

Designing Municipal Ordinances that Work

While towns will want to consider a range of regulatory and non-regulatory strategies for implementing the vision supplied by the comprehensive plan, well crafted ordinances can be a powerful tool used to conserve working forests and farms, preserve scenic views, protect water quality and wildlife habitat, provide recreational opportunities and reduce municipal expense. Possible ordinances that a town may consider include:

- ▶ Timber harvesting (*must be approved by the Maine Forest Service*)
- ▶ Town trees
- ▶ Trees adjacent to Right of Way's
- ▶ Town forests
- ▶ Sub-divisions
- ▶ Trees and shrub plantings in new developments
- ▶ Shoreland zoning (*in excess of state minimums*)
- ▶ Scenic view protection
- ▶ Wildfire prevention

During the crafting of an ordinance, planners should take care that the regulation actually achieves the desired goal. Unintended consequences are all too common, since regulations set the floor for minimum acceptable performance. They do not necessarily promote excellence and may serve as a disincentive to landowners. For example, a restrictive timber harvesting ordinance may have the unintended consequence of either encouraging landowners to cut their most valuable timber

(*high-grading or liquidation harvesting*), or getting out of forest management altogether and selling the land for development. Likewise, a subdivision ordinance with a large minimum lot size enacted in an attempt to preserve the rural character of a municipality actually does the reverse; it encourages residential development to spread further and further across the forested landscape.

Given these precautions, well designed municipal ordinances are effective at protecting natural resource values. Municipalities may also amend existing ordinances to protect those values. For example, a town may require a wider setback zone than is required by the state shoreland zoning in order to protect the water quality of a lake that supplies town water. Or a town may amend a subdivision ordinance to enhance open space by basing the number of housing units on density rather than on minimum lot sizes.

While a comprehensive plan guides the decision on whether an ordinance should be considered as a tool to reach planning goals, all ordinances should be written so they are easy to understand. They should also include the following basic information:

- ▶ Why the town needs the ordinance
- ▶ Who is affected by it
- ▶ Who enforces it
- ▶ How it may be appealed
- ▶ Where (*geographically*) it applies

A municipal ordinance needs to be practical, reasonable, legal and enforceable. That is, it should

not be vindictive nor deprive a landowner of all economic use of a property and it should advance a legitimate governmental interest. Landowners should also be provided with a clear avenue of appeal through an escape clause in the ordinance.

Model ordinances can be useful when drafting an ordinance, but must be tailored to the specific municipality. While the comprehensive plan serves as the overarching guide, model ordinances provide insight into the format, legal language and specifics to consider when drafting an ordinance. But there is no one-size-fits-all ordinance, since municipalities in Maine range from small rural villages to well populated cities and suburban towns. Many of the concerns facing these municipalities, such as rapid growth in residential areas and the increasing costs of municipal services, are the same, but the appropriate course of action may be quite different from one town to the next. Given this variety, it is important to adapt model ordinances as appropriate.

Municipalities should seek out the help and advice of planners experienced in crafting ordinances. See the list of Regional Planning Councils to contact your closest office for assistance and refer to the *Additional Resources* list in this publication to find guidelines for crafting specific ordinances. The Maine State Planning Office can also be of assistance: their *Municipal Handbook of Model Smart Growth Ordinances and Policies* is due out in 2001.