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# ARTICLE 1 GENERAL

## 101 TITLE

This Code shall be known as and may be cited as the "Land Use Code of the City of Brewer, Maine," and will be referred to herein as the "Land Use Code."

## 102 AUTHORITY

This Land Use Code is adopted pursuant to Home Rule powers as provided in Article VIII, Part 2, of the Maine Constitution and the Home Rule provisions of Title 30-A MRSA Sections 3001. It is also adopted pursuant to various provisions of Title 30-A MRSA including, without limitation, those related to zoning (Sections 4352 et. seq.), subdivision review (Sections 4401 et. seq.) and manufactured housing (Section 4358).

## 103 PURPOSE (#2)

The purposes of this code is to regulate in the City of Brewer the location and use of real estate for industrial, commercial, residential and other purposes; the construction, height, number of stories and area of all structures, the size of open spaces of real estate population density and setback of structures along public ways. This code is an integral part of a comprehensive plan for municipal development, the purpose of which is to promote the health, safety and general welfare of the residents of the City of Brewer and, among other things, is designed to encourage the most appropriate use of land throughout the municipality, to promote traffic safety, to provide safety from fire and other elements, to provide adequate light and air, to prevent overcrowding of real estate, to promote a wholesome living environment, to protect buildings from flooding and from accelerated erosion, to prevent housing developments in unsanitary areas, to promote the coordinated development of unbuilt areas, to protect archaeological and historic resources, to encourage the formation and preservation of neighborhoods, to provide an allotment of land area in new development sufficient for all requirements of community life, to conserve natural resources and to provide for adequate public services.

To achieve said purposes, this code divides the city into districts and imposes other regulations.

**104 JURISDICTION**

The provisions of this Land Use Code shall apply to all land areas within the City of Brewer unless otherwise specified by specific Articles of this Land Use Code.

**105 CONFLICTS WITH OTHER CODES OR ORDINANCES**

The provisions of this Land Use Code shall not be construed to abrogate or annul the provisions of other ordinances or regulations, or to impair the provisions of private restrictions placed on property. Where this Land Use Code imposes a greater restriction upon land, buildings or structures than is imposed by any such provision, the restrictions of this Land Use Code shall prevail.

**106 VALIDITY AND SEVERABILITY**

If any of the provisions of this Land Use Code or the application thereof to any person or circumstances is held invalid by any court, such invalidity shall not affect other provisions or applications of this Land Use Code which can be given effect without the invalid provisions or applications, and to this end, the provisions of this Land Use Code are declared to be severable.

**107 EFFECTIVE DATE**

The effective date of this Land Use Code shall be certified by the City Clerk and attached to this Land Use Code. A certified copy of this Land Use Code shall be filed with the City Clerk of the City of Brewer.

**108 AMENDMENTS**

**108.1 INITIATION**

On petition, or on recommendation of the Planning Board, City Planner, Code Enforcement Officer, City Engineer or on its own motion, the City Council may present ordinance amendments for consideration by the City to amend, supplement or repeal the regulations and provisions of this Land Use Code. The Council shall refer proposed amendments to the Planning Board, as hereinafter provided. (#4)

**108.2 ZONING AMENDMENTS (#4)**

**1. PUBLIC HEARING DATE AND NOTICE**

In any zoning amendment, the provisions of Title 30-A MRSA Section 4352 shall be met. A zoning ordinance change or amendment may be enacted only after a public hearing has been held by the Planning Board for its consideration. The Chairman of the Planning Board shall fix a time and place for the public hearing, at which hearing parties in interest and citizens shall have an opportunity to be heard. Notice of the hearing shall be given in accordance with the requirements of Title 30-A MRSA Section 4352, subsections 9 and 10. (#4)

## 2. PUBLIC HEARING PROCEDURES

The public hearing shall be conducted by the Chairman or Chairman Pro Tempore of the Planning Board. A quorum for the conduct of a public hearing under this Land Use Code shall be a majority of both the Planning Board. Should a quorum as defined above not be present at any public hearing, then said public hearing shall be continued to a time certain. At any time the City Council deems it necessary for a public hearing to be heard simultaneously by both the Planning Board and the City Council an order will be placed on the Council agenda and a joint public hearing date will be scheduled. (#4)

## 3. PLANNING BOARD ACTION

The Planning Board shall, after the public hearing, or joint public hearing with the City Council, meet and vote either to recommend or not recommend that the Zoning Ordinance change or amendment be made by the City Council. The Planning Board shall file with the City Clerk its recommendations to the City Council within ten (10) days after the public hearing, or any continuation thereof, has been concluded. (#4)

## 4. COUNCIL ACTION (#18)

The City Council, upon receipt of the Planning Board's recommendation, shall meet and consider legislation to enact the Zoning Ordinance or Amendment. Any amendment shall be certified to the City Clerk by the City Council and posted by the City Clerk in accordance with Title 30-A M.R.S.A. § 3002.

2. Subsection 108.2.5

5. Any revision to this Land Use Code of the City of Brewer shall follow the provision set forth in Section 108, and Subsection 108.1 through and including 108.4 of this Article.

### **108.3 SHORELAND ZONING AMENDMENTS**

In accordance with the requirements of Title 38 MRSA Section 435 et. seq., amendments to the Shoreland Zoning provisions of this Land Use Code shall have Maine Department of Environmental Protection approval before they become effective.

### **108.4 CITY CLERK ATTESTATION**

The City Clerk shall attest to the validity of any changes made on the official map by his signature thereon.

## **109 CONTRACT ZONING**

In accordance with Title 30-A MRSA Section 4352, Subsection 8, property in the City of Brewer may be rezoned by a process known as contract zoning.

### **109.1 PURPOSE**

It is the general purpose of this Section, in furtherance of the goals provided in the preamble of this Land Use Code, to provide for the reasonable regulation of agricultural, