms. Two (2) Trustees shall be elected by the voters of Boothbay, one (1) shall be elected at large by the voters of Boothbay and Boothbay Harbor. Powers and duties of the Trustees shall be as specified in Chapter 15, Maine Private and Special Laws of 2001, as may be amended from time to time.

**3.1.6 Trustees, Boothbay-Boothbay Harbor Cemetery District.** Three members of the Boothbay-Boothbay Harbor Cemetery District Board of Trustees shall be elected to staggered three-year terms, one each year. Powers and duties of the Trustees shall be as specified in Chapter 156, Maine Private and Special Laws of 1939, as may be amended from time to time.

**3.1.7 Unexpired Terms of Office.** Vacancies in elected offices shall be filled as directed in 30-A M.R.S.A. §#2602 (vacancy in municipal office) and 20-A §#1653 (vacancy in CSD school committee). Any individual elected to fill a vacated, unexpired term of office shall be elected to serve only for the remainder of that term. They may then run for re-election as any incumbent might.

## **3.2 APPOINTED OFFICIALS**

The following Town officials shall be appointed by the Board of Selectmen. Unless otherwise stated below, terms shall be one (1) year, from July 1 through June 30. To hold any of these offices, a person must be a resident of the Town of Boothbay for more than six (6) months of the calendar year, at least eighteen (18) years of age, a registered voter in the Town of Boothbay, and a citizen of the United States. The residency requirement does not apply to Appointed Officials who are employees of the Town.

**3.2.1 Animal Control Officer.** Animal Control Officers must be State-certified and may not have been convicted of a criminal violation under Title 17, Chapter 42 of the M.R.S.A., or adjudicated of a civil violation under Title 7, Chapter 739 of the M.R.S.A. Animal Control Officers' duties shall include controlling domesticated and undomesticated animals that are a cause of complaint in the community, or that pose a threat to public health or safety. Animal Control Officers shall enforce the terms of the Animal Control Ordinance, Section 5.2 of these General Ordinances.

**3.2.2 Assessor.** The Assessor must be State-certified. The Assessor shall plan and administer the assessment/appraisal system for the Town in maintaining current property valuation through visitation, data collection, and computer analysis. The Assessor shall appraise residential, commercial, agricultural, and industrial properties; special rights and interests; personal property; and public utility equipment and properties. The Assessor shall maintain and oversee the maintenance of official maps, transfers, and other records maintained in the assessment office. The Assessor shall make and enter computation valuations and other data in valuation commitment books, and determine the valuations to be placed on new, renovated, and existing property based on changing market value. The Assessor shall prepare and administer a department budget, and assist other Town departments with tax related questions.

**3.2.3 Building Inspector.** The Building Inspector must be skilled in the construction of buildings. The Building Inspector's duties are to issue building permits in accordance with the Town's ordinances regulating building construction, alteration, demolition or improvement; inspect all new buildings under construction or in the process of being repaired to see that all proper safeguards are used against the catching or spreading of fires, that the chimneys and flues are made safe and that the proper cutoffs are placed between the timbers in the walls and floorings where fire would be likely to spread and that all applicable codes have been followed; issue occupancy permits to allow the occupancy of new buildings provided such buildings conform to all applicable codes; withhold building permits from proposed construction in accordance with local ordinances and State and federal statutes; and other duties as expressly provided by ordinance or statute.

**3.2.4 Code Enforcement Officer.** The Code Enforcement Officer must be State-certified. The Code Enforcement Officer shall be responsible for enforcing shore-land zoning law and all ordinances related to Town zoning. The Code Enforcement Officer shall enforce State and local subdivision laws and regulations; site plan review requirements; the local floodplain management ordinance; State laws regarding junkyard and automobile graveyard licensing, miscellaneous nuisances, and accessibility for persons with disabilities; as well as any other codes falling under the Code Enforcement Officer's jurisdiction by ordinance or statute.

**3.2.5 Constables.** Constables are appointed annually by the Board of Selectmen and shall have the powers of a police officer as defined by State law, with the exception that their certificates of appointment shall state whether or not each Constable is allowed to carry a weapon.

**3.2.6 Election (Ballot) Clerks.** Election Clerks shall be appointed for two (2) year terms to serve at state, county and federal elections. For Town elections, Election Clerks shall be appointed for each election. Election Clerks shall assist in the conduct of elections to ensure that all applicable laws are followed. A minimum of two (2) Election Clerks shall be appointed. An immediate family member of a candidate may not be appointed as Election Clerk.

**3.2.7 Fire Chief.** The Fire Chief shall be responsible for the direction and control of all firefighters in the performance of firefighting operations, and for the maintenance of all fire equipment and buildings and shall otherwise serve as directed by the Emergency Services Ordinance, Section 5.4 of these General Ordinances.

**3.2.7.1 Assistant Fire Chief.** Two (2) Assistant Fire Chiefs shall be appointed, and shall carry out all duties of the Fire Chief in the Fire Chief's absence.

**3.2.7.2 Emergency Management/Preparedness Director.** The Emergency Management/Preparedness Director shall be responsible for Town-wide disaster preparedness and disaster response. S/he shall serve as directed by the Emergency Services Ordinance, Section 5.4 of these General Ordinances.

**3.2.8 Forest Fire Warden.** The Forest Fire Warden is appointed by the Director of the Maine Bureau of Forestry and must be the Town Fire Chief, if practicable. The Board of Selectmen must approve the appointment if someone other than the Town Fire Chief is appointed. The Forest Fire Warden shall be responsible for implementing programs to prevent forest fires and shall take immediate action to control any unauthorized forest fires, employing assistance when required.

**3.2.9 Harbor Master.** The Harbor Master shall oversee permitting of moorings and other structures in Town waters. The Harbor Master shall oversee the general

operation of the waters of the Town, including mooring plans and designated channels, and shall enforce the watercraft laws of the State and the Harbor Ordinance.

**3.2.9.1 Deputy Harbor Masters.** There shall be six (6) Deputy Harbor Masters appointed to oversee specific portions of the Town's waterways in accordance with State law and the Harbor Ordinance.

**3.2.10 Health Officer.** The Health Officer shall report to the Maine Department of Human Services (DHS) facts that relate to communicable diseases occurring in the Town; receive and evaluate complaints concerning nuisances posing a potential public health threat; inspect premises, with owner or person-in-possession consent or court-ordered warrant, where conditions posing a public health threat are known or believed to exist; order the suppression or removal of any conditions posing a threat to the public health after inspection and consultation with the DHS; and order removal of sources of filth as defined in State law. The Health Officer shall keep an accurate record of all proceedings, actions and transactions performed by the office, as required by State law.

**3.2.11 Plumbing Inspector.** The Plumbing Inspector must be State-certified and may not approve his/her own work or the work of an employer or employee, in which case the State Plumbing Inspector shall act. The Plumbing Inspector shall inspect all plumbing that requires permits, to ensure compliance with State rules and Town ordinances and investigate all construction or work covered by those rules and ordinances; condemn and reject all work done or being done or material used or being used that does not comply with State rules and Town ordinances, and order changes necessary to obtain compliance; issue a certificate of approval for any work that the Inspector has approved; keep an accurate account of all fees collected and transfer those fees to the Town Treasurer; keep a complete record of all essential transactions of the office; investigate complaints of alleged violations relating to plumbing or subsurface waste water disposal and take appropriate actions as specified by law; issue permits, when appropriate, before a seasonal dwelling can be converted to a year round dwelling in the shoreland zone if the disposal system is located within the shore-land zone; inspect shoreland zone subsurface systems, when requested by an owner who is going to sell, to determine if the system has malfunctioned within 180 days of transfer of that property; and submit an activity report by February 1 each year to the Town and DHS.

**3.2.12 Public Works Foreman.** The Public Works Foreman shall oversee all operations of the Public Works Department and maintenance of Public Works equipment and supplies. His/her duties shall be as outlined in the Public Works Ordinance, Section 5.7 of these General Ordinances.

**3.2.13 Registrar of Voters.** The Registrar of Voters may not hold or be a candidate for any State or county office or be an officer of any political party committee. The

Registrar of Voters shall be appointed for a term of two years; the appointment shall be made by January 1 of each odd-numbered year. The Registrar of Voters shall be responsible for maintaining a complete up to date list of persons registered to vote in the Town, assisting citizens in registering to vote, and verifying voter registration for other Town officials or departments.

**3.2.14 Road Commissioner.** The Road Commissioner is in charge of the repair and maintenance of all public ways within the Town, acting in accordance with general policies or guidelines determined by the Board of Selectmen. Road Commissioner duties are further defined in Section 5.3, Public Streets and Traffic Ordinance, and Section 5.7, Public Works Ordinance, of these General Ordinances.

**3.2.15 Shellfish Warden.** The Shellfish Warden must be State-certified. The Shellfish Warden shall be responsible for enforcing all State laws and local ordinances related to shellfish, including but not limited to licensing, site closings, size limits, and catch limits.

**3.2.16 Tax Collector.** The Tax Collector shall complete all tax collections of each tax commitment committed to the Tax Collector by the Assessor. The Tax Collector shall deposit all property and excise tax receipts with the Town Treasurer at least on a monthly basis and submit an accounting to the Board of Selectmen at least every two months.

**3.2.16.1 Deputy Tax Collector.** The Deputy Tax Collector shall assist the Tax Collector in the performance of the Tax Collector's duties.

**3.2.16.2 Excise Tax Collector.** The Excise Tax Collector shall be responsible for collecting excise taxes before vehicles or boats are registered to operate on the public ways or water bodies of the State. The Excise Tax Collector shall make monthly deposits of excise tax money to the Town Treasurer and submit an accounting to the Board of Selectmen at least every two months.

**3.2.17 Town Clerk.** The Town Clerk shall be responsible for maintaining, preserving, and providing access to Town records, including but not limited to vital statistics such as births, deaths, and marriages, appointments to Town offices, boards and committees, decisions of boards, licenses, registrations, commercial filings, election results, Town Meeting warrants, Town Meeting notes, and ordinances. The Town Clerk shall be responsible for conducting all elections in the Town.

**3.2.18 Town Manager.** Except as otherwise provided by law, the Town Manager shall be responsible for the coordination of all aspects of the administration of the Town. The Town Manager shall be responsible for the appointment of all department heads, subject to the approval of the Board of Selectmen, and, through the department heads, all municipal employees; the preparation of the

municipal budget for approval at Town Meeting; the administration of that budget once adopted; the regulation of departmental spending; the development and execution of an administrative plan for governmental activity; and the duties belonging to any other municipal office to which the Town Manager has specifically been appointed by the Board of Selectmen and separately sworn.

**3.2.19 Treasurer.** The Treasurer shall receive and record all revenues due the Town and make necessary disbursements upon authorization by the Board of Selectmen. The Treasurer shall be responsible for keeping the Town's financial accounts in accordance with generally accepted principles of municipal accounting. The Treasurer shall present clear financial information to the voters, primarily through the Town report, and to the Board of Selectmen so that the Board of Selectmen can make informed decisions, particularly with regard to municipal borrowing and investment. The Treasurer is also responsible for accepting tax warrants from the State and county governments and making sure they are promptly paid.

**3.2.19.1 Deputy Treasurer.** The Deputy Treasurer shall assist the Treasurer in the performance of the Treasurer's duties.

### **3.3 STANDING TOWN BOARDS and COMMITTEES**

The following standing Town committees and boards shall be implemented. Unless otherwise specified below, committee and board members are appointed by the Board of Selectmen for staggered terms of three (3) years, from July 1 through June 30. To hold any of these positions, a person must be a resident of the Town of Boothbay for more than six (6) months of the calendar year, at least eighteen (18) years of age, a registered voter in the Town of Boothbay when appointed and while serving, and a citizen of the United States.

All boards and committees shall keep records of their proceedings.

Appointments and dismissals shall be made in accordance with Town's Policy on Administrative/Appointed Boards and Committees, as such policy is established by order of the Board of Selectmen and amended by the Board of Selectmen from time to time. There shall be no limit on the number of terms a board or committee member may serve, except as otherwise provided by law.

No person may serve on more than one of the following committees or boards at the same time: Town Board of Appeals, Town Board of Assessment Review, Town Planning Board, Town Port Committee, Boothbay Region Refuse Disposal District, Shellfish Committee.

**3.3.1 Board of Appeals.** The Board of Appeals shall consist of five (5) full members and two (2) alternate members. The Board shall hear and decide administrative appeals, interpretation appeals, and requests for variances filed in connection with decisions made under the Zoning Ordinance. The Board shall have jurisdiction over appeals filed under State law relating to special amusement permits (28-A M.R.S.A. § 1054) and appeals regarding whether a particular piece of farmland is eligible to be registered for protection from inconsistent

development and requests for variances to allow inconsistent development to occur on land adjacent to a registered farmland parcel.

