Planning Board Ordinance
of the Town of Chebeague Island, Maine

Adopted by the Town Meeting: June , 2015
Effective: June , 2015

Attest:

__________________________
Town Clerk

Seal:
SECTION 101. PURPOSE OF THIS PLANNING BOARD ORDINANCE

(A) The Planning Board of the Town of Chebeague Island was established, and its initial duties outlined, by an Ordinance adopted by the Town Meeting on July 1, 2007. The purpose of this replacement Planning Board Ordinance is to enable the Board to more fully carry out its data gathering, planning, and regulatory functions in a manner that is consistent with Maine statutes, and that meets existing and emerging needs of the Town. All of the substantive provisions in the prior ordinance are embodied, clarified, and/or expanded in this Ordinance.

(B) Specifically, this Planning Board Ordinance enables the Board to amend, as necessary, the Town’s comprehensive plan, to prepare a uniquely Town of Chebeague Island zoning ordinance, a separate (or a combined) subdivision and commercial development ordinance, and such other land use ordinances and regulations as the Board in the future deems necessary. Amendments to the Town’s comprehensive plan, ordinances and regulations prepared by the Board, shall be presented initially to the Selectmen of the Town for their advice and comment, and then to a Town Meeting for adoption.

(C) This Planning Board Ordinance delineates the land use duties of, and the relationship among, the Town’s Planning Board, Code Enforcement Officer, Zoning Board of Appeals, Selectmen, and the legislative arm of Town government, the Town Meeting.

SECTION 102. PLANNING BOARD APPOINTMENT, QUALIFICATIONS, TENURE, AND VACANCIES

(A) The Planning Board shall consist of seven (7) members appointed by the Selectmen. Board members shall serve without compensation. Sitting Selectmen, members of the Zoning Board of Appeals, and the Code Enforcement Officer may not be appointed to the Planning Board.

(B) Planning Board appointees must be residents of the Town of Chebeague and the State of Maine. The Selectmen may establish additional lawful criteria for appointment to the Planning Board.

(C) The term of office of appointees to the Planning Board is three years. The terms of office of the seven Board members shall remain staggered; the terms of at least two Board members expire each year; every third year the terms of three Board members expire. A Board member whose term has expired may be reappointed by the Selectmen (but not more than twice consecutively).
Town of Chebeague Island Code of Ordinances
Chapter 17 - Land Use & Planning
Article V - Administration

(D) Vacancies on the Board may occur by reason of resignation, death, or moving out of the Town or State. Vacancies shall be filled by the Selectmen; this appointment is limited to the unexpired portion of the term.

(E) If a Board member fails to attend three regularly scheduled Board meetings in a row without providing a reasonable excuse for such absence, a majority of the Board may certify this failure to the Selectmen, asking them to replace this member. The Selectmen after providing the recalcitrant Board member notice and the opportunity for a hearing may appoint a replacement for the unexpired portion of this member's term, or they may defer the request for replacement for up to ninety (90) days.

SECTION 103. PLANNING BOARD ORGANIZATION AND RULES

(A) The Board shall annually elect a Chairman and a Vice-Chairman. Officers shall serve one (1) year terms and shall be eligible for re-election.

(B) At all regularly scheduled and special meetings of the Board, four (4) members of the Board shall constitute a quorum for the discussion and disposition of any item of business on the agenda for that meeting. Any agenda item requiring a vote of the Board shall be deemed to be passed/adopted/approved if a majority of the quorum present votes in the affirmative.

(C) The Board shall adopt and give town wide notice of such rules and regulations for the transaction of its business and conduct of its meetings as it deems necessary. At a minimum, it must give at least five days’ notice of the date, time, and place of all regular and special Board meetings; all Board meetings must be in a public building; notice must include an agenda of items that will be taken up at a Board meeting.

(D) Minutes (a record) of all regular and special Board meetings must be kept. This record must include a summary of discussion with respect to each item on the agenda; a summary of action(s) taken on agenda items; the vote of individual Board members present on agenda item(s) disposed of. Final decisions of the Board on any agenda item may only be made in an open public meeting.

(E) At any regular or special Board meeting, if a question is raised as to whether a Board member has a conflict of interest with respect to a particular agenda item sufficient to disqualify that member from participating in discussion and voting on that agenda item, the question shall be decided by a majority vote of the other Board members present at that meeting.

(F) All planning data gathered by the Board—documents prepared by the Board and/or staff or consultants to the Board—all materials submitted to the Board by applicants or members of the public with respect to any permit for development approval—and all e-mail communications among Board members, staff, consultants, applicants, other town officials,
or members of the public are public records. Pertinent portions of these materials must be made a part of the individual record of the agenda item they pertain to. All Board materials/records must be available to be read, reviewed, copied, at reasonable times and cost, by any person wishing to search Board materials/records.

(G) Except for the exchange of general information and/or materials that are, or shortly will be, a part of the public record, ex-parte communications by, between, or among Board members and/or third parties with respect to a pending application are not permitted.

SECTION 104. DEFINITIONS

[Preamble: In this Planning Board Ordinance and in subsequent comprehensive plan amendments, zoning, subdivision or development ordinances, or other land use ordinances and/or regulations proposed by the Board and enacted at a Town Meeting, the following definitions apply.]

(A) Minor Development Permit

1) A minor development permit allows the construction, repair, or expansion of steps, porches and decks (with a total area less than 300 sq. ft.), storage sheds (less than 8 feet in height, occupying less than 100 sq. ft. of ground space), single story garages less than 12 feet in height, occupying less than 350 sq. ft. of ground space). These improvements must be appurtenant to an existing house or structure.

2) In addition, a minor development permit allows the construction of one (1) new single family house or one (1) commercial/business structure (less than 25 feet in height, with less than 3,000 sq. ft. of floor space) in an appropriately zoned area, and when all of the requirements of any subsequently enacted zoning, subdivision or development ordinance(s) and state or local safety codes are demonstrably met.

3) Whether undertaken by a public or private entity application for a minor development permit shall be made to the Town of Chebeague Island’s Code Enforcement Officer. An approval, and the issuance of required building permits, is warranted upon a showing of compliance with the above requirements and limitations, as well as receipt of any applicable State or Federal permits. Approved minor development permits are subject to enforcement by the Town’s Code Enforcement Officer and/or by the Planning Board.

(B) Major Development Permit

1) A major development permit is required for any housing or commercial development in, or on, any land or water area within the Town of Chebeague Island that either individually, or as a cumulative addition to a previously existing or approved minor development, exceeds the size and spatial limitations for a minor development permit.
2) Whether undertaken by a public or private entity, application for a major development permit shall be made to the Town of Chebeague Island’s Planning Board. An approval is warranted upon a showing of compliance with an enacted zoning ordinance, other applicable subdivision or development ordinance(s), state or local safety codes, as well as the receipt of any applicable State or Federal permits. Approved major development permits may be conditioned, and are subject to enforcement by the Town’s Planning Board. Building permits for an approved major development shall be issued by the Town’s Code Enforcement Officer.

3) Any uncertainty or dispute as to whether a particular development is a minor or a major development shall be resolved by requiring the development to obtain a major development permit.

(C) Other Planning and Land Use Definitions: A large number of other planning and land use terms of art are defined by statute, see 30-A MRSA, §§ 4301-4353. These definitions, unless specifically and necessarily altered by subsequent enactments of the Town of Chebeague Island, are incorporated by reference in the Town’s comprehensive plan, land use ordinances and regulations.

SECTION 105. POWERS AND DUTIES OF THE PLANNING BOARD

[Preamble: As noted in Section 101 (C) of this Planning Board Ordinance there are five instrumentalities in the Town of Chebeague Island that have interrelated planning and land use control responsibilities, i.e., the Planning Board, the Code Enforcement Officer, the Zoning Board of Appeals, the Selectmen, and the legislative arm of government, the Town Meeting. The duties of each that are essential to the effective implementation of the Town’s land use controls are laid out in sections 105-109.]

(A) Having prepared an initial Comprehensive Plan, adopted at Town Meeting on June 4, 2011, the Planning Board is charged with periodically proposing for adoption updated and necessary amendments to the Plan. The Comprehensive Plan and subsequent plan amendments state the overarching goals of the community.

(B) To implement Comprehensive Plan goals the Planning Board shall present to the Selectmen and to the Town Meeting a zoning ordinance and other land use control ordinances or regulations that reflect the unique quality of life and physical (often limiting) characteristics of the Town, e.g., existing wetlands, woodlands and open space, historic structures—the size, population, topography, soils, fresh water resources of principal land areas within the Town. Proposed ordinances/regulations become effective if adopted by the Town Meeting.

(C) In preparing ordinances or regulatory proposals the Planning Board may undertake research and studies that facilitate their work. At the same time the Board, as expeditiously as
possible, must respond to questions, requests for land use information and data referred to them by the Town Meeting, the Selectmen, and/or the Town Administrator.

(D) When dealing with proposals to amend the Comprehensive Plan or adopt land use ordinances or regulatory measures, the Planning Board must provide the public, particularly those directly affected, complete information with respect to the proposal, and ample opportunity to be heard.

(E) As outlined in Section 104 (B) 1) the Planning Board is the reviewing authority for all new public or private subdivisions or commercial development proposals in the Town of Chebeague Island. In settings where the nature and/or the scale of a proposed development imposes unique and high reviewing costs, the Planning Board may require the developer/applicant to bear these costs.

(F) The Planning Board shall review and make recommendations to the Selectmen with respect to proposals that would transfer interests in land to the Town or a quasi-public entity within the Town, or that would sell interests in land presently held by the Town or a quasi-public entity within the Town to a private party.

(G) The Planning Board shall annually review and make recommendations to the Selectmen with respect to the Town’s Capital Improvement Plan, and its annual capital budget.

(H) The Chairman of the Planning Board prior to the annual Town Meeting shall submit to the Town Administrator, the Selectmen, and the Town Meeting a report detailing Board actions in the preceding year, and outlining anticipated actions in the forthcoming year.

