

**Introduced: 07/12/99**  
**Second Read: 08/02/99**  
**Public Hearing: 08/02/99**  
**Adopted: 08/02/99**

**ORDINANCE 99-08**  
***AN AMENDMENT TO THE ZONING ORDINANCE***  
***RELATING TO THE GROWTH MANAGEMENT***  
***ORDINANCE***

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***WHEREAS*** the Londonderry Planning Board has voted to amend the Zoning Ordinance of the Town of Londonderry to reflect certain changes; more specifically, to revise Section XIII - Growth Management and Innovative Land Use Control; and,

***WHEREAS*** the Londonderry Town Council is vested with the power to effect such changes to the Zoning Ordinance; and,

***NOW THEREFORE BE IT ORDAINED*** by the Town Council of the Town of Londonderry that the Zoning Ordinance of the Town of Londonderry, that amendments to Section XIII - Growth Management and Innovative Land use Control - Subsection 1305 - Planning Board Monitoring and Notification, and the addition of Subsection 1305.E as attached hereto is hereby adopted.

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Daniel J. Vecchione  
Chairman - Londonderry Town Council

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Joan M. Savina  
Town Clerk

(SEAL)

***A TRUE COPY ATTEST:***  
***08/02/99***

**TOWN OF LONDONDERRY, N.H.**  
**ZONING REGULATIONS**  
**REVISED 1999**

**Section XIII - (1301 -1303.B)**

**Chapter 1—ZONING ORDINANCE**

**SECTION XIII—GROWTH MANAGEMENT AND INNOVATIVE LAND USE CONTROL**

**1301 Authority**

The section is enacted in pursuant to RSA 674:21 and 674:22.

**1302 Purposes - The purposes of this section of the Zoning Ordinance are as follows:**

- A. Promote the development of an economically sound and environmentally stable community which considers and balances regional development needs.
- B. Guide efforts by the Town to monitor, evaluate, and establish a rate of residential growth in Londonderry that is consistent with the Town's capacity for planned, orderly, and sensible expansion of its services to accommodate such growth.
- C. Provide a temporary mechanism to allow for phased development of residential projects to manage the impact on municipal services.
- D. Provide a temporary mechanism when municipal services are strained or overloaded to reduce the rate of residential growth to allow the Town time to correct any deficiencies that have developed.
- E. Protect the health, safety, convenience, and general welfare of the Town's residents.
- F. This ordinance is grounded upon its correlation with the Master Plan and Capital Improvements Plans of the Town of Londonderry.

**1303 Findings - The Town hereby finds that:**

- A. Londonderry's developable land resources are still sufficient to support extensive growth. The 1997 Master Plan for the Town of Londonderry indicates there were 5,884 acres of available developable land in 1996.
- B. Housing demand has been and is projected to be large. The number of housing units in Londonderry increased 47% between 1980 and 1990, and grew another 8.3% from 1990 to 1995. Studies made for the Master Plan project another 40% increase from 1995 to 2010.

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**Section XIII - (1303.C - 1304)**

**Chapter 1—ZONING ORDINANCE**

**SECTION XIII—GROWTH MANAGEMENT AND INNOVATIVE LAND USE CONTROL**  
(Cont'd)

**1303 Findings - (Cont'd)**

- C. Londonderry population growth reflects housing growth, so has been and is projected to be large. Londonderry population increased at a compound annual rate of 2.5% over the 1980-95 period. Total population grew 46% between 1980 and 1990, and another 5.2% from 1990 to 1995. Projections of population growth to 2010 indicate average annual growth rates between 1995 and 2010 ranging from a low of 2.1% (Office of State Planning, 1997) to a high of 2.3% (Master Plan, 1997).
- D. Londonderry's population growth is large in relation to its region. Since 1960, Londonderry has been the fastest growing town in the Manchester Metropolitan Planning Study (MMPS) area. SNHPC's 1997 regional growth projections indicate a regional annual growth rate of 1.3% 1995-2010, compared with their Londonderry projection of 2.1%. The current growth rate of the United States is approximately 1.2% per year.
- E. Growth has placed heavy demands upon Town facilities, especially schools. Even after a 1996-97 \$10.6 million school building program, the school system in 1997 is at 89% of capacity utilizing portable classrooms. The School Board reports that without the use of portables, which do not accurately reflect the core capacity of the facilities, the School system is at 97% of capacity. The capacity utilizing portables follows:

North Elementary:	73%
South Elementary:	76%
Matthew Thornton:	86%
Middle School:	100%
High School:	100%

- F. The Town is straining to meet projected service and facility demands. For example, the Master Plan projects a continuing 2% per year pupil enrollment growth through 2010. The 1998-99 Capital Improvements program (CIP) includes a new \$12 million School Building Program in fiscal year 2002-2003. The Master Plan projects a 2.4% annual growth in local auto trip generation, certain to demand road improvements. Police and fire facilities, for which improvements are already sought, will be further strained by continuing rapid growth.

**1304 Periods of Unsustainable Growth**

Not later than March 1 of each year, the Planning Board shall determine whether or not "unsustainable growth conditions" shall be declared to exist from that time until the next annual determination. "Unsustainable growth conditions" exist when the preceding year's growth was unusually rapid by Londonderry norms, as indicated in §1304.A, and was also unusually rapid by regional norms, as indicated in §1304.B, and was also threatening to overtax the community's ability to provide services and facilities, as indicated in §1304.C.

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**Section XIII - (1304.A - 1304.C.3)**

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**SECTION XIII—GROWTH MANAGEMENT AND INNOVATIVE LAND USE CONTROL**  
(Cont'd)

**1304 Periods of Unsustainable Growth (Cont'd)**

**A. Unusually Rapid Growth per Londonderry Norms.**

Growth was unusually rapid by Londonderry norms if for the preceding calendar year the number of dwelling units authorized on building permits exceeded by one-third or more the average of such authorizations over the six years preceding that one.

**B. Unusually Rapid Growth Per Regional Norms.**

Growth was unusually rapid by regional norms if for the preceding calendar year the percentage increase in housing stock represented by the number of dwelling units authorized on building permits in Londonderry exceeded by one-third or more the projected average annual percentage increase in population for the SNHPC region, as most recently projected for the current decade by that Commission.

**C. Service and Facility Strain -** Growth threatens sustainability if any one of the following are true:

1. The number of pupils projected by the Londonderry School Board to be enrolled in the Londonderry School System in the sixth year of the current Capital Improvement Program would exceed the stated capacity of the Londonderry School System in that year, given continuation of residential development at the rate of the preceding year and facilities development as proposed in the Capital Improvement Program most recently approved by the Planning Board, or
2. The Planning Board has made a determination, based upon careful studies and consultation with the agencies involved, that the Town's capacity to service growth with public facilities other than schools, as planned in the six-year Capital Improvement Program most recently approved by the Planning Board, together with facilities anticipated to be provided by developers and others, would be exceeded if given continuation of residential development at the rate of the preceding year, or
3. The current year's combined municipal and school appropriations for capital expenditures, including debt service and capital outlay, will exceed 20% of the total municipal and school department appropriations combined for the current year.

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**Section XIII - (1305.A - 1305.E)**

**Chapter 1—ZONING ORDINANCE**

**SECTION XIII—GROWTH MANAGEMENT AND INNOVATIVE LAND USE CONTROL**  
(Cont'd)

**1305 Planning Board Monitoring and Notification -**

It shall be the responsibility of the Planning Board to monitor growth in the Town and region, assembling as soon as practicable following the end of the calendar year such information as is necessary for making the determination of whether unsustainable growth conditions exist, and if they do, determining the annual rate of development which, at maximum, could be sustained. *The Planning Board shall also monitor the progress of the Town and School District in providing services and facilities on the schedules called for in the Capital Improvement Program.*

- A. Hearing - Prior to making a final determination of sustainability and a sustainable annual rate of development, the Planning Board shall hold a public hearing with ten days notice to seek input from the public.
- B. Guidance - Determination of unsustainable growth conditions shall be made in accordance with the grounds specified in §1304. The "sustainable annual rate of development" shall be the largest number of housing units which could be authorized annually over each of the following six years and be likely to result in unsustainable growth conditions no longer prevailing by the end of that period.
- C. Notification - If the Planning Board determines that unsustainable growth conditions exist, it shall so notify the Town Council, the Building Inspector, the Town Clerk, and the general public by, among other things, posting a notice to that effect in Town Offices. That determination shall apply for a period of one year from the date of notice to the Town Council or, if sooner, until notification of a subsequent determination by the Planning Board under the provisions of §1305.
- D. Following years in which phasing and permit limitations are in effect, the Planning Board shall, in its annual monitoring of the rate of growth, determine the probable rate of unrestricted growth for the previous year according to applications for allocation certificates.
- E. *When the Planning Board determines, after notice and hearing as set forth in Subparagraph A, that the Town or School District has failed to implement the Capital Improvements Program with respect to certain service or facility demands that have created "unsustainable growth conditions," the Board shall declare that any resulting phasing or permit limitations are forthwith terminated. The Board shall give notice of such a determination in the manner provided in Subparagraph C.*

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**Section XIII - (1306.A - 1307)**

**Chapter 1—ZONING ORDINANCE**

**SECTION XIII—GROWTH MANAGEMENT AND INNOVATIVE LAND USE CONTROL**  
(Cont'd)

**1306 Phasing of Developments**

During periods when the Planning Board has given notice under §1305 that unsustainable growth conditions exist, the following shall apply:

**A. Phasing Required** - A phasing plan shall be submitted for Planning Board approval for all developments of more than fifteen (15) lots or dwelling units (unless exempted under §1309), and at the applicant's option may be submitted for smaller developments. Such plans shall result in no more than one-eighth of the total number of lots or dwelling units proposed in the development being authorized per year in that development or, if resulting in a smaller number than fifteen (15), the following.

1. For development either proposed under the provisions of Section 407 Planned Residential Development, or located in the R-III district: twenty five (25) dwelling units per year;
2. For other development proposed to be serviced with public sewerage, and proposing no dwelling structures within 200 feet of a street other than one created by that development: twenty (20) dwelling units per year;
3. For other developments: fifteen (15) dwelling units per year.

**B. Phasing and Permit Limitations** - Any permit limitations under the provisions of §1307 and §1308 shall apply in addition to phasing under §1306. Approval of a phasing plan limits the number of dwelling units eligible for building permits during a particular year but does not assure issuance of permits under §1308.

**C. Termination of Phasing** - The above constraints shall be removed if either (a) the Ordinance expires under the provisions of §1310, or (b) the Planning Board determines in its §1305 monitoring that there are no longer unsustainable growth conditions.

**1307 Limiting the Issuance of Permits**

The Planning Board's notice of unsustainable growth conditions shall include notice that limitations on the issuance of permits will be required during the period of such conditions, and notice of what the sustainable annual rate of development has been determined to be, and notice of how many building permits for new dwelling units will be allocated during said period.

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**Section XIII - (1308.A.1 - 1308.B.2)**

**Chapter 1—ZONING ORDINANCE**

**SECTION XIII—GROWTH MANAGEMENT AND INNOVATIVE LAND USE CONTROL**  
(Cont'd)

**1308 Procedures for Permit Limitations**

A. During a period of unsustainable growth, available building permits shall be allocated according to the following procedure:

1. Except as otherwise provided in Section XIII no building permit may be issued without an allocation certificate issued by the Planning Board. For purposes of this section, each proposed dwelling unit in a mobile home, single-family dwelling, two-family dwelling or multifamily dwelling, shall require a separate allocation certificate.

2. From March 1 through March 21, the Planning Board shall, on a form prepared by the Board, receive applications for allocation of building permits for the period.

3. Prior to April 1, allocation certificates shall be issued according to the following system:

a. First priority shall be given to lots which are exempt from the provisions of Section XIII under RSA 674:39 or RSA 676:12.

b. Second priority shall be given to lots from two-lot subdivisions; provided that no more than 10% of the available certificates may be allocated on this basis, and no more than one per subdivision.

c. Third, fourth, fifth and sixth priorities shall be given to lots which have earned four, three, two and one points, respectively, according to the system described in §1308.B.

d. When the number of allocation requests of a given priority exceeds the number of available allocation certificates, the certificates shall be allocated proportionately among the owners with applications of that priority, or to the extent proportionate allocation is impossible, by lottery.