**3.3.2 Board of Assessment Review.** The Board of Assessment Review shall consist of three (3) full members and two (2) alternate members. The Board shall hear and decide all appeals from the refusal of the Assessor or Board of Selectmen to make property tax abatements. The Board may take such evidence and testimony as it deems necessary and may grant such abatements as it thinks proper. The Board's decisions may be appealed in accordance with 36 M.R.S.A. § 843.

**3.3.3 Administrative Code Review Committee.** The Administrative Code Review Committee shall consist of not fewer than five (5) full members. The committee shall, on an ongoing basis, review all of the General Ordinances for consistency, relevancy, comprehensiveness and legality, and make recommendations to the Board of Selectmen for revisions, additions and deletions. The Committee shall oversee the production of a printed document listing all ordinances of the Town.

**3.3.4 Planning Board.** The Planning Board shall consist of five (5) full members and two (2) alternate members. The Board shall perform such duties and exercise such powers as are provided by the Zoning Ordinance and State law.

**3.3.5 Port Committee.** The Port Committee shall consist of seven (7) regular members, none of whom shall be the Harbor Master or a Deputy Harbor Master. Any applicable term limits shall be as specified in the Harbor Ordinance. The Port Committee shall be responsible for overseeing harbor use regulations and mooring administration as specified in the Harbor Ordinance.

**3.4 Ad-Hoc Committees.** In addition to Standing Town Boards and Committees, the Board of Selectmen may, from time to time, establish (or request Town Meeting to establish) and define a variety of appointed boards to assist in carrying out the work of the Town. Appointed boards may also be established as allowed by law.

## **SECTION 4: CONDUCT OF TOWN BUSINESS**

**4.1 Fiscal Year:** The Town's fiscal year shall commence July 1 and shall close annually on the last day in June. The Board of Selectmen shall make all recommendations for municipal spending at the annual Town Meeting based upon the following:

**4.1.1** The report of the Auditors for the period ending June 30 of the preceding year;

**4.1.2** Actual income and disbursements for the current fiscal year to date (July 1 to the end of the month preceding the town meeting); and

**4.1.3** Their best judgment for projected expenses.

**4.2 Licenses and Fees:** Except as otherwise provided by law, licenses and fees shall be established by the Board of Selectmen, which shall make and maintain a current schedule of such licenses and fees available, as updated on an annual basis, to the general public.

**4.3 Tax Acquired Property:** The Board of Selectmen shall have authority to deal with tax acquired property in any of the following ways:

**4.3.1** The Board of Selectman may retain such property but only for town or public use.

**4.3.2** All property which the selectmen in their discretion decide is not needed for town or public use shall be disposed of as follows:

**4.3.2.1** The Board of Selectmen shall send notice via regular and certified mail to the immediately prior owner or owners of any impending sale at least 45 days prior to said sale or by March 15, whichever date shall first occur. Said prior owner or owners may redeem the property at any time within 30 days immediately following such notification with full payment of all outstanding taxes including a just value for the current year not yet assessed, along with cost of lien release, interest and all other costs including but not limited to notice and insurance. The Selectmen in their discretion, may determine a payment plan for such redemption by a prior owner or owners.

Providing only that all back and current taxes, interest and lien charges shall have been paid in full, the Selectmen shall execute and deliver a quit-claim deed from the Town to any owner of property in order to clear the title to that property from any undischarged tax lien.

**4.3.2.2** Any property not redeemed in accordance with 4.3.2.1 above shall be disposed of as follows:

The Board of Selectmen shall solicit bids for the purchase of any such tax acquired property not needed for town or public use and not redeemed by the former owner or owners in accordance with 4.3.2.1 above and shall receive, open and read aloud at a public meeting all bids so received. Such reading to be the first week of June following foreclosure of the tax lien.”

**4.3.2.3** The Board of Selectmen shall cause a public notice of impending public sale of tax-acquired property to be posted within the Town office, the post office, and to be advertised for two successive weeks in a newspaper with local/regional circulation, the last notice to be published at least seven (7) days prior to the advertised sale date.

**4.3.2.4** The Board of Selectmen shall require the following for proper submission:

**4.3.2.4.1** A bid sheet containing a full description of the property being bid upon, and the bid price in U. S. currency.

**4.3.2.4.2** A bank check or money order, in an amount not less than 10% of the bid price, shall be included as a deposit on the bid. Failure to submit a deposit shall cause the bid to be automatically rejected.

**4.3.2.5** The Board of Selectmen shall require that those bid items cited in Section 4.3.2.4, be sealed in a single plain envelope marked only "Tax-Acquired Property Bid" on the exterior and either be hand delivered to the Town, or, if mailed, to be enclosed within a second envelope addressed to the Board of Selectmen, Town of Boothbay, P.O. Box 106, Boothbay Maine, 04537.

**4.3.2.6** The Board of Selectmen shall retain the right to accept or reject any and all bids submitted, and shall cause the same disclaimer to be noted in any public notice soliciting bids in accordance with this ordinance. Should the Board of Selectmen reject all bids, the property may be offered again for public sale without notice to any prior owner or owners.

**4.3.2.7** The Board of Selectmen shall notify all bidders as to the outcome, shall retain the submitted bid price deposit of any successful bidder as a credit to payment, and shall return all other submitted deposits.

**4.3.2.8** The Board of Selectmen shall, except in exigent circumstances, require payment in full from any successful bidder within thirty (30) calendar days following date when bids are opened and read aloud. Should the Board of Selectmen decree that exigent circumstances exist, a one-time-only extension of twenty (20) days may be granted for full payment. Should the bidder fail to pay the full balance, the Town shall retain the bid price deposit and title to the proffered property.

**4.3.2.9** The Board of Selectmen shall issue only a Quit-claim Deed to convey title to tax-acquired property.

**4.3.2.10** The successful bidder shall be responsible for the removal of any and all occupants of purchased tax-acquired property and shall, in writing, forever indemnify and save harmless the Town from any and all claims arising out of the sale of the tax-acquired property brought by the occupants of the purchased property, their heirs, successors and assigns.

**4.4 ETHICS AND CONFLICTS OF INTEREST:** The business and affairs of the Town of Boothbay must be conducted openly and in a manner that is above reproach. There cannot be any suggestion of favoritism, cronyism, or self-dealing in any of the actions of the Town or its Municipal Officers, Municipal Officials, or Employees, including without limitation, action pertaining to hiring and employment practices, purchasing of goods and services, raising of revenues, and providing of goods and services.

For the Town to carry out its operations effectively, it is necessary that it enjoy the confidence of the citizens of the Town and others in the integrity of its operations. In particular, it is necessary that no person will benefit from actions of the Town by reason of having, directly or indirectly, a position of influence in the Town.

Section 4.4 shall serve as a guide to the conduct of the Town's Municipal Officers, Municipal Officials, and Employees. There is not always a bright line that, when crossed, will constitute a violation of this section. It is expected that individuals will not attempt to come as close as possible to the limits in this Section 4.4 without crossing it. On the contrary, it is expected that individuals will try to avoid conduct that falls within the broad definitions of prohibited conduct.

Section 4.4 does not replace the laws, rules, and regulations that govern the business and affairs of municipalities, quasi-municipal corporations, and other bodies politic and corporate within the State of Maine generally, but is a supplement to those laws, rules, and regulations. In the event of a conflict between the provisions of such laws, rules, and regulations on the one hand and the provisions of this Section on the other, the more restrictive provisions shall govern unless prohibited by applicable law.

Section 4.4 does not supersede or replace any other applicable policies, laws, rules, and regulations that address issues of discrimination, harassment, and similar undesirable conduct.

#### **4.4.0.1 Definitions**

**4.4.0.1.1 Responsible Person:** a Municipal Officer, Municipal Official, or Employee of the Town.

**4.4.0.1.2 Benefit:** A gain, whether financial or otherwise, to a Responsible Person. A Responsible Person shall be deemed to realize a Benefit if a gain is realized by a member of the family of a Responsible Person or his business associate or any firm in which the Responsible Person has, directly or indirectly, an ownership interest of at least 10 percent. "Benefit" does not include a reasonable compensation package to an Employee arrived at in the ordinary course of business.

**4.4.0.1.3 Conflict of Interest:** A conflict between the interests of the Town and the interests of a Responsible Person. A Conflict of Interest arises when a Responsible Person may realize a Benefit from a decision on behalf of the Town that he could make or influence, or from the use of information concerning the business and affairs of the Town.

**4.4.0.1.4 Contractor:** any vendor, supplier, consultant, or contractor, that may provide goods or services to the Town.

**4.4.1 Standards of Conduct:** Each Responsible Person shall take reasonable steps to avoid a Conflict of Interest or the appearance of a Conflict of Interest.

Illustrations of conduct prohibited by this Policy are as follows:

**4.4.1.1** A Responsible Person shall not engage in self-dealing or obtaining any Benefit directly or indirectly for himself, his family, or his friends. A Responsible Person shall hold in strict confidence all information concerning the business and affairs of the Town gained by reason of his association with the Town, and shall not use such information to assist in any way any Contractor in competition with any other Contractor seeking to furnish goods or services to the Town.

**4.4.1.2** A Responsible Person shall not take part in any decision (or any discussion or deliberation concerning such decision) concerning the obtaining of goods or services by the Town from any Contractor if such Responsible Person is or will be employed by, or be a subcontractor to, or is an officer or director or trustee of, or owns or controls the Contractor, all during the time that such Contractor is to furnish such goods or services. For purposes of this policy, ownership (individually or together with family members, partners, and business associates) of at least 10 percent of the Contractor is deemed to constitute control of the Contractor.

**4.4.1.3** A Responsible Person shall not accept any gift of goods or services of more than twenty-five dollars in value from any Contractor that wishes to do business with, or that is doing business with the Town.

**4.4.1.4** No Responsible Person shall attempt to have any member of his family, or person with whom he has a personal or business relationship, to be hired as an employee of the Town, except in accordance with the hiring practices and procedures established by the Town, or with the prior approval of the Board of Selectmen. Such approval, together with the reasons for granting such approval, shall be in writing and filed with the minutes of the meeting of the Board of Selectmen at which such approval was granted. Nepotism in its broadest sense is prohibited.

#### **4.4.2.1 Administration**

**4.4.2.1.1** If a question arises as to whether a course of action by a Responsible Person constitutes a violation of this Policy, the question shall be referred to the Board of Selectmen; provided that if the Responsible Person is a Selectman, that person shall not participate in the actions of the Board in considering the question. The Board of Selectmen shall gather information which it deems necessary to reach a decision, and shall confer with the Responsible Person in question. Such Responsible Person shall either abide by the findings and recommendations of the Board of Selectmen or resign his position.

**4.4.2.1.2** A Responsible Person shall disclose to the Board of Selectmen any instance of a Conflict of Interest or the appearance of a Conflict of Interest prior to action by the Town on the matter to which such Conflict of Interest pertains, and such disclosure shall be included in the minutes of the meetings of the Board of Selectmen.

**4.4.2.1.3** To the extent permitted by applicable laws, the Board of Selectmen shall have authority to cause the removal from his position with the Town, or otherwise discipline, any Responsible Person who fails to comply with the provisions of this Policy.

**4.4.2.1.4** The Board of Selectmen shall maintain written records of its proceedings under this Section 4.

**4.4.2.1.5** Annually, all Responsible Persons shall be given a copy of this ordinance, and shall acknowledge in writing that they have received a copy of this Policy and that they agree to the provisions of this Policy. Such acknowledgements shall be filed with the records of the Town Clerk.

**4.4.3 Exceptions:** It is acknowledged that the Town and the Boothbay region has a small population and that there might be occasions when the interests of the Town will be best served in engaging a Contractor where such engagement might result in a Benefit to a Responsible Person. Such engagement may be undertaken under the following provisions:

**4.4.3.1** The Board of Selectmen shall review the circumstances of the proposed course of action; provided that if the Responsible Person is a Selectman, he shall not participate in the deliberations or decision of the Board of Selectmen except to provide information as to the nature of the proposed engagement.

**4.4.3.2** The Board of Selectmen shall, at the request of any Selectman, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.

**4.4.3.3** After exercising due diligence, the Board of Selectmen shall determine whether the Town, in the exercise of reasonable efforts, can obtain a more advantageous transaction or arrangement from a person or entity that would not give rise to a Conflict of Interest.

**4.4.3.4** If a more advantageous transaction or arrangement is not reasonably attainable, the Board of Selectmen shall determine by a majority vote whether the transaction or arrangement is in the Town's best interest and is fair and reasonable to the Town; it shall thereafter make its decision in writing as to whether to enter into the transaction or arrangement in conformity with such determination.

**4.4.3.5** The Board of Selectmen shall prepare a written report of actions taken under Section 4.4.3.1 above, and such report together with its written decision shall be filed with the minutes of meeting of the Board of Selectmen at which the decision was made.

**4.4.4 Confidential Information:** Responsible Person shall not, without proper legal authorization, disclose confidential information, concerning the property, government or affairs of the Town, nor shall he or she use such information to advance the financial or private interest of himself or herself or others. For purposes of this subsection, the term "confidential information" shall mean any information, oral or written, which comes to the attention of, or is available to, such Responsible Person or appointee only because of his or her position with the Town, and is not a matter of public record and that term is defined in 1 M.R.S.A. §402(3). Information received and discussed during an executive session of a Boothbay administrative board or committee shall be considered within the constraints of this section, and shall not be disclosed to any third party unless permitted by affirmative vote of such body or as otherwise provided by law.

**4.4.5 Use of Town Property:** A Responsible Person may not, without prior approval by the Board of Selectmen, use, or permit the use of, any Town-owned property including, but not limited to, motor vehicles, equipment and buildings, for any private purposes. Nothing herein shall prohibit the use of Town buildings and equipment at rates and/or terms as may be established for the public at large.

## **4.5 PURCHASING ORDINANCE**

**4.5.1 Purpose.** The purpose of this Ordinance is to standardize the purchasing procedure of the Town. The Board of Selectmen shall annually adopt dollar amounts to define purchase limits and bidding requirements, except as otherwise provided herein.

**4.5.2 Purchasing Agent.** The Purchasing Agent shall be the Town Manager.

**4.5.3 Applicability.** This Ordinance shall apply to purchases made by departments and agencies of the Town, except as otherwise specified herein.

**4.5.4 Appropriation.** Except as otherwise provided by law, no one shall make any purchase or allow any purchase to be made until an appropriation therefore has been voted by Town Meeting.

#### **4.5.5 Purchase Limits**

**4.5.5.1** A Department Head or the Department Head's designated representative may make field purchases when the total purchase price for goods or services being purchased is less than the dollar amount set annually by the Board of Selectmen as the purchase limit for Department Heads under this Ordinance, provided the field purchases are reported to the Town Manager within three (3) days thereafter.

**4.5.5.2** The Town Manager shall make any purchase when the total purchase price exceeds the dollar amount set annually by the Board of Selectmen as the purchase limit for Department Heads under this Ordinance.

#### **4.5.6 Competitive Bidding**

**4.5.6.1** Competitive bids shall be required for all purchases in excess of the dollar amount set annually by the Board of Selectmen as the purchase limit for Department Heads under this Ordinance, unless specifically exempted by this Ordinance or by action of the Board of Selectmen.

**4.5.6.2** Informal bidding procedures shall be allowed when a purchase is required to be by competitive bidding if the total purchase price is less than the dollar amount set annually by the Board of Selectmen for formal bidding procedures under this Ordinance, unless the Town Manager recommends use of formal bidding procedures.

**4.5.6.3** Formal bidding procedures shall be followed by the Town Manager in all other cases when competitive bidding is required by this Ordinance.

**4.5.6.4** The Town Manager may make cooperative purchases without competitive bidding if the Town Manager determines the purchase is being made after competitive bidding by the cooperative entity or at price more advantageous than the Town would be likely to obtain through competitive bidding.

**4.5.6.5** The Town Manager may waive the requirements for competitive bidding, with the approval of the Board of Selectmen, for purchases in cases of emergency or when the purchase is inappropriate for competitive bidding due to the nature of the item, time constraints or other factors, provided that the Town Manager shall file a full and complete statement of the reasons for waiving competitive bidding.

**4.5.7 Procedure for Formal Bidding.** The procedure for formal bidding shall be as follows:

**4.5.7.1 Invitation for Bids.**

The Town Manager shall prepare the invitation for bids, describing the Town's requirements clearly, accurately and completely, but avoiding unnecessarily restrictive specifications or requirements that might unduly limit the number of bidders. The term "invitation for bids" means the complete assembly of related (whether attached or incorporated by reference) materials furnished prospective bidders for the purpose of submitting sealed bids. The Town Manager shall determine that the requirements of the Town are clearly and accurately and completely stated within the invitation to bid. Every invitation to bid shall note that all purchases are subject to the conditions set forth in Section 4.5.9 hereof.

**4.5.7.2** The Town Manager shall publicize the invitation for bids through distribution to prospective bidders, posting on the bulletin board at Town Offices and in the office of the department(s) involved, advertising in a newspaper with local and/or regional circulation, or such other means as the Town Manager determines is appropriate at least ten calendar days prior to the time set for public opening of sealed bids.

**4.5.7.3** Bidder(s) shall submit sealed bids to the Town prior to the date and time specified for the opening of bids. Late bids shall not be accepted and no bidder shall be permitted to withdraw a bid after the deadline for bids specified in the invitation to bidders.

**4.5.7.4** Bids shall be publicly opened at the time and place specified in the invitation to bid. A contract shall be awarded to the responsible bidder whose bid conforms to the invitation to bid and will be the most advantageous to the Town. Award may be delayed pending verification of a bidder's credentials and references or review of the bids received.

**4.5.7.5** Nothing in this Ordinance shall preclude the Town from rejecting any and all bids as provided in Section 4.5.9.

**4.5.8 Procedure for Informal Bidding.**

The procedure for informal bidding shall be as follows:

**4.5.8.1** The Town Manger shall solicit competitive bids either by notice communicated to vendors, posting on appropriate Town bulletin boards, or by advertisement in a newspaper(s) having at least local circulation. The notice shall contain specifications as to quantity and quality required, the availability of bid packages or other details, and the date and time when bids must be

received. Any solicitation or advertisement shall note that all purchases are subject to the conditions set forth in Section 4.5.9.

**4.5.8.2** All bids shall quote delivered prices, terms of payment and cash discounts if applicable. If oral quotations are accepted, the Town Manager shall make a written record of the quotation. The person from whom the quote is received, and the date and time the quote is received by the Town shall be recorded.

**4.5.8.3** The Town Manager shall attempt to solicit at least three vendors on every purchase subject to informal bidding procedures. If fewer than three bids are received, or if in the opinion of the Department Head or the Town Manager no bids are acceptable, re-bidding may be required.

**4.5.8.4** In all cases the bid most advantageous to the Town, in terms of price, quality, and other factors being considered, shall be awarded.

**4.5.9 Administrative Procedures and Conditions.** Competitive bids shall be administered by the Town Manager and shall be subject to the following conditions:

**4.5.9.1** The Town Manager shall keep a record of all bids submitted and such records shall be opened to public inspection.

**4.5.9.2** All bidders shall be notified of bid results within ten days after the bids are opened.

**4.5.9.3** Tie bids shall be resolved by the Board of Selectmen.

**4.5.9.4** All bids shall be awarded on the basis of the bid most advantageous to the Town.

**4.5.9.5** The Town reserves the right to accept or reject any or all bids, to investigate the qualifications of any bidder, and to waive or not waive any and all informalities in the bids when making an award.

**4.5.9.6** If an award is made to other than the low bidder, the Town Manager shall file with the Board of Selectmen a full and complete statement of the reasons for determining that the low bid was not the bid most advantageous to the Town, together with all papers relating to the bidding process.

**4.5.9.7** The Town shall retain custody of all bids submitted to the Town pursuant to this Ordinance.

**4.5.10 Duties of Department Heads.** In order to assist in advantageous and expeditious purchasing for the Town, Department Heads shall:

**4.5.10.1** Determine acceptable quality of commodities and supplies to be purchased.

**4.5.10.2** Cooperate with the Town Manager in establishing lists of specifications and vendors.

**4.5.10.3** Be empowered to reject any unacceptable supply or commodity on the grounds of high cost or low quality, and provide the Town Manager a detailed report of any rejection.

## **4.6 General Welfare/Assistance**

**4.6.1** One of the principal purposes of establishing a town government is to do for its citizens that which they cannot do for themselves. The general welfare of the population has, since the founding of the Town in 1764, been well provided for by the Board of Selectmen, but is now directed and controlled by State law. As, however, the protection of the welfare of all citizens is a prime purpose of the adoption of this Administrative Code, the Town Manager is hereby authorized to:

1. Coordinate and cooperate with all local, state and national institutions to secure aid for townspeople in need;
2. To join with local churches and other local charities to pool information and funding in order to eliminate redundancy and promote efficiency;
3. To take all other actions as directed by the Board of Selectmen to promote the general welfare of the citizens of the Town.

**4.6.2 Responsibilities:** State law mandates that every municipality shall administer a General Assistance program (22 M.R.S.A. § 4305(1)). The Board of Selectmen must adopt an ordinance (after notice and hearing) that establishes written standards including the amount of assistance to be provided, as defined by State criteria. These standards are to be employed in making eligibility determinations (22 M.R.S.A. § 4305(3)). Within thirty (30) days of enactment the ordinance must be filed with the Department of Human Services. If the Town amends any part of its General Assistance Ordinance (including the adoption of new yearly maximums), only the amendment or notice thereof needs to be filed with the Department within thirty (30) days of enactment (22 M.R.S.A. § 4305(4)).

## **SECTION 5. PUBLIC ORDER**

### **5.1. PUBLIC HEALTH AND SAFETY ORDINANCE**

**5.1.1** The Town ordains that all existing Maine State laws relating to Public Health shall be applicable as well as these Ordinances. The Health Officer is authorized to prosecute violations of Sections 5.1.2, 5.1.3 and 5.1.4 of this Ordinance.

**5.1.2** The Health Officer is hereby authorized to have removed, at the expense of the owners of the property, any pile of garbage, refuse or waste matter that is dangerous to health or that gives off offensive odors or which might cause the breeding of flies or vermin, accumulated on any property which, after reasonable notice, has not been removed.

**5.1.3** It is the right of the Town to make inspection of all places wherein food or beverages are sold or served to confirm that they are in accordance with Title 22 of the M.R.S.A. and to Town regulations that may be adopted by the Board of Selectmen from time to time, as it sees fit and in accordance with state law.

**5.1.4** No house that is in such a dilapidated condition or state of filthiness or uncleanness as to endanger the health or life of any person that occupies it, or that is not furnished with a safe water supply or with toilet facilities, shall be used as a dwelling, or rented for that purpose. The Board of Selectmen, pursuant to 17 M.R.S.A. §#2851 et seq., may seek the advice of the Code Enforcement Officer and Health Officer to determine if conditions are dangerous to health, safety or life. The Board of Selectmen may then declare the building unfit for human habitation and take appropriate action.

#### **5.1.5 Licenses Generally**

**5.1.5.1 Licensing authority.** To the extent practical, licensing procedures should be uniform and consistent with the protection of the public health, safety and welfare. To that end, all licenses shall be issued, denied, suspended or revoked by the Town Manager or his/her designee except as expressly provided in these General Ordinances or by State law.

**5.1.5.2 Applications.** An applicant for a license must file with the Town Manager or his/her designee a sworn application in writing, on a form to be furnished by the Town Manager or designee. Each application submitted shall state the following information:

- (1) Name and description of the applicant.
- (2) Address (legal and local) of the applicant.
- (3) A brief description of the license desired.
- (4) The location to be used in conjunction with the license (if applicable).
- (5) The nature of the business or use for which the license is desired.
- (6) Name of Employer (if other than applicant).
- (7) Vehicle to be used (if any) (description and license #).
- (8) A recent photo of the applicant (within sixty (60) days).
- (9) The date of the application.

(10) Any other information as may be deemed necessary or useful by the Town Manager or his/her designee in determining whether such license applied for should be issued.

### **5.1.5.3 Fees.**

**5.1.5.3.1 Application Fee.** The license application fee for each type of license shall be in such amount as specified in the Boothbay Fee Schedule, as established by order of the Board of Selectmen and as amended by the Board of Selectmen from time to time.

**5.1.5.3.2 Renewal Fee.** The license renewal fee for each type of license shall be in such amount as specified in the Boothbay Fee Schedule, as established by order of the Board of Selectmen and as amended by the Board of Selectmen from time to time.

**5.1.5.3.3 Late Fee.** An additional fee shall be charged for the issuance of any license more than 30 days after the expiration of the holder's prior license, unless the application for renewal license was filed prior to such expiration. The late fee for each type of license shall be in such amount as specified in the Boothbay Fee Schedule, as established by order of the Board of Selectmen and as amended by the Board of Selectmen from time to time.

**5.1.5.4 Standards for Denial, Suspension and Revocation.** In addition to any other specific provision of these General Ordinances or State law authorizing such action, a license may be denied, suspended or revoked upon a determination of the existence of one (1) or more of the following grounds:

- (1) Failure to fully complete the application forms; knowingly making an incorrect statement of a material nature on such form; or failure to supply any additional documentation required or reasonably necessary to determine whether such license is issuable, or failure to pay any fee required hereunder; or
- (2) The licensed activity, or persons on the premises for the purpose of participating in the licensed activity, or persons patronizing the licensed device have caused one (1) or more breaches of the peace; or
- (3) There is a clear danger that a breach of the peace will occur if the licensed activity is permitted; or
- (4) The licensed activity or persons patronizing the licensed premises will substantially and adversely affect the peace and quiet of the neighborhood, whether or not residential, or any substantial portion thereof; or
- (5) The licensee has violated any provision of these General Ordinances in the course of the conduct of the activity or device for

which the license or licenses have been applied for, or have been issued; or

- (6) The occurrence of any event subsequent to issuance of the license which event would have been a basis for denial of the license shall be grounds for revocation thereof; or
- (7) The applicant's or licensee's real or personal property taxes, or final judgments due and payable to the Town, are determined to be in arrears as of the date of the license or application; or that real or personal property taxes or final judgments due and payable to the Town on account of the premises for which application has been made or a license issued have not been paid in full as of the date of the license or application.
- (8) Violation of any of the terms and conditions of the license.

#### **5.1.5.5 Appeals.**

**5.1.5.5.1 Procedure.** An appeal to the Board of Selectmen may be taken by any person aggrieved by the denial, suspension or revocation of a license by the Town Manager or his/her designee by filing a notice of appeal and the prescribed fee with the Board of Selectmen within thirty (30) days of the decision appealed from, and not thereafter. Every appeal shall be in writing and shall state the basis for the appeal. The Board of Selectmen shall hear the appeal within thirty (30) days after the filing of the appeal and may affirm, reverse or modify the decision appealed from. The taking of an appeal shall not stay a decision appealed from, except that at the request of the licensee, the Town Manager or his/her designee may stay the effective date of a suspension, revocation or denial of a renewal license upon a finding that the public is not likely to suffer any harm during the pendency of the appeal. In such case, the Town Manager or his/her designee shall make a written finding of his or her decision in this regard and shall notify the appellant.

**5.1.5.5.2 Scope of Review.** On appeal, the Board of Selectmen shall review the decision of the Town Manager or his/her designee and any disciplinary action taken pursuant thereto to determine whether the decision was based upon substantial evidence and the disciplinary action taken was proportionate to the violation. The Board of Selectmen may take additional evidence with respect to such decision or action, and if additional testimony or evidence is taken, shall determine the appeal upon all of the evidence.

**5.1.5.5.3 Appeal to the Superior Court.** Any person aggrieved by a decision of the Board of Selectmen on appeal may appeal therefrom to the Superior Court in accordance with the provisions of Maine Rule of Civil Procedure 80B.

### **5.1.5.6 License Not Transferable.**

**5.1.5.6.1** No license shall be transferred to any person, to any location, or to any other vehicle or device, and no license fee shall be refunded if the licensed activity is ceased prior to the expiration of the license. All purported transfers not in accordance with this section are void. A license shall be deemed the subject of an attempted transfer whenever there is a change in actual ownership interest. Upon any such event, the licensee shall immediately surrender the license to the Town Manager or his/her designee; except that, in the case of death, bankruptcy or receivership of any licensee, the duly appointed executor or administrator of the deceased licensee or the duly appointed trustee or receiver of the bankrupted licensee or licensee receivership may retain the license and operate under the same for the benefit of the estate with the written permission and approval of the Town Manager or his/her designee until such time as such operation is no longer needed to benefit the estate. Thereafter, such personal representatives, receivers, or trustees shall either return the license to the Town Manager or his/her designee or transfer the same to any other person, under order of the court having jurisdiction and upon written notice to the Town Manager or designee. In the interim, between the death of the licensee and the appointment of an executor or administrator, or in cases where no administration of the estate of a deceased licensee is contemplated, the widow or widower or person designated by all of the heirs of the deceased licensee may take over the license upon written notice of the Town Manager or his/her designee. Duly appointed and qualified guardians and conservators of the estate of a licensee may retain the license of their ward during the term of office upon written notice to the Town Manager or his/her designee.

**5.1.5.6.2** In all cases arising out of this section in which the Town Manager or his/her designee is required to determine the identity or composition of or ownership interests in an applicant or licensee, or to determine whether a transfer of an ownership interest in an applicant or licensee has taken place, he or she shall look to the substance rather than the form of transactions and any person aggrieved may appeal the Town Manager or his/her designee's determination to the Board of Selectmen.

**5.1.5.6.3** *Actual ownership interest* shall mean and include any legal or equitable interest in either the licensed firm, corporation, partnership or other entity, or the assets of that entity that are the subject matter of the license, other than any mortgage or security interest created solely as security for valuable consideration. In the case of stock in a corporation, the term shall be limited to those

persons who individually or collectively have an interest in more than one-half of the voting shares of the corporation. In the case of a limited partnership, the term shall not include ownership of limited partnership shares.

#### **5.1.5.7 Inspections.**

**5.1.5.7.1** A licensee must allow access to the licensed premises to any Town official authorized to determine compliance with federal, state or local law at any reasonable time, including any time that access is allowed to the public.

**5.1.5.7.2** A violation of this section is grounds for license nonrenewal, suspension, or revocation, in addition to any other penalties authorized by this Administrative Code.

**5.1.5.8 Violations.** In addition to any action that may be taken by the Town Manager or his/her designee or the Board of Selectmen with respect to the suspension or revocation of a license, violation of this section, or of any licensing provisions of the Town governed by this Administrative Code, or of any rule made pursuant thereto, shall be a civil violation subject to the penalties specified in the Boothbay Fee Schedule, as established by order of the Board of Selectmen and as amended by the Board of Selectmen from time to time.

**5.1.5.9 Display of License.** Every license shall be exhibited in a conspicuous place on the premises, device or vehicle at all times that the premises, device or vehicle is open to the public.

#### **5.1.6 Street Vendors and Street Goods Vendors.**

**5.1.6.1 Definitions.** For purposes of this section, the following definitions shall apply:

FARM RELATED PRODUCTS shall mean any agricultural, horticultural, forest or other product of the soil or water, including, without limitation, fruits, vegetables, eggs, dairy products, meat and meat products, poultry and poultry products, grain and grain products, honey, nuts, maple syrup, apple cider and fruit juice.

MARINE RELATED PRODUCTS shall mean any fish and fish products, edible sea plants or other agricultural items derived from the sea, seafood, shellfish, and sea salts.

STREET GOODS VENDOR means a person who sells, demonstrates, distributes samples of or solicits or takes orders for goods other than food or beverages.

STREET VENDING means selling or offering to sell, displaying for sale, demonstrating, distributing samples of, or soliciting or taking orders for, any food, beverages, goods or services in any street, way or public place.

STREET VENDOR means a person who sells, demonstrates, distributes samples of or solicits or takes orders for food or beverages.

STREET, WAY OR PUBLIC PLACE means any public right-of-way, street, sidewalk, alley or path; and any park, playground or other Town-owned or Town-controlled property, or any portion thereof, which is open for use by the public as a matter of right.

#### **5.1.6.2 License Required.**

**5.1.6.2.1** All street vendors conducting business on any street, way or public place must have a license issued by the Town Clerk as provided in this section. Any license issued pursuant to this section shall expire on December 31 immediately following issuance of the license.

**5.1.6.2.2** A street vendor's license may be issued under this section only for the sale of food (including farm related products and marine related products), and shall be in addition to any other license, permit or authority required by law.

**5.1.6.2.3** No street goods vendors may operate on any street, way or public place without a license and only during such times as set forth herein.

**5.1.6.2.4** In addition to the information required by Section 5.1.5.2, each application for a street vendor's or street goods vendor's license shall include a specific description of the business, the goods or services to be sold, and the equipment, if any, to be used, including a reasonable estimate of the value thereof.

**5.1.6.2.5** No street vendor's license shall be issued without the applicant first filing with the Town Clerk a certificate, in a form satisfactory to the Town Attorney, evidencing public liability insurance coverage in an amount not less than the maximum liability of the Town under applicable law and naming the Town as an additional insured. The certificate shall also provide for notice to the Town Clerk not less than thirty (30) days prior to any cancellation of insurance, which insurance the licensee shall maintain at all times while engaged in street vending.

**5.1.6.2.6 Exceptions for License Required.** No street vendor's license shall be required for the following:

- (1) Conducting business on Town-owned property pursuant to a lease, contract, or other agreement with the Town;

- (2) Transporting goods or passengers for hire;
- (3) Providing emergency medical or motor vehicle services;
- (4) Advertising only, on a motor vehicle; or
- (5) Persons selling solely for the benefit of a bona fide nonprofit organization.

### **5.1.6.3 Conditions of Operation.**

**5.1.6.3.1 Area of Operation.** A licensed street vendor may operate in any zoning district of the Town where such use is a permitted or conditional use as defined in the Zoning Ordinance.

### **5.1.6.3.2 Conduct of Operations.**

- (1) Every licensed street vendor shall wear a numbered badge issued by the Town Clerk.
- (2) Every licensed street vendor shall operate only from a pushcart that conforms to all applicable rules or regulations promulgated under this section.
- (3) Every licensed street vendor that is also a mobile food service establishment shall provide waste paper receptacles for use by customers, and shall maintain the immediate area free of litter generated by them.
- (4) No licensed street vendor shall sell any goods or services, or use any equipment not specifically authorized by the license, operate in any manner that would constitute an unfair or deceptive trade practice under State law, or make any noise in violation of Section 5.1.12, Noise Ordinance, of the Administrative Code.
- (5) No street vendor shall engage in street vending between the hours of 10:00 p.m. and 8:00 a.m.

### **5.1.6.4 Prohibited Operations.**

**5.1.6.4.1** No street vendor shall operate on any street, way or public place without a license.

**5.1.6.4.2** No street goods vendor shall operate on any street, way or public place except during a festival or event declared pursuant to Section 5.1.6.5.

**5.1.6.4.3** No vendor other than a licensed street vendor as defined in this section shall operate on any street, way or public place.

**5.1.6.4.4** No street vendor shall operate:

- (1) Within any area designated by the Board of Selectmen for a street festival or other special event except as authorized by the Board of Selectmen;
- (2) On any Town-owned property without a lease, contract, or other agreement with the Town;

- (3) Within sixty-five (65) feet of any other licensed street vendor, except for festivals approved pursuant to Section 5.1.7.5;
- (4) On any sidewalk less than eight (8) feet in width or in any other location so as to impede the free passage of vehicles or pedestrians, obstruct the entrance to or exit from private property, jeopardize the public safety, or otherwise inconvenience the public; or
- (5) Between the hours of 10:00 p.m. and 8:00 a.m. of the succeeding day.

#### **5.1.6.5 Declaration of Festivals.**

**5.1.6.5.1** The Board of Selectmen may designate an area for a street festival or other special event. In the event of such Festival designation, street and goods vendors shall be required to obtain the permission of the Festival organizer to conduct business within the Festival area. A Town license issued to the Festival Organizer shall apply to all permitted vendors.

**5.1.6.5.2** The Festival organizer shall be required to defend, indemnify and hold the Town harmless from any claims resulting from Festival activities.

**5.1.6.5.3** The Festival organizer shall be required to provide proof of general liability insurance, naming the Town of Boothbay as additional insured thereon in the minimum amount of not less than the maximum liability of the Town under applicable law.

**5.1.6.5.4** The Festival organizer shall obtain a license from the Town, pursuant to Section 5.1.6, and any other applicable Zoning Ordinance provisions for all installations, structures, or objects placed within the public way for all street vendors conducting business within the Festival zone. Any license issued pursuant to this subsection shall be a per-event license and shall expire upon the conclusion of the Festival.

**5.1.6.6 Rules Promulgated by Board of Selectmen.** The Board of Selectmen is authorized to make reasonable written rules and regulations, not inconsistent with this section, governing the design, construction and location of pushcarts.

**5.1.6.7 General Licensing Provisions to Apply.** All provisions of Section 5.1.5 shall be additional to the provisions of this section.

#### **5.1.7 Mobile Food Service Establishments.**

**5.1.7.1 Definitions.** For purposes of this section, the following definitions shall apply:

*Mobile food service establishment* shall mean and include only a food service establishment capable of movement over public and private ways that has all utilities and facilities contained within the unit regardless of whether it needs

an outside power source or not; that has no fixed location for the operation or transaction of business; and that is moved from one location to a different location not less frequently than once every twelve (12) hours in any twenty-four (24) hour period in order to serve persons otherwise present at such locations at such times. Mobile food service establishments include, but are not limited to, pushcarts, food vending trucks and ice cream trucks.

**5.1.7.2 License Required.** No person shall operate a mobile food service establishment within the Town without a license from the Town Manager or his/her designee. Any license issued pursuant to this section shall expire on December 31 immediately following issuance of the license.

**5.1.7.3 Application.** An applicant for a mobile food service establishment license shall, in addition to the information required under Section 5.1.5.2, submit the following information to the Town Manager or his/her designee:

- (1) A plan for water supply;
- (2) A plan for the cleaning of the establishment at least daily;
- (3) A plan for waste disposal;
- (4) A plan for disposal of liquid waste, which shall not be allowed to run into the ground; and
- (5) A plan for the provision of restrooms for employees.

**5.1.7.4 General Licensing Provisions to Apply.** All provisions of Section 5.1.5 shall be additional to the provisions of this section.

## **5.1.8 Transient Sales.**

**5.1.8.1 License Required.** No person shall engage in transient sales of consumer merchandise or services within the Town without a license from the Town Manager or his/her designee. Any license issued pursuant to this section shall expire on December 31 immediately following issuance of the license.

**5.1.8.2 State License Required.** Obtaining and maintaining a transient seller's license for the State by the applicant or licensee shall be a condition precedent to the issuance or maintenance of a license under this section.

**5.1.8.3 General Licensing Provisions to Apply.** All provisions of Section 5.1.5 shall be additional to the provisions of this section.

**5.1.9 Yard Sales** - Yard sales shall be regulated in the following manner:

### **5.1.9.1 Performance Standards**

- (a) A yard sale may occur for three (3) or fewer consecutive days without obtaining a permit.
- (b) A yard sale may occur over a period of four (4) to seven (7) days if a permit has been issued by the Code Enforcement Officer.

- (c) Each household shall be allowed only four (4) yard sale events during a calendar year, regardless of whether each event required a permit.
- (d) No items shall be placed in the right-of-way or in such manner as to obstruct vehicles on the right-of-way.
- (e) An attempt shall be made to provide off-street parking for all patrons.

**5.1.9.2** Any yard sales in excess of the standards will be considered retail sales and the standards for that use in the Zoning Ordinance Land Use Table shall apply.

**5.1.10 Fireworks** – ~~No fireworks or other devices of a pyrotechnic nature shall be discharged within the confines of the Town except in public displays conducted in complete accordance with state law.~~

**5.1.11 Obstruction of Public Ways** - No person shall play with a kite, or at any game of ball, or throw any object, nor shall they skate, roll or slide in, across or along any public way in such a way that travelers might be injured or annoyed, whether such travelers shall be actually passing or not, except as may be specifically provided for by the Town.

**5.1.12 Nudity** - No person shall swim, bathe or sunbathe in the nude in any place exposed to public view.

**5.1.13 Noise** - The purpose of this Ordinance is to protect, preserve and promote the health, safety, welfare and quality of life of the citizens of Boothbay through the reduction, control and prevention of excessive noise. In addition to 29-A M.R.S.A. §§ 1912, 2079, 2079-A, as may be amended from time to time (regarding motor vehicles); 12 M.R.S.A. § 13068, as may be amended from time to time (regarding watercraft); 12 M.R.S.A. § 13070, as may be amended from time to time (regarding airmobiles); 12 M.R.S.A. § 13106, as may be amended from time to time (regarding snowmobiles); and 12 M.R.S.A. § 13157, as may be amended from time to time (regarding ATVs), the following shall apply:

**5.1.13.1 - Definitions:**

**UNREASONABLE NOISE** shall mean any excessive or unusually loud sound that either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of a reasonable person of normal sensibilities within the Town. Elements to be considered in determining whether noise is excessive in a given situation include, but are not limited to, the following: intensity of the noise, whether the noise is usual or unusual, whether the origin of the noise is natural or unnatural, the intensity of the ambient noise, the proximity of the noise to sleeping facilities, the zoning district within which the noise emanates, the time of the day or night the noise occurs, the duration of the noise, whether the noise is continuous or intermittent, and

whether alternate methods are available to achieve the objectives of the sound producing activity.

**PERSON** shall mean any individual, firm, partnership, association, syndicate, company, trust, corporation, municipality, agency or political, administrative or legal entity of any kind.

**PLAINLY AUDIBLE** shall mean any sound that can be detected by a person using his or her unaided hearing faculties. For example, if the sound source under investigation is a portable or personal vehicular sound amplification or reproduction device, the enforcement officer need not determine the title of a song, specific words, or the artist performing the song. The detection of the rhythmic base component of the music is sufficient to constitute a plainly audible sound.

**5.1.13.2 – General Prohibitions.** No person or persons shall make, cause to be made, assist in making or continue any excessive, unnecessary or unreasonable noise or disturbance, or any noise or disturbance that disturbs, destroys, or endangers the comfort, health, peace, or safety of others within the immediate vicinity of the noise or disturbance, especially between the hours of 9:00 PM and 7:00 AM.

**5.1.13.3 – Specific Prohibitions.** The commission of one or more of the following acts shall be deemed a violation of this Ordinance and shall be considered a noise disturbance and public nuisance, provided that the instrument, devices, vehicles or other noise source is plainly audible from (a) the property line of the premises from which the noise emanates if the noise is from a fixed location; or (b) a distance of fifty feet (50') from the building, structure, location or vehicle from which the noise emanates, whichever distance is greater:

**(1) Horns and Signaling Devices.** The repeated sounding of any horn or signal on any automobile, motorcycle or other vehicle except as a danger warning; the creation, by means of any other signaling device, of any unreasonable loud or harsh sound; and the sounding of any such device for unnecessary and/or unreasonable periods of time.

**(2) Mobile, Portable or Outdoor Electronic Sound-producing Devices.** The playing or use of a mobile, portable or outdoor electronic sound-producing device in such a manner or with such volume at any time and place as to disturb, destroy or endanger the comfort, repose or peace of persons.

**(3) Radios, Musical Instruments and Phonographs.** The playing, using or operating of any radio, musical instrument, or other machine or device for the production or reproduction of sound in such a manner as to disturb the peace, quiet, comfort or repose of any other persons in the vicinity with a volume louder than is necessary for the reasonably convenient hearing for

the person or persons or voluntary listeners thereto who are in the immediate vicinity, vehicle or chamber in which such machine or device is operated between the hours of 9:00 PM and 7:00 AM or at any time so as to annoy or disturb the quiet, comfort or repose of any persons located within or upon the premises of any office, dwelling, hotel or other type of residence or business.

- (4) **Vocal disturbances.** Yelling, shouting, singing, hooting and whistling between the hours of 9:00 PM and 7:00 AM or at any time so as to annoy or disturb the quiet, comfort or repose of any persons located within or upon the premises of any office, dwelling, hotel or other type of residence or business.
- (5) **Vehicular Noise.** Vehicles used, operated, or revved in such a manner as to create loud and unnecessary noise that is audible above background sounds and that disturbs the peace and quiet of others.
- (6) **Exhaust.** The discharge into the open air of the exhaust of any steam engine, internal combustion engine, motorboat, or motor vehicle, except through a muffler or other device that will effectively prevent loud or explosive noises therefrom.
- (7) **Parties and Other Social Events.** It shall be unlawful for any person in charge of a party or other social event to allow that party or event to produce unreasonable noise. A person shall be deemed to be in charge of a party or social event when that event occurs on private property and the person is present at the event and resides on the premises involved or is a person who lives in or on the premises involved and who has authorized the use of the premises for such event.

**5.1.13.4** – The following shall be considered exempt from this Ordinance:

- (1) Any person who has obtained a Special Sound Permit from the Town.
- (2) All signaling devices, safety signals and warning devices required by state, federal, or local law; all signaling devices, safety signals and warning devices installed pursuant to manufacturer's specifications; or any other device used to alert persons to any emergency or used during the conduct of emergency work including, but not limited to, police, fire and medical/rescue vehicle sirens.
- (3) Any vehicle owned by and operated by federal, state or local government or a utility in the performance of its duties.
- (4) Any government or utility emergency repair.
- (5) Noise associated with a bona fide response to an emergency situation that poses a threat to the public health, safety or welfare.
- (6) Musical, recreational and athletic events conducted by and on the site of a school or municipal facility.
- (7) Equipment for maintenance of lawns and grounds during the hours of 7:00 A.M. to 9:00 P.M. (including, but not limited to, lawn mowers, hedge trimmers, weed trimmers, chain saws and leaf-blowers).
- (8) Noise associated with routine snow removal activities where customary practices and equipment are used and where the snow removal

equipment is operated within the manufacturer's specifications and in proper operating condition.

- (9) Any activity or conduct, the regulation of which has been preempted by federal or state law.

**5.1.13.5 Special Sound Permits** – Any person may apply to the Town Manager for a Special Sound Permit to authorize the production or generation of noise that would otherwise be in violation of this Ordinance prior to engaging in such activity. Any request for such a permit must be made at least forty-eight (48) hours before the time the intended noise-producing activity will commence. The Town Manager or his designee has the authority to grant or deny a Special Sound Permit, but the decision shall be made subject to the following standards:

1. The activity producing the noise must be an event that occurs infrequently on the premises for which the Special Sound Permit is requested.
2. The applicant may not receive more than two (2) Special Sound Permits for any particular premises in any twenty-eight (28) day period.
3. Reasonable conditions may be imposed on the Special Sound Permit.

**5.1.13.5.1 Appeal of Denial of Special Sound Permit** – An applicant may appeal the denial of a Special Sound Permit to the Board of Selectmen. Such an appeal must be filed within ten (10) days of the denial of the permit. The Board of Selectmen shall conduct an administrative hearing on the appeal. In the event such an appeal is not satisfactorily resolved before the Board of Selectmen, the applicant may appeal the Board of Selectmen's decision to Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure.

**5.1.13.6 Violations** – A violation of this Ordinance shall be a civil violation.

**5.1.13.7 Enforcement.** – Any municipal officer or their designee or any sworn law enforcement officer who is a member of the Maine State Police or the Lincoln County Sheriff's Office may issue a civil violation complaint, in the same manner as would be the case with a parking violation, to the individual responsible for any such device emitting sound in violation of this Ordinance, including the driver of a motor vehicle, or the registered owner of the vehicle, the owner of record of a residence, the proprietor of a business or the person who is in physical control of the device responsible for the unreasonable or excessive noise. Actions shall be prosecuted in Maine District Court located in Wiscasset in accordance with Rule 80H of the Maine Rules of Civil Procedure.

**5.1.13.8 Penalties.** – For any first violation of this Ordinance, there shall be imposed a civil fine or penalty in such amount as specified in the Boothbay

Fee Schedule, as established by order of the Board of Selectmen and as amended by the Board of Selectmen from time to time. Each subsequent violation within a two (2) year period from the date of the first violation shall carry with it a civil fine or penalty of double the prior penalty. A violation-free period of two (2) years shall return the penalty to the minimum.

**5.1.13.8.1-** In addition to civil penalties for any violation hereof, the District Court shall require the violator to pay the Town's reasonable attorney's fees and costs incurred in connection with prosecution of the enforcement action.

**5.1.13.9 Waiver Fee.** – A person charged with a violation of this Ordinance may admit the violation and avoid the necessity of further legal action by payment of a waiver fee to the Town in the amount of the minimum fine for the violation; provided, however, that the violation(s) alleged in the civil violation complaint shall be deemed admitted for the purpose of assessing any future penalties under this section. Upon receipt of such payment to the Town, the Town shall cause the complaint to be dismissed. Failure to pay the waiver fee within seven (7) days from the date of issuance of the complaint shall result in further enforcement action, including, without limitation, liability for the full amount of the fine for the violation and any other appropriate relief.

## **5.2 ANIMAL CONTROL ORDINANCE**

**5.2.1** – The purpose of this Ordinance is to require that all animals in the Town be kept under the control of their owner at all times so that they will not injure persons or other animals, damage property or create a public health threat or nuisance, pursuant to 7 M.R.S.A. § 3952.

The provisions of this Ordinance that apply to the owner of an animal apply equally to any person keeping, or having control, custody, or possession of that animal.

### **5.2.2 – Definitions:**

**ABANDONED ANIMAL:** an animal that has been deserted by its owner or keeper.

**ANIMAL:** every living, sentient creature not a human being.

**ANIMAL CONTROL:** control of domesticated or undomesticated animals.

**ANIMAL CONTROL OFFICER:** any person appointed by the Town to enforce animal control laws.

**ANIMAL SHELTER:** a facility that includes a physical structure, or part of a physical structure, that provides temporary or permanent shelter to stray, abandoned, abused or owner-surrendered animals.

**AT-LARGE:** off the premises of the owner and not under the control of any person whose personal presence and attention would reasonably control the conduct of the animal.

**BEACH:** any beach area within the Town that is used by the general public.

**Dog:** any of large and varied groups of domesticated animals in the canine family.

**OWNER:** any person or persons, firm, association or corporation owning, keeping or harboring an animal or any person having custody, possession, or control of an animal.

**5.2.3 – Animal Control Officer:** A State-certified person(s) shall be employed by the Town who shall be known as and perform the duties of Animal Control Officer. The Animal Control Officer(s) shall be principally responsible for the enforcement of all laws related to domestic animals that pose a threat to public health and safety, controlling undomesticated animals in matters on which no other department or agency is charged by law to regulate, taking a stray animal to its owner or to an animal shelter, and ensuring that any injured animal that is at-large or in a public way is given proper medical attention. The Animal Control Officer(s) shall also have authority to deal with cases of dangerous dogs, animal trespass, and cruelty to animals, and shall be required to respond to reports of animals suspected of having rabies.

**5.2.4 – At-Large Dogs:** It is unlawful for any dog, licensed or unlicensed, to be at-large, except when used for permitted hunting. The owner of any dog found at large shall be subject to the civil penalties provided in 7 M.R.S.A. § 3915.

**5.2.5 – Impoundment or Return of At-Large Dogs:** All dogs found at-large in violation of 7 M.R.S.A. § 3911 may be impounded at the animal shelter or returned to the owner, at the discretion of the Animal Control Officer(s). If the Animal Control Officer(s) returns the dog to its owner, the owner shall pay a Return Fee as described in 7 M.R.S.A. § 3915 to the Town, which shall issue a receipt, before the dog is returned.

**5.2.6 – Animal Noise:**

- (1) Except as provided in subparagraphs (2) and (3) below, no owner shall permit or allow any animal to bark, howl or make other sound common to its species if such sounds recur in steady, rapid succession for 20 (twenty) minutes or more or to recur intermittently for one hour or more. Violators of this regulation shall be subject to fine as specified in the Boothbay Fee Schedule, as established by order of the Board of Selectmen and as amended by the Board of Selectmen from time to time.
- (2) Subparagraph (1) above shall not apply if any animal is provoked by trespassing people or animals on private property on which the animal is situated or by other legitimate cause for provocation.
- (3) Subparagraph (1) above shall not apply to farm animals kept on property the principal use of which is the production of farm products, or to commercial kennels.

**5.2.7 – Control of Animal Waste:** An owner must remove and dispose of any feces left by his/her animal on any sidewalk, street, beach, public property or private

property (other than the property of the owner of the animal or of a person who has consented to the presence of the animal on his or her property) and deposit such feces into an appropriate litter receptacle. An owner whose animal is present on any property from which the animal's feces is required to be removed pursuant to this section must have in his or her possession a plastic bag or similar utensil for collecting and removing the feces. This regulation shall not apply to any person who, by reason of physical handicap, is unable to comply with the requirement. Violators of this regulation shall be subject to fine as specified in the Boothbay Fee Schedule, as established by order of the Board of Selectmen and as amended by the Board of Selectmen from time to time.

**5.2.8 – Tags and Stickers:** No dog shall be kept within the limits of the Town unless such dog is licensed by its owner in accordance with Maine law (7 M.R.S.A. § 3701). The owner shall make sure that the tag is securely attached to the dog's collar and that collar must be worn at all times by the dog except when on the premises of the owner or off the premises of the owner when hunting, in training, or in an exhibition (7 M.R.S.A. § 3923-B). In that case, the owner shall produce proof of license within 24 (twenty-four) hours upon request by the Animal Control Officer(s). If the tag is lost, the owner shall obtain a new license and tag. The Town shall issue the same upon presentation of the original license document and the payment of a Recording Fee as specified in the Boothbay Fee Schedule, as established by order of the Board of Selectmen and as amended by the Board of Selectmen from time to time.

**5.2.8.1 – Rabies Tags:** Rabies tags obtained from a veterinarian attesting to immunization against rabies must be secured to a dog's collar and that collar must be worn at all times by the dog except as described in this section. In that case, the owner shall produce proof of license within twenty-four (24) hours upon request by the Animal Control Officer(s).

**5.2.9 - Violations and Penalties:** Any person who violates these Animal Control Ordinances shall be subject to a civil fine or penalty for each violation. The fine for a violation of State law shall be as set forth in State law, and the fine for a violation of local law shall be as State statutes 7 M.R.S.A. §§ 3913, 3915, 3924, and 3952 define state penalties, and shall be as specified in the Boothbay Fee Schedule, as established by order of the Board of Selectmen and as amended by the Board of Selectmen from time to time.

Except as otherwise provided by law, all civil penalties collected pursuant to this Ordinance shall be recovered for the use of the Town and deposited in a separate account as required by 7 M.R.S.A. § 3945.

**5.2.10 - Waiver Fee.** – A person charged with a violation of this Ordinance may admit the violation and avoid the necessity of further legal action by payment of a waiver fee to the Town in the amount of the minimum fine for the violation; provided, however, that the violation(s) alleged in the civil violation complaint

shall be deemed admitted for the purpose of assessing any future penalties under this section. Upon receipt of such payment to the Town, the Town shall cause the complaint to be dismissed. Failure to pay the waiver fee within seven (7) days from the date of issuance of the complaint shall result in further enforcement action, including, without limitation, liability for the full amount of the fine for the violation and any other appropriate relief.

### **5.3 PUBLIC STREETS AND TRAFFIC ORDINANCE**

**5.3.1 – Traffic Laws:** The Town adopts Title 29-A of the M.R.S.A. with the same force and effect as though set out in full herein as the official municipal ordinance for the operation of vehicles in the Town. Enforcement of Sections 5.3.1 through 5.3.6 shall be the Road Commissioner or any sworn law enforcement officer who is a member of the Maine State Police or the Lincoln County Sheriff's Office.

**5.3.2 –** The Board of Selectmen shall have the authority to locate stop signs on Town public ways and to make streets one-way in the Town, except as otherwise provided by law.

**5.3.3 -** Drivers of a vehicle on the approach of an emergency-responder vehicle showing a flashing red or blue light shall pull said vehicle to the right curb as soon as possible, and slow to a stop.

**5.3.4 -** No vehicle shall trail, follow or approach closer than two-hundred feet (200') any emergency vehicle going to or attending an emergency.

**5.3.5 -** No vehicle shall obstruct or impede traffic in any unreasonable manner on the public ways in the Town.

**5.3.6 –** No obstructions may be placed or caused to be placed within the legal right of way of any public way in the Town unless approved by the Road Commissioner.

**5.3.6.1 – Mailbox Replacement:** The Town will not be responsible for damage to any mailbox or mailbox post that is in the public right of way. The Town will not replace or repair damaged mailboxes in the right of way.

#### **5.3.7 – Road Openings:**

No person shall dig up any part of any street, highway, or town way, without first obtaining permission from the Road Commissioner, as set forth in 23 M.R.S.A. §§ 3351-3360-A. All openings in the streets and sidewalks made under such permit shall be opened and refilled under the supervision of the Road Commissioner and all expenses charged to the parties asking for such an opening. No road openings will be allowed for five (5) years after paving, except in emergency as determined by the Road Commissioner, with appeal to the

Board of Selectmen. For good cause shown, the Board of Selectmen may reverse or modify the decision of the Road Commissioner.

**5.3.7.1** – All utilities placed under public ways in the Town must be “sleeved” (run through a larger pipe) to facilitate repairs without opening the road.

**5.3.7.2** – Any person, persons, partnership, firm or corporation violating the above Ordinance shall be punishable by a fine as specified in the Boothbay Fee Schedule, as established by the Board of Selectmen and as amended by the Board of Selectmen from time to time.

**5.3.8 - Parking Ordinance:** The Board of Selectmen has the power to enact parking regulations, pursuant to 30-A M.R.S.A. § 3009, as it deems necessary. A copy of any Parking Ordinance shall be kept on file at the Town Clerk’s office.

**5.3.9 - Bicycles:** Every person riding a bicycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by the laws of this State declaring rules of the road applicable except as to those that by their nature can have no application.

**5.3.9.1** – Pursuant to 29-A M.R.S.A. § 2323, any person under 16 years of age who is an operator or a passenger on a bicycle on a public roadway or a public bikeway shall wear a helmet of good fit, positioned properly, and fastened securely upon the head by helmet straps.

**5.3.10 – Street Acceptance Ordinance:** The following ordinance is written for the purpose of setting minimum standards for streets and public ways that are to be considered by Town meeting for acceptance as public ways.

**5.3.10.1** – No street or way that does not conform to the specifications in the Zoning Ordinance shall be laid out and accepted by Town meeting as a public street or way, unless the same shall have been actually constructed and used for public travel prior to the adoption of this Ordinance.

**5.3.10.2** - Compliance with the conditions and specifications set forth in the Zoning Ordinance will render a street or way constructed on private land by the owners thereof eligible for consideration by Town meeting for laying out and acceptance as a street or public way for the use of the Town.

**5.3.10.3** – The public benefit of any road will be important in the determination of its acceptance by Town meeting.

**5.3.10.4** – No road shall be accepted by Town meeting after November 1<sup>st</sup> or before May 1<sup>st</sup> of any given year.

**5.3.11 – Entrance to Town Ways (Driveways):** Property owners must apply to the Road Commissioner or his/her designee for a permit to construct any driveway accessing a Town Way. For any driveway accessing State Aid Roads, a permit should instead be obtained from the Maine Department of Transportation (MDOT). Guidelines for locating a driveway entrance are set forth in the “Guidelines for Locating your New Residential Driveway,” dated May 2004, as may be amended from time to time by the Board of Selectmen following a recommendation from the Road Commissioner.

#### **5.4. EMERGENCY SERVICES ORDINANCE**

**5.4.1 – Emergency Management:** The Board of Selectmen shall appoint a Director of Emergency Management to develop plans for and to facilitate cooperation in the work of disaster prevention, preparedness, response and recovery in the Town.

**5.4.1.1 -** The Director shall serve as the Town’s liaison to the Lincoln County and Maine Emergency Management Agencies.

**5.4.1.2 –** The Director shall be appointed for a term of one (1) year and may be reappointed for indefinite one (1) year terms.

**5.4.1.3 –** The Director shall provide to the Fire Chief an Annual Report of the Department’s operations with a complete inventory of the Department’s equipment and recommendations for the future.

**5.4.2 – Emergency Medical Services:** The Board of Selectmen shall provide for the delivery of State of Maine licensed Emergency Medical Services for the Town on a 7 days per week, 24 hour per day basis.

**5.4.2.1 –** The Board of Selectmen shall require the provider of Emergency Medical Services to furnish an Annual Report of its operations.

**5.4.3 – Fire Department:** The Board of Selectmen shall maintain a Fire Department to extinguish fires and to provide emergency services in the Town.

**5.4.3.1 - Life Safety Code:**

**5.4.3.1.1 -** The Town adopts the current edition of the National Fire Protection Association Code NFPA 101 Life Safety Code published by the National Fire Protection Association with the same force and effect as though set out in full herein as the official Life Safety Code of the Town.

**5.4.3.1.2 –** The penalty for violating the provisions of said Life Safety Code, in addition to injunctive relief, shall be a fine as provided for by 30-A M.R.S.A. § 4452, as may be amended from time to time. Each day

during which a violation of said Life Safety Code continues shall constitute a separate violation.

**5.4.3.2** – The Fire Department shall consist of a Fire Chief, two Assistant Fire Chiefs, and as many firefighters as deemed necessary to perform the functions of the Department.

**5.4.3.3** – The Fire Chief shall have full and complete charge of the personnel, equipment, and facilities used by the Fire Department.

**5.4.3.4** – The Fire Chief will provide to the Board of Selectmen an Annual Report of the Department's operations with an inventory of the Department's equipment and recommendations for the future.

**5.4.3.5** – The Board of Selectmen and the Fire Chief shall insure that the Fire Department complies with State law in effect for municipal fire protection including, but not limited to, Title 26, Chapter 28 of the M.R.S.A. (Minimum Safety Standards for Firefighters) and Title 30-A, Chapter 153 of the M.R.S.A. (Municipal Fire Protection).

**5.4.3.6** – The Fire Chief, subject to approval of the Board of Selectmen, is authorized to establish "Mutual Aid" or "Cooperative" agreements with other fire departments on behalf of the Town.

#### **5.4.4 – Fire Alarms**

**5.4.4.1 – Definitions.** - For the purpose of this ordinance, the following terms used herein shall be interpreted as follows:

**FIRE ALARM SYSTEM** – a system, including any mechanism, equipment or device, designed to automatically transmit or cause the transmission of a signal, message or warning from a private facility (i.e. residential or commercial) to the Lincoln County Communication Center or its successor, or to cause the activation of an audible device whose purpose or result is to obtain emergency response by the Town Fire Department.

**NON-EMERGENCY ALARM** – signals transmitted by an alarm system as a result of human error or equipment malfunction.

**OWNER** – any person or persons, firm, association, or corporation owning, renting, in possession of, in control of, or occupying a residence, building or structure equipped with an alarm system as defined in this section.

#### **5.4.4.2 – Alarms.**

**5.4.4.2.1 - Response by Fire Department:** Upon notification of an alarm message or signal from an alarm system, the Fire Department will be dispatched to the scene to take appropriate action. If the premises in which the alarm system is installed appears secure and there is no evidence to indicate that there is an emergency situation requiring the

presence or action of the Fire Department, the Town's obligation to the owner shall have been discharged and the Lincoln County Communications Center or its successor shall be notified of this determination.

**5.4.4.2.2 - Transmission of Non-Emergency Alarms.**

- a) **Assessment of Forfeitures.** – Any owner whose system causes transmission of a non-emergency alarm more than three (3) times in any one calendar year period shall be assessed a cash forfeiture as described in the Boothbay Fee Schedule, as established by order of the Board of Selectmen and as amended by the Board of Selectmen from time to time, for each instance of a non-emergency alarm in excess of three such alarms in any one calendar year.
  
- b) **Disconnection of the System.** – Any owner whose system causes the transmission of two or more non-emergency alarms within a forty-eight (48) hour period shall, upon request of the Fire Chief or an Assistant Fire Chief, immediately disconnect the system and shall not reconnect the system until it has been inspected and repaired. Notice of inspection and repair shall be provided to the Boothbay Fire Department prior to reconnection of the system.

## **5.5. ADDRESSING ORDINANCE**

**5.5.1 - Purpose of Ordinance.** - The purpose of this Ordinance is to enhance the easy and rapid location of properties by law enforcement, fire, rescue, and medical service personnel in the Town.

**5.5.2 – Authority.** - This Ordinance is pursuant to and consistent with the municipal home rule process as provided for in 30-A M.R.S.A. § 3001.

**5.5.3 – Administration.** - The Code Enforcement Officer (CEO) shall administer this Ordinance. The CEO shall assign road names and numbers to all properties on both existing and proposed roads, in accordance with the criteria in Sections 5.5.4 and 5.5.5 of this Ordinance. The CEO shall be responsible for maintaining the following records under this Ordinance:

- a) A town map for official use showing road names and numbers.
- b) An alphabetized list of all property owners as identified by assessment records, showing the assigned numbers.
- c) An alphabetical list of all roads with property owners listed in order of their assigned numbers.
- d) All appropriate state records and forms.

**5.5.4 - Naming System.** - All roads that serve two or more properties shall be named regardless of whether the ownership is public or private. For the purposes of the Addressing Ordinance, the following definitions shall apply: "ROAD" refers to any highway, road, street, avenue, lane, private way, or similar paved, gravel, or dirt thoroughfare. "PROPERTY" refers to any property on which a permanent structure has been erected or could be placed. A road name assigned by the Town, or its representatives, shall not constitute or imply acceptance of the road as a public way.

The following criteria shall govern the naming of roads:

- a) No two roads shall have the same name (e.g. Pine Road and Pine Lane).
- b) No two roads shall have similar sounding names (e.g. Beech Street and Peach Street).
- c) Each road shall have the same name throughout its entire length.

**5.5.5 - Numbering System.** - Numbers shall be assigned every fifty (50) feet along both sides of the road, with even numbers appearing on the left side of the road and odd numbers appearing on the right side of the road, ascending from the number origin.

The following criteria shall govern the numbering system:

- a) All number origins shall begin from North to South and West to East. For dead-end roads, numbering shall originate at the intersection of the adjacent road and terminate at the dead end.
- b) The number assigned to each structure shall be that of the numbered interval falling closest to the front door of said structure, or the driveway of said structure if the front door cannot be seen from the main road.
- c) Every structure with more than one principle use or occupancy shall have a separate number for each use or occupancy. For example, duplexes will have two separate numbers.
- d) Apartments will have one property number followed by an apartment number (i.e. 235 Maple Street, Apt. 2.)

**5.5.6 – Compliance.** - All owners of structures shall display and maintain in a conspicuous place their assigned numbers.

The following criteria shall govern the location, color and size of numbers:

- a) Structure Numbers. Where the structure is within fifty (50) feet of the edge of the road right-of-way, the assigned number shall be displayed on the front of the structure in the area of the front door or entry.
- b) Street Numbers. Where the structure is over fifty (50) feet from the edge of the road, the assigned number shall be displayed on a post, fence, mailbox (if immediately adjacent to the driveway), or the nearest structure to the property.
- c) Size and Color of Numbers. Numbers shall be a minimum of 4 inches high and of a contrasting color to its background.

- d) Every person whose duty it is to display the assigned number shall remove any numbers that might be mistaken for, or confused with, the assigned number.
- e) Inside Locations. All residents and other occupants are encouraged to post their assigned number and road name next to their telephone for emergency reference.

**5.5.7 - New Developments and Subdivisions.** - All new construction and subdivisions shall be named and numbered in accordance with the following provisions:

- a) New Construction. Whenever any residence or other principal structure is constructed, it shall be the duty of the new owner to get an assigned number from the CEO at the time of issuance of the building permit
- b) New Subdivisions. All developers shall show a proposed road name and lot numbering system on the final plat plan submission to the Planning Board.

Approval by the Planning Board after consultation with the CEO shall constitute the assignment of road names and numbers to the lots in the subdivision. On the final plan showing proposed roads, the applicant shall mark the center of the streets every fifty (50) feet, using lines and dots, so as to aid in the assignment of numbers to future structures.

**5.5.8 - Effective Date.** - It shall be the duty of the CEO to notify by mail each property owner and the Post Office of their new address at least sixty (60) days prior to the effective date of their use. It shall be the duty of each property owner to post the new numbers in accordance with this Ordinance, on the stated date of effective use. For new structures, numbering will be installed prior to final inspection or when the structure is first used or occupied, whichever comes first

**5.5.9 - Enforcement and Penalties.** - Violation of any of the provisions of this Ordinance shall be deemed civil violations. Any person or persons, firm or corporation owning or having control of any building or premises or other persons, such as subcontractors, who assist in the violation of this Ordinance shall be guilty of a civil violation, and upon adjudication thereof shall be fined as specified in the Boothbay Fee Schedule, as established by order of the Board of Selectmen and as amended by the Board of Selectmen from time to time. The CEO, acting in accordance with his/her duties and responsibilities, shall serve written notice on the owner(s), or others assisting, of such violation or violations. If the violation is not corrected or abated within thirty (30) days of notification, the Board of Selectmen shall authorize and direct any and all actions seeking injunctions of violations and impositions of fines that may be appropriate or necessary to enforce the provisions of this Ordinance.

**5.5.10 - Conflicts with Other Ordinances.** - This Ordinance shall in no way impair or remove the necessity of compliance with any other rule, regulation, bylaw,

permit or provision of law. Where this Ordinance imposes a greater restriction upon the use of land, buildings or structures, the provisions of this Ordinance shall prevail.

**5.5.11 - Appeals Process:** Appeals of any person aggrieved by a decision, act, or failure to act by the CEO as it relates to the implementation and enforcement of the Ordinance shall be to the Board of Selectmen.

## **5.6 FIREARMS ORDINANCE**

**5.6.1** - All laws pertaining to firearms regulation in the State of Maine (25 M.R.S.A. §2011) shall apply in the Town.

**5.6.2** - Applications for concealed weapons permits must be made to the State Police.

## **5.7 PUBLIC WORKS ORDINANCE**

**5.7.1** – There shall be a Department of Public Works, the head of which shall be the Public Works Foreman, who shall be appointed by the Town Manager/Road Commissioner with ratification by the Board of Selectmen, and who shall be under the supervision of the Town Manager/Road Commissioner. The number of employees shall be determined by, and each such employee shall be appointed by the Town Manager, except as s/he may delegate such power to the Public Works Foreman.

**5.7.2** – The Road Commissioner shall direct the maintenance of public ways in the Town in accordance with the Maine Roads Center Guide, as published by the Maine Dept of Transportation and as may be amended from time to time.

**5.7.3** - The Road Commissioner shall, in addition to the duties required of him or her by law by 23 M.R.S.A § 2701 and § 3201, treat the public ways of the Town whenever conditions warrant.

## **5.8 SOLID WASTE ORDINANCE**

**5.8.1** – The Town is a member of the Boothbay Region Refuse Disposal District. All refuse disposal within the Town shall be governed by the rules and regulations of the Boothbay Region Refuse Disposal District.

**5.8.2** No person may operate on any public way in the Town a vehicle containing solid or liquid waste unless the vehicle's load is covered or otherwise secured or

confined to prevent any portion of the load from falling, blowing, or spilling out of the vehicle, as provided by state law, 17 M.R.S.A. §§ 2263-A and 2264, as may be amended from time to time. Should any materials escape from the vehicle, the driver shall take immediate steps to retrieve that material and shall be held responsible for cleaning up any residual debris.

**5.8.2.1** Any person violating this provision shall be considered to have committed a civil violation, punishable by a fine as specified in the Boothbay Fee Schedule, as established by order of the Board of Selectmen and as amended by the Board of Selectmen from time to time, plus costs for the first violation, not more than twice that fee plus costs for the second violation, and not more than four times the initial fee plus costs for the third offense and each separate violation of the same nature thereafter within a 12 month period, which fines shall be recovered on complaint for the use of the Town.

**5.8.3 Recycling** – Recycling is required to the extent mandated by the Boothbay Region Refuse Disposal District recycling regulations.

## **5.9 UTILITIES ORDINANCE**

**5.9.1** The purpose of this Ordinance is to provide for Town regulation and use of community systems, including all aspects of their construction, installation, and operation, and any additions or extensions thereto in the Town; and to provide rules, regulations, and conditions for the granting of franchises for the construction, installation, maintenance, and operation of such systems in the Town, in the best interests of the Town and its citizens.

**5.9.2** All utilities placed under public ways in the Town must be “sleeved” (run through a larger pipe) to facilitate repairs without opening the road.

**5.9.3 Water:** The supply of public water in Boothbay is provided by the Boothbay Region Water District (BRWD) the successor in interest of the former East Boothbay Water District and the Boothbay Harbor Water District. The enabling legislation for the Boothbay Region Water District is defined in Chapter 15, Maine Private and Special Laws of 2001 and as amended from time to time. The district is further regulated by the Maine Public Utilities Commission.

**5.9.4 Sewer:** The service of public sewer is provided by the Boothbay Harbor Sewer District, and provides public sewer services to the Town of Boothbay. The enabling legislation of the Boothbay Harbor Sewer District is set forth in Chapter 161 of the Maine Private and Special Laws of 1961 and as amended from time to time.

**5.9.5 Community System Oversight Boards:** Should the Board of Selectmen deem it advisable, the Board of Selectmen may appoint a committee for each Community System of no fewer than three (3) and no more than seven (7)

residents of the Town to form Oversight Boards. The term of office of a member shall be three (3) years except for initial appointments, which shall be staggered with at least one member for three (3) years, one member for two (2) years, and one member for one (1) year.

## **5.10 USE OF TOWN LAND ORDINANCE**

**5.10.1** - The purpose of this Ordinance is to regulate the use of and set forth the conditions applicable to the types of use and the signs that are allowed on Boothbay Town Land. The Board of Selectmen is authorized to make any reasonable written rules and regulations, not inconsistent with this section, for the use of Town Land.

### **5.10.2 Conditions and Requirements:**

- a) No camping is allowed on Town Lands at any time, except with specific written permission of the Board of Selectmen.
- b) No vehicles shall be allowed on the grassed areas of Town Lands without permission, which may be granted by the Town Manager for a vehicle that will provide specific service for an event.
- c) The use of Town Land is permitted from 9:00 AM. to sunset. Other hours may be allowed by special permit from the Town Manager.
- d) Special event organizers shall be required to provide proof of general liability insurance, naming the Town of Boothbay as additional insured thereon in the minimum amount of not less than the maximum liability of the Town under applicable law.
- e) Trash facilities must be maintained by the event sponsors. The rental of a dumpster is recommended and all trash container must be emptied after the event.
- f) Traffic and parking control will be required for events, as directed by the Town Manager. This includes but is not limited to traffic flow control and crossing guards, and overflow areas. Signage for overflow parking may be required.
- g) A deposit as specified in the Boothbay Fee Schedule as established by order of the Board of Selectmen and as amended by the Board of Selectmen from time to time, will be required for all events and will be refunded if the Town Land is left as originally found.
- h) Except as otherwise provided by law, signs are not allowed on the Common or other Town Lands without the completion of an application and approval of the Town Manager.
- i) No paint-ball or similar propelled-projectile activity shall be permitted on Town Land without permission of the Town Manager.
- j) The Town Manager may attach additional restrictions to the use of Town Land to ensure that the proposed activity does not impact day to day operations of the Town, events sponsored by the Town, the health and

safety of participants and the general public, and the protection of Town Land.

- k) In order to preserve the natural beauty and environment of Town land and to protect the Town's investment in the same, the Town reserves the right to prohibit the use of Town Land at any time when the public interest so requires.

**5.10.3** When deemed by the Board of Selectmen to be in the best interest of the Town, the Board of Selectmen may waive any of the above conditions or requirements for the use of Town Land.

## **SECTION 6 CABLE TELEVISION ORDINANCE**

### **6-1 Purpose.**

The purpose of this chapter is to regulate the establishment and operation of multi-channel video and cable television service in the Town of Boothbay, Maine (the "Town") for the safety, convenience and general welfare of the public and to provide the procedures and conditions accompanying the application for and grant of Cable Television Franchise Agreements (CTFA), including the renewal of existing franchising agreements.

### **6-2 Franchise agreement required**

No person, firm or corporation may construct, install, maintain or operate a multi-channel video and cable television system in the town without first obtaining a cable television franchise agreement from the town selectmen, authorizing the use of public streets and areas and establishing a framework for delivery of multi-channel video and cable television service, and without maintaining said franchise agreement in full force and effect.

### **6-3 Application for Franchise Agreement.**

1. In order to obtain a new or renewal CTFA to establish or operate a cable television system in the Town, the applicant shall first submit an application to the town clerk which meets the requirements of this section.
2. Each applicant for a franchise agreement, including each applicant for renewal of an existing franchise agreement, shall cover the costs to the town including but not limited to the placement of public notices, advertising, and other expenses relating to, or incurred by the town, in acting upon such applications, and all legal and consulting fees and expenses. The town selectmen shall oversee the amount of these expenses as set forth in the Town's Fee Schedule.
3. Any application for a cable television franchise or renewal of a franchise must contain the following information:
  - a. The name, address, telephone number and e-mail address of the applicant and the applicant's local manager or other primary contact with the town;

- b. A detailed statement of the corporate or other business organization of the applicant, included but not limited to, the following:
  - i. The names, residence and business addresses of all officers and directors of the applicant, and all employees of the applicant who will have management-level responsibility of the cable system serving the town;
  - ii. The names, residence and business addresses of all officers, persons and entities having, controlling or being entitled to have or control 1% or more of the ownership of the applicant and each parent or subsidiary of the applicant and the respective ownership share of each such person or entity;
  - iii. The names and addresses of any parent or subsidiary of the applicant and any other business entity owning or controlling the applicant in whole or in part or owned or controlled in whole or in part by the applicant, and a statement of the nature of any such parent or subsidiary business entity, including but not limited to multi-channel video and cable television service owned or controlled by the applicant, its parent and subsidiary and the areas served thereby;
  - iv. A detailed description of all previous experience of the applicant in providing cable television service and in any other related fields such as telecommunications or information services;
  - v. A detailed and complete financial statement of the applicant, its parents and its subsidiaries, prepared by a certified public accountant, for the fiscal year next preceding the date of the application hereunder, or a letter or other acceptable evidence in writing from a recognized lending institution or funding source, addressed to both the applicant and the Town Selectmen, setting forth the basis for a study performed by such lending institution or funding source to prove whatever capital shall be required by the applicant to construct and operate the proposed system in the Town; and
  - vi. A statement identifying, by place and date, any other cable television franchise(s) awarded to the applicant, its parent or subsidiary, the status of said franchise(s) with respect to completion thereof; the total cost of completion of such system(s); and the amount of the applicant's and its parents or subsidiaries resources committed to the completion thereof;
- c. A detailed description of the applicant's plan for operating the cable system serving the Town, including, but not limited to, the following:
  - i. A detailed map indicating all areas being served and additional areas proposed to be served, and a proposed construction time schedule for the installation of said equipment necessary to become operational throughout the entire area to be served, and the time of commencement of construction and anticipated operation date;

- ii. A statement or schedule setting forth all proposed rates and charges to be made to each classification of subscribers, including installation charges, service charges, equipment rental charges and any deposit requirements;
    - iii. A detailed statement describing the actual equipment and operational standards proposed by the applicant. In no event shall said operational and performance standards be less than those contained in Title 47 C.F.R. Subpart K (§ 76.601, et seq.)<sup>i</sup>, of the Rules and Regulations of the Federal Communications Commission, as amended in the future; and
    - iv. A copy of the form of any proposed or standard agreement between the applicant and any subscriber;
  - d. A detailed and complete statement describing the design of the cable system serving, or proposed to serve, the Town. Such statement shall include system architecture, channel capacity, channel uses, access, programming facilities, studio location, point to point service, two-way service, subscriber privacy, and interconnection; and
  - e. Such other information as the Town may require at the time of the franchise application.
4. Prior to issuing a request for proposals to any cable television company or companies for initial or renewal franchise agreements, the Town shall hold a public hearing or conduct some other process to determine any special local needs or interests with respect to cable television service and shall allow for a period of public comment on the request for proposals.
5. Franchise agreement applications, including renewal applications and any submittals in response to a request for proposals or solicitation of bids and related documents, are public records. Upon filing of such documents, the Town shall provide reasonable notice to the public that such documents are open to public inspection during reasonable hours.
6. A franchise agreement may be revoked by the Town Selectmen for good and sufficient cause after due notice has been given to the cable operator and a public hearing thereon, with the sole right to appeal to the Lincoln County Superior Court pursuant to Rule 80B of the Maine Rules of Civil Procedure.
7. Before authorizing the issuance of any franchise agreement, including franchise renewals, and approvals of any transfers of ownership, property or rights under franchise agreements, the Town Selectmen shall review the applicant's character, financial and technical qualifications and the adequacy and feasibility of its qualifications to operate a multi-channel video and cable television system within the Town, and shall conduct a public hearing thereon. Such public hearing shall provide a reasonable opportunity for public input on the proposed franchise agreement, renewal or transfer. Before doing so, the Town shall publish a notice in a newspaper having general circulation in the Town at least seven (7) days before the hearing advising the name and address of the proposed franchisee, the fact that the Town will consider entering into an initial or renewal franchise agreement or transfer, and the time and place of the hearing.

#### **6-4 Issuance of Franchise Agreements.**

The Town shall enter into non-exclusive franchise agreements for not more than ten (10) years with those applicants that the Town finds are best able to establish and operate multi-channel video and cable television service in the Town on terms that are most favorable to the Town and its residents. Each franchisee shall provide the Town with a performance bond in the sum of not less than fifty thousand dollars (\$50,000) to ensure the franchisee's performance of its obligations under the franchise agreement.

Each franchise agreement between the Town and any multi-channel video and cable television provider shall contain the following:

1. A statement of the area or areas to be served by the provider;
2. A line extension policy;
3. A provision for renewal;
4. Procedures for the investigation and resolution of subscriber complaints by the provider;
5. An agreement to comply with the requirements of 30-A M.R.S.A. Section 3010 regarding consumer rights and protection and any amendments thereto;
6. Provisions for access to, and facilities to make use of local public, educational and governmental (PEG) access channels;
7. A provision authorizing the Town to conduct an annual performance evaluation hearing between May 15 and September 15, with one or more representative(s) from the franchisee with authority to address all provisions in the agreement in attendance, in order to evaluate the cable operator's compliance with obligations under the franchise agreement, to hear public input, to consider new technologies and services applicable to cable service and to hear from the cable operator;
8. Provisions for Maine-based (and preferentially Boothbay peninsula based) customer service;
9. Provisions for payments to the Town or other entities, including but not limited to, franchise fees and capital grants; and
10. Any other terms and conditions that are in the best interest of the Town.

#### **6-5 Establishment of New Multi-Channel Video and Cable Television Service.**

1. In the case of a franchise agreement for a new multi-channel video and cable television system, as soon as the franchise agreement has been executed, the cable franchisee shall:
  - a. Apply to the Federal Communications Commission for any required authorization to receive and transmit local and distant signals and to operate the cable system;
  - b. After the authorization has been granted, prepare the necessary engineering surveys, plans, and specifications in conformity with state and local laws;
  - c. After plans and specifications have been approved by state and local officials, prepare and execute any necessary pole contracts to permit alteration of poles so as to accept the necessary cables; and

- d. Install the cable system distribution plant in the Town in accordance with a time schedule to be submitted by the cable franchisee and approved by the Town Selectmen.
2. Until the system is in operation in the Town, the cable franchisee shall report its progress to the Town Selectmen at least every three (3) months. Should the cable franchisee fail to make all reasonable efforts to establish the system and put it into operation, or fail to comply with the requirements set forth in Section 6-5(1) above, the Town Selectmen shall, after notice and hearing, revoke the franchise agreement, and the cable franchisee shall forfeit the proceeds of the performance bond to the Town. In making this determination, the Town Selectmen shall take into consideration those matters beyond the control of the cable franchisee including delays caused by federal, state or local governmental agency, or by any public utility.

#### **6-6 Installation of Service.**

Each cable franchisee shall install and maintain the cable system in a workmanlike manner using only those materials and methods of installation, which are accepted in the industry as being safe and suitable to the purpose for which they were designed.

#### **6-7 Public Liability Insurance.**

Each cable franchisee shall carry all-risk public liability insurance with limits of at least seven million dollars (\$7,000,000) per occurrence and seven million dollars (\$7,000,000) in the aggregate, for bodily injury, personal injury, death or property damage, which coverage may be supplied by a combination of primary and excess policy limits. Each cable franchisee shall furnish the Town with, and keep current, a certificate of insurance that indicates compliance with this section.

#### **6-8 Type and Scope of System.**

Each Cable Franchisee shall:

1. Install and maintain at least an eighty-channel cable system designed to receive and transmit color television programming;
2. Provide for reception and transmission of the multi-channel video and cable television service and radio broadcast signals required by the Federal Communications Commission;
3. Provide public, educational and governmental (PEG) access channels as required by the terms of the franchise agreement; and
4. Provide leased channels and channels utilized for other non-broadcast purposes as are required by the Federal Communications Commission.

#### **6-9 Hours of Operation.**

Each cable franchisee shall keep the cable system serving the Town in operation twenty-four (24) hours per day, seven (7) days per week.

#### **6-10 Non-Duplication of Programming.**

Each cable franchisee shall provide for non-duplication of programs and program exclusivity as required by the rules of the Federal Communications Commission.

#### **6-11 Annual Statement and Manager's Report to Selectmen.**

Annually, within ninety (90) days after the end of the cable franchisee's fiscal year, but within the timetable allowing for an annual review as set forth in 6-4-(7) of this Ordinance, each cable franchisee shall file with the Town Manager an annual statement for the Town's franchise area including but not limited to a balance sheet, a profit and loss statement, an updated map of the service area, and all other information required by the terms of the franchise agreement. The report will be made available to the general public for comments and suggestions. The Town Manager, or his or her designee, shall then provide a summary of both the franchisee's report and public input to the Selectmen regarding the status of each cable franchise agreement and the quality of service issues.

#### **6-12 Free Service to the Town.**

Each Cable franchisee shall provide free basic cable service and cable programming service including free installation and service drop to each school and municipal building in the Town. The Town shall pay for any costs of installation of internal wiring necessary to distribute the cable service within the interior of such buildings.

#### **6-13 Basic Service Tier Rates.**

The Town will follow FCC Rate Regulation<sup>ii</sup> in its regulation of the Basic Service Rates and Charges of any cable television system operating in the Town, notwithstanding any different or inconsistent provisions in the franchise.

1. In connection with such regulation, the Town will ensure a reasonable opportunity for consideration of the views and needs of interested parties, with preference given to senior and low-income households.
2. The Town Manager, or his or her designee, is authorized to research and execute on behalf of the Town and file with the FCC such certification forms or other instruments as are now or *may hereafter* be required by the FCC Rate Regulations in order to enable the Town to regulate basic service rates and charges.
3. The Town expects the Cable franchisee to offer rates equal to or better than rates offered to communities of like density, population and geography.

#### **6-14 Enforcement.**

Any cable operator in violation of any part of this ordinance shall be punished by fines as set forth in the Town's Fee Schedule. The Town selectmen may enforce this chapter

and any franchise agreement hereunder by seeking any available civil remedies, including injunctive relief as provided in 30-A M.R.S.A. § 3008(3) (E).

**6-15 Severability.**

Should any section of this ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this ordinance.

**6-16 Effective date.**

This chapter shall take effect immediately upon its adoption and shall apply to all cable television franchise agreements executed after adoption of this chapter.

- Notes:           <sup>i</sup> Subpart K Technical Standards  
                      <sup>ii</sup> Subpart N: Cable Rate Regulation

**SECTION 7.** [reserved for future use.]

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**II. SHELLFISH CONSERVATION ORDINANCE**

**III. HARBOR ORDINANCE**

**IV. FLOOD PLAIN MANAGEMENT ORDINANCE**

**V. ZONING ORDINANCE**

**VI. COMPREHENSIVE PLAN**

<sup>i</sup> Subpart K: Technical Standards

<sup>ii</sup> Subpart N: Cable Rate Regulation”