

## ARTICLE XII: GROWTH MANAGEMENT AND INNOVATIVE LAND USE CONTROL (2006)

### 12.000 GENERAL

#### 12.001 AUTHORITY

This section is enacted pursuant to RSA 674:16, 674:17, 674:21, and 674:22.

#### 12.002 FINDINGS

Based on, among other things, the Milford 1999 and 2005 Master Plan updates, current Capital Improvements Plan, the 2004 Milford Buildout Analysis, the 2005 Cost of Community Services Study, NRPC data and data developed by the Planning Board on Milford's population, building permits, taxation, school enrollment and other demographic and land use trends, the Town hereby finds that:

- A. **Introduction** – Increased development is having rapid and adverse effects on Milford's land use patterns, population size, adequacy of public facilities and services, tax base, tax burden, congestion, traffic, open space, and community character. While the Town's overall objective, reflected in the *1999 Master Plan Update*, is "to develop a pro-active, organized and deliberate approach to enhance and protect the character and resources of the Town and Community for both the present and the future", unmanaged residential growth presents a clear and substantial threat to this objective. There is an immediate need for action to regulate and manage the rate of residential development and adopt innovative land use controls to further the Town's objectives.
- B. **Land Use Patterns** –
1. **Available Land Resources** - Milford's land resources are sufficient to support substantial and extensive new residential development. The 2004 Milford Buildout Analysis estimates that there are 8,856 developable acres of land in Town available for residential uses, based on current zoning.
  2. **Developable Acreage & Zoning** - Of the available developable acreage 8,435 acres are zoned single-family and 421 acres are zoned multi-family. This developable acreage, according to the assumptions in the Buildout Analysis, will support 6,866 new single-family and multi-family dwelling units, double the amount of dwelling units of all types that currently exist.
  3. **Build-Out Potential** - At an average household size of 2.5 people per unit, Milford's population at ultimate build out would be over 34,000.
  4. **Single-family Unit Growth Rate – Comparison to Regional Average** - Milford's single-family dwelling unit growth rate is substantially higher than the regional average. From 1991 to 2003, based on data obtained from the US Census, New Hampshire Office of Energy and Planning, the Nashua Regional Planning Commission (NRPC), and the Town of Milford Department of Planning and Community Development, Milford's annual growth rate of new single-family home construction was 2.7%, approximately twice the regional average of 1.4% and the fourth highest in the 12-town NRPC region. Looking at the most recent period, from 2001 to 2004, Milford's annual single-family home growth rate remained at 2.7%, well above the regional average of 2.2% and the fourth highest in the region.
  5. **Single-family Home Percentage of Milford Overall Growth** - The rapid growth in Milford's single-family homes has resulted in a substantial shift in the Town's residential housing stock. In 1981, single-family homes constituted only 36% of Milford's housing stock. By year-end 2003, single-family homes had grown to 52% of the Town's total dwelling units.
  6. **Multi-family & Manufactured Housing Growth in Milford** - Milford's housing stock consists of single-family, multi-family (2 or more units per building), and manufactured homes. In comparison to the

region, Milford has a disproportionately high share of multi-family and manufactured dwelling units. At year-end 2000, 40% of Milford's total dwelling units consisted of multi-family units, almost double the average of 22% for the NRPC region (excluding Nashua). In the period from 2001-2003, Milford's rate of growth for new multi-family units was 2.5% per year. Currently, Milford's manufactured housing accounts for 8% of the Town's total dwelling units, 267% greater than the regional average of 3%.

7. **Development Approvals Since 1995** - Additionally, since 1995 approximately 1,392 acres of land has been approved for new residential development, an approximate 13% reduction in available land for development.

C. **Population Increase** - Milford's population increased approximately 1.8% per year during the period 1995 - 2004, from approximately 12,500 residents to an estimated 14,675 (through 2004). The annual growth rate during the period 2000 through 2004 was 1.7% (from 13,535 to 14,675) nearly 170% of the region's growth rate as the NRPC region grew at an estimated 4.1% during the period 2000 through 2003, or 1% annually. The New Hampshire Office of Energy and Planning estimates Milford's population to be 18,350 in the year 2025, a predicted annual increase of approximately 1%.

D. **Tax Base & Tax Burden** - As indicated in the Master Plan, residential development in Milford is substantially tax-negative – that is, on average, the cost of public services required for each unit of housing substantially exceeds the property tax revenue generated by each unit. The result is that the cost of new residential development is spread among existing residents and property owners in Milford at a rate that increases faster than the revenue increases, resulting in an upward tax spiral. Furthermore, this spiral is exacerbated by multi-family and manufactured homes, in which the gross amount of the assessment, when compared to the number of persons requiring service, is much lower, per capita, than the single-family dwelling unit experience. While this characteristic is common among many towns, the larger than average proportion of residential development in Milford, as well as the larger than average proportional share of multi-family and manufactured homes, makes Milford's experience disproportionately high by comparison to the rest of the region.

The 2005 Cost of Community Services Study analyzed school related expenditures and revenues in relation to residential uses. The study found single-family residences are tax negative, funding only 83% of the school related public services generated by single-family residences. The disparity between school related expenditures and revenues is further exacerbated by multi-family residences which were found to fund only 50% of school related public services generated by multi-family residences. The scope of this impact and the disparity between revenues and expenditures of school related public services is a critical element to address in any public policy.

Milford's rapid growth of tax-negative residential development has inevitably led to sharp increases in Milford's tax burden, with the average annual operating budget increases of 5.7%. In 2004, Milford's fully-equalized property tax rate was \$18.52 per \$1000 of equalized value, 107.5% of the regional average of \$17.23 and the fifth highest in the region. These increasing tax burdens are becoming more and more difficult for Milford citizens to bear and represent, in substance, a subsidy from existing taxpayers to the beneficiaries of new residential development.

E. **Adequacy of Public Facilities and Services** - Milford is straining to meet current and projected facilities and services demands created by new residential growth. It is anticipated, based on a Facilities Master Plan being developed, that there will need to be significant expenditures made within the next five years for ambulance, police, and fire emergency services, school building upgrades, library expansion, public works facilities, and new and upgraded recreational facilities.

F. **Community Character, Traffic, Congestion & Facilities** –

1. **Community Character** - New residential development is having a rapid and adverse effect on traffic and open space, and there is a perception that the community is losing its sense of character. Results of the

“community vision” survey, distributed by the Milford Planning Board in May 2005 found that people live in Milford because of its rural and historic character and community feel, and that it is important to preserve and protect the Town’s natural resources.

2. **Traffic** - Traffic counts in many areas of Town continue to increase reflecting both local and regional population growth, development patterns, and commuting routes. Improvements to the main traffic arteries linking Southern New Hampshire to Massachusetts (Route 3 and Route 93) will likely speed up regional integration, making Milford more accessible as a residential “commuter” community.
3. **Congestion**- Increasing tax burdens in neighboring states will likely continue to make Southern New Hampshire relatively more attractive as a residential location. Milford, in comparison to many communities in the region, has lower cost land, a more streamlined development process and, as a result, lower cost housing. Milford has a full compliment of stores, restaurants, health care facilities, schools, and other services that facilitate residential uses. These and other factors make Milford attractive on a relative basis for new residential development.
4. **Facilities** - In light of the specific characteristics of Milford’s undeveloped residential land, failure to manage residential growth could result in “shocks” to the Town that could create unacceptable pressure on already overburdened facilities and services while further altering the quality of life. There are certain large undeveloped parcels of residentially-zoned land in Milford that, individually or consolidated, could support developments of up to several hundred new dwelling units. Looking just at the school system, at the average of 0.76 school age children per single-family dwelling unit (see 2005 Cost of Community Services Study), Milford’s school enrollment could suddenly expand by 10% or more if three hundred new single family homes are built, putting an unworkable strain on school facilities and services.

G. **Future Growth** - Milford’s above average rate of residential development is likely to continue. Milford increasingly stands out as an attractive Town for residential development that, in contrast to its neighbors, does not manage the rate of residential growth. In New Hampshire, 40 towns, most of them in the southern tier and including eight towns in Hillsborough County, have adopted growth management measures. Six of the twelve towns in the NRPC region have implemented growth management and or phasing ordinances. As the surrounding towns in the region and across Southern New Hampshire take pro-active steps to manage growth, Milford will likely come under even greater residential development pressure unless it also effectively manages its rate of growth.

H. **Citizen Concern** - The Town citizens support the establishment of a growth management regulation. In March 2005 the Town warrant article for the establishment of an interim growth management ordinance was supported by over 85% of those voting.

I. **Existing Approved ‘Phased’ Subdivisions** - As of December 31, 2005, there were 8 approved subdivisions with a phasing plan required as a condition of approval. These subdivisions have a potential to create a combined total of 250 additional dwelling units over the next three to five years assuming buildout proceeds according to the approved plans. This represents a 3.8% increase in the number of dwelling units in the Town. In recognition of the fact that the requirement that these approved subdivisions be phased represents a form of growth management already applicable to these properties, the Board finds that these lots would have to be exempt from any growth regulation with a corresponding increase in the number of available units.

J. **Necessity for Growth Management** - Based on the above data, information and considerations, and based upon and consistent with the Master Plan Updates and the annually updated Capital Improvements Plan, the Town finds that it is necessary, appropriate, and in the public interest to adopt this growth management and innovative land use control ordinance to assess and balance community development needs and consider regional development needs.

### **12.003 PURPOSES**

The purposes of the Growth Management ordinance, which is a part of the Milford Zoning Ordinance, are as follows:

- A. To protect the health, safety, and general welfare of the Town's residents.
- B. To promote the development of an orderly, economically, and environmentally sound and stable community, with appropriate consideration and balancing of local and regional development needs.
- C. To guide efforts by the Town to monitor, evaluate, and establish a rate of residential growth in Milford that is consistent with the Town's capacity for planned, orderly, sensible and financially responsible expansion of its municipal and school services and facilities to accommodate this growth.
- D. To provide a mechanism when public services are strained or overloaded, or may become so, to reduce the rate of residential growth to allow the Town time to correct the deficiencies that have developed.
- E. To achieve a residential growth rate that does not exceed the NRPC's regional residential growth rate by allowing for both the build out of existing approved residential lots and developments and a mechanism for providing additional new residential lots and developments.
- F. Growth management is intended to smooth out the spikes in future growth so that growth is balanced with the ability of the community to provide adequate and cost-effective facilities and services and maintain the quality of life.

### **12.004 ESTABLISHMENT OF MAXIMUM ANNUAL RESIDENTIAL DWELLING UNITS AND OTHER DETERMINATIONS**

- A. The Planning Board shall establish Milford's maximum annual allowable number of dwelling unit building permits for the twelve-month period beginning March 1<sup>st</sup> of that year, and shall make the other determinations provided in this section, pursuant to the following provisions. The Planning Board shall publicly post the number of allowable dwelling unit permits and other information deemed necessary prior to March 1<sup>st</sup>.
- B. Except as modified by 12.004.C, the maximum annual allowable dwelling unit permits shall be 1% (one percent) of the total number of dwelling units in the Town of Milford as of December 31<sup>st</sup> of the year prior to the year the number is set. The maximum annual allowable dwelling unit permits may be waived by the Planning Board in a special case, so that justice may be done and the public interest secured, provided that such waiver will not have the effect of nullifying the intent and purpose of the Zoning Ordinance, Regulations or the Master Plan. (2008)
- C. The permits which are available for issuance under this ordinance will be available to eligible applicants regardless of the number of permits which may otherwise be issued to applicants who are not subject to the ordinance as a result of phasing agreements or conditions previously approved (See Section 12.006.B.10 and 12.008). (2008)
- D. Residential dwelling units that are federally or state subsidized or are built for the disabled as defined by federal or state guidelines, shall be exempt from the provisions of the Growth Management ordinance.
- E. Taking into account the purposes of this ordinance, the Planning Board shall have the authority to establish the number of annual residential dwelling unit permits, where necessary or appropriate to ensure that the projected demands of new residential development in Milford can be adequately met with the Town's existing and planned municipal facilities and services at a prudent level of sound fiscal management.

### **12.005 PLANNING BOARD DETERMINATION OF RESIDENTIAL DWELLING UNIT GROWTH RATE**

- A. It shall be the responsibility of the Planning Board (directly or through its designated agent) to monitor and assess, on an annual basis, residential growth in Milford and the NRPC region so as to develop the data

necessary to set the maximum annual dwelling unit growth rate and make the other determinations provided in this Section of this Ordinance.

- B. The dwelling unit growth rate and related information shall be made public on or prior to February 1<sup>st</sup> of each year, in a form deemed appropriate by the Planning Board.
- C. On or prior to February 15<sup>th</sup> of each year, after the occurrence of Section 12.005.B above, the Planning Board shall hold a public hearing to seek input from the public relative to the dwelling unit growth rate.
- D. All municipal and school district departments, agencies, boards, committees, officials, and employees, shall cooperate actively, fully, and in a timely manner with the Planning Board to assist the Board in gathering the information necessary pursuant to this Ordinance.