SECTION 106. POWERS AND DUTIES OF THE CODE ENFORCEMENT OFFICER

[Preamble: Beyond those powers and duties of the Code Enforcement Officer that may be noted in other portions of the Town of Chebeague Island’s Code of Ordinances, the powers and duties outlined below are essential to the effective implementation of the Town’s land use controls.]

(A) As outlined in Section 104 (A) 1) and 2) application for a Minor Development Permit shall be made to the Town of Chebeague Island’s Code Enforcement Officer. An Approval is warranted if the Permit criteria outlined in Section 104 (A) have been met.

(B) All building permits whether for a Minor Development Permit or a Major Development Permit shall be issued by the Code Enforcement Officer.

(C) All approved Minor Development Permits and Major Development permits (including conditions attached thereto) for which building permits have been issued are subject to enforcement by the Code Enforcement Officer and/or the Planning Board.
SECTION 107. POWERS, DUTIES, AND LIMITATIONS OF THE ZONING BOARD OF APPEALS

[Preamble: Beyond those powers and duties of the Zoning Board of Appeals that may be noted in other portions of the Town of Chebeague Island’s Code of Ordinances, and/or in 30-A MRSA, § 4353, the powers, duties, and limitations outlined below are essential to the effective implementation of the Town’s land use controls.]

(A) A denied applicant for a Minor or Major Development Permit or the issuance of a building permit—a property owner whose property is within 500 feet of an approved applicant—the Planning Board or the Selectmen (on behalf of the Town of Chebeague Island) aggrieved by a final determination of the Code Enforcement Officer or the Planning Board may within fourteen (14) days of that determination seek to reverse or modify the offending determination by appealing to the Zoning Board of Appeals. Review by the Board of Appeals is an administrative review, and is a required prerequisite to judicial review.

(B) The Board of Appeals shall establish necessary rules and procedures that comply with state statutes and fundamental due process principles for the conduct of appeal proceedings.

(C) In settings where variance relief is warranted, the Board of Appeals may only alter the dimensional requirements of an ordinance or rule. It may not grant a “use” variance, i.e., permit what the ordinance or rule prohibits, or prohibit what the ordinance or rule permits.

SECTION 108. POWERS AND DUTIES OF THE SELECTMEN

[Preamble: Beyond those powers and duties of the Selectmen noted in the Town of Chebeague Island’s Code of Ordinances, it must be noted that the Selectmen do not exercise legislative powers. These powers are reserved to the citizenry of the Town acting in a Town Meeting. It follows then that the adoption of this Planning Board Ordinance, and subsequently fashioned revisions to the comprehensive plan, proposals for a zoning ordinance, a subdivision and commercial development ordinance, and/or land use regulatory measures fashioned by the Planning Board and presented to the Selectmen for their advice and comment cannot be disposed of (enacted) by the Selectmen. These proposals must ultimately be disposed of by the Town Meeting.]

(A) Notwithstanding these limitations on the powers of the Selectmen, state statutes require that some development proposals be approved by the Selectmen of a Town. In these cases, determinations of the Planning Board and/or of the Code Enforcement Officer are not final; they are advisory only. The Selectmen and ultimately a Town Meeting will determine approval/disapproval, conditions, and whether building permits should issue with respect to these development proposals.
SECTION 109. POWERS OF THE TOWN MEETING

(A) For reasons noted in the preamble to Section 108, it is appropriate that this Planning Board Ordinance, and any subsequently fashioned Planning Board proposals to revise the comprehensive plan, adopt uniquely Town of Chebeague Island zoning or other land use ordinances or regulations, should (along with Selectmen comments) be presented to a Town Meeting for discussion, adoption or remand by that legislative body.

SECTION 110. INTRA-TOWN ASSISTANCE

[Preamble: Beyond the cooperation and coordination that the Planning Board Ordinance calls for among the Planning Board, Code Enforcement Officer, Zoning Board of Appeals, and Selectmen, other forms on intra-town assistance are required to facilitate the effective implementation of the Town’s land use controls.]

(A) The Planning Board is authorized to request the Town Administrator to engage consultant and professional help to assist the Board in carrying out its duties, subject to the availability of funds budgeted and appropriated by the Town Meeting. The Board Chairman shall annually, and in a timely manner, file an operating budget appropriation request in a form prescribed by the Administrator.

(B) The Town Administrator is directed to supply the Planning Board administrative and clerical assistance, and any technical assistance, data, reports, information the Planning Board may from time to time require from the Town Clerk, Road Commissioner, Harbormaster, the Chebeague/Cumberland Land Trust, or other Town officials/personnel.

SECTION 111. JUDICIAL REVIEW

(A) Any unsuccessful party to a proceeding before the Town of Chebeague Island’s Zoning Board of Appeals may within forty-five (45) days of the Board’s final adverse determination seek, judicial review of the Board’s ruling pursuant to rules 80B, 80C of the Maine Rules of Civil Procedure.

SECTION 112. SEVERABILITY PROVISION

(A) A judicial finding of “error” with respect to, or “invalidity” of, a section, sub-section or minor portion, of this ordinance shall not affect the validity of the remaining portions of the ordinance.