B. For purposes of determining priority in the system of certificate allocation, development shall be awarded points according to the following:

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**Section XIII - (1308.B.3 - 1308.I)**

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**SECTION XIII—GROWTH MANAGEMENT AND INNOVATIVE LAND USE CONTROL**  
(Cont'd)

**1308 Procedures for Permit Limitations (Cont'd)**

- B. For purposes of determining priority...(Cont'd)
  - 1. For development authorized under either Section 407 Planned Residential Development or Section V Multi-Family Residential: one (1) point;
    - 2. For development proposed to be serviced with Town sewerage, and proposing no dwelling structures within 200 feet of a street other than one created by that development: one (1) point;
    - 3. For development proposing no construction within lands mapped as recommended open space on Map OS-3 of the Londonderry Master Plan and also not assessed under RSA 79-A Current Use Taxation at any time within the preceding three years: one (1) point;
    - 4. For development documented to increase traffic at build-out by no more than 10% on any existing street: one (1) point;
- C. If by April 1, allocation certificates have not been issued for all available building permits for the year, a second allocation process using the procedure set forth in §1308.A and B shall take place. The Planning Board shall receive applications from May 1 through May 21, and allocation certificates shall be issued prior to June 1. If necessary a third allocation process shall be held with applications received from August 1 through August 21 and certificates issued by September 1.
- D. The owners of the lots awarded allocation certificates for a given period may apply for building permits from the Building Department from April 1 through December 31. Any certificate for which a building permit is not applied for by December 31 shall lapse.
- E. Building permits which are not used within one year of issuance shall lapse.
- F. Lapsed allocation certificates and building permits may not be renewed if a notice of unsustainable growth remains in effect. In the case of such a lapsed certificate or permit, the number of certificates available for the following year shall be increased by one.
- G. An allocation certificate may be used for a building permit on any lot within the subdivision for which it was awarded but may not be used for lots outside that subdivision.
- H. Building permits for non-residential construction, or for expansion, alteration, renovation or replacement of existing dwelling units, are not limited by Section XIII.

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**Section XIII - (1309 - 1310)**

**Chapter 1—ZONING ORDINANCE**

**SECTION XIII—GROWTH MANAGEMENT AND INNOVATIVE LAND USE CONTROL**  
(Cont'd)

I. Nothing in Section XIII shall be construed to authorize or require issuance of a building permit that is not eligible for issuance under any other provision of law.

**1309 Exemptions from Phasing and Permit Limitations**

The Planning Board shall grant exemptions to the phasing requirements of §1306 and the Permit Limitations requirements of §1308 under the following conditions:

A. The proposed project has a substantial positive tax impact, i.e. the total revenues received by the town in taxes and fees must be at least 150% of the total cost of services provided by the Town and School Districts to the project and its inhabitants, with impact estimates to be based upon guidance materials to be provided annually by the Planning Board.

B. The proposed project is for Elderly Housing as defined in Section XIV. The owner of record shall enter an agreement, to be filed in the Rockingham County Registry of Deeds, certifying that the project will be utilized and restricted to elderly occupants as such for a period of no less than twenty years.

C. At least 25% of the dwelling units proposed will be "affordable," meaning subject to restrictions limiting sale or lease to households with incomes no higher than 80% of the regional median at rates affordable to them, under administrative guidelines to be adopted and from time to time amended by the Planning Board; provided that the cumulative total of affordable dwelling units in projects approved by the Planning Board in any one year in which phasing and permit limitations are in effect shall not exceed one-sixth of the Town's "fair share" of affordable housing units as determined in the then-current estimate of the Southern New Hampshire Planning Commission, *and further provided that the cumulative total of all dwelling units and projects approved under this exemption in any one year shall not exceed one hundred (100).*

**1310 *Applicability - Nothing herein is intended to repeal Article XI (numbered as passed by Article 101 at the 1988 Town Meeting), as amended, as it applies to subdivisions and site plans approved subject to phasing requirements of such ordinance. Said ordinance shall continue to apply to such subdivisions and site plans, and the Sunset Provisions of said Ordinance shall not apply to such subdivisions and site plans.***

**1311 Sunset**

This Ordinance shall expire on January 1, 2008 unless re-adopted prior to that date.

~~End of Section~~