**12.006 ALLOCATION OF BUILDING PERMITS BY PHASING**

- A. As provided in Section 12.004 and 12.005, on or prior to March 1 of each year the Planning Board shall determine, with respect to the subsequent twelve months beginning on March 1<sup>st</sup> the maximum number of allowable dwelling unit building permits available for development of single-family, multi-family, and manufactured dwelling units.
- B. Allocation of dwelling unit building permits shall be by the following method:
  - 1. Each subdivision or site plan of land for a residential use producing less than four (4) lots or dwelling units shall not be subject to a phasing plan.
  - 2. Each subdivision or site plan of four (4) lots or dwelling units and not more than six (6) lots or dwelling units shall be phased over a minimum of two (2) years.
  - 3. Each subdivision or site plan of seven (7) lots or dwelling units but not more than nine (9) lots or dwelling units shall be phased over a minimum of three (3) years.
  - 4. Each subdivision or site plan of ten (10) lots or dwelling units but not more than nineteen (19) lots or dwelling units shall be phased over a minimum of four (4) years.
  - 5. Each subdivision or site plan of twenty (20) lots or dwelling units but not more than thirty-nine (39) lots or dwelling units shall be phased over a minimum of five (5) years.
  - 6. Each subdivision or site plan of forty (40) or more lots or dwelling units shall be subject to an allocation of building permits and a phasing schedule as determined by the Planning Board. In no case shall phasing be less than five years.
  - 7. In no case shall any subdivision or site plan of 40 or more lots or dwelling units be allowed more than 35% of the overall allowable building permits per year unless a waiver is granted by the Planning Board in a special case, so that justice may be done and the public interest secured, provided that such waiver will not have the effect of nullifying the intent and purpose of the Zoning Ordinance, Town Regulations or the Master Plan.

Phasing Schedule	
<u># of New Dwelling units</u>	<u>Phasing (Years)</u>
2-3	N/A
4-6	2
7-9	3
10-19	4
20-39	5
40+	Minimum of 5

- 8. It is the intention of the phasing schedule to evenly distribute the number of building permits over the required number of years. However, if the Planning Board determines it is in the public’s best interest (i.e. through-road connection, etc.) to allow an applicant to have a greater number of permits in the beginning or end of the allotted phasing period, the Planning Board may grant an allowance for more permits in a single year as long as the project remains phased over the entire phasing period.

- a. It shall be the responsibility of the applicant to provide a phasing schedule for allowable number of building permits per year for Planning Board review and approval that demonstrates that the purposes of this regulation will be met.
- 9. A minimum of ten percent (10%) of the allowable building permits per year (but no less than five (5) individual permits) shall be allocated for lots not subject to the phasing established by this Ordinance.
- 10. There shall be a limit on the number of allowable new multi-family dwelling unit permits. The limit shall be set at no more than twenty percent (20%) of the maximum allowable annual dwelling unit permits, until such time as the Planning Board determines that Milford no longer has a disproportionately greater share than the other communities in the NRPC Region.
- 11. The requirements shall apply to all forms of residential subdivision of land and site plans, as defined in RSA 672:14 (I), except as provided below:
  - a. A phasing plan shall not be required for units that are a part of an assisted living facility or a congregate care facility as defined in Section 7.078 of the Zoning Ordinance; or federally subsidized dwelling units as defined in Section 12.004.D. above.
  - b. The Planning Board may require any subdivision to adhere to a longer phasing plan if such phasing is deemed necessary to protect the health, safety, welfare, character, and environment of the Town of Milford.
  - c. Building permits for new dwelling units shall be granted as allowed by the approved subdivision phasing throughout the year beginning March 1 until such time as the number of maximum allowable of new dwelling units, as determined in Section 12.004.B above, is reached.
  - d. If the Town does not issue the full number of allowable dwelling units within the year beginning March 1, there shall be no carry-over of the remaining unissued permits to subsequent years.
  - e. Residential building permits that do not have a foundation in within one year of issuance shall lapse, unless renewed prior to the date of expiration. Said building permit shall not be entitled to more than one renewal.

Allocation of available building permits pursuant to this ordinance in no way ensures or guarantees the actual issuance of a building permit, which is subject to the normal standards and procedures. (2008)

### **12.007 ISSUANCE OF BUILDING PERMITS**

Building permits shall be issued on a first-come first-served basis beginning on the first business day on or after March 1<sup>st</sup>. No application for a building permit shall be made until all applicable (local, state, federal or other) regulatory obligations have been met.

### **12.008 APPLICABILITY**

- A. Building permits for non-residential construction, or the expansion, alteration, renovation, or improvement of an existing dwelling unit, which does not create an additional dwelling unit, are not limited by this ordinance.
- B. This ordinance applies to all residential lots or dwelling units approved and signed by the Planning Board through either subdivision or residential site plans subsequent to the effective date of this ordinance. (2008)
- C. New dwelling units shall be subject to the requirements of Article XI, Impact Fees, of the Milford Zoning Ordinance.

### **12.009 IMPLEMENTING REGULATIONS**

To the extent necessary or appropriate, the Planning Board may adopt administrative regulations to guide the implementation of this ordinance by staff and/or agents of the Planning Board.

**12.010 SUNSET (2008)**

This ordinance shall expire on December 31, 2011 unless amended to remain in effect beyond that date.

**12.011 EFFECTIVE DATE (2008)**

This ordinance is effective as of January 1<sup>st</sup> 2006 and as amended March 11, 2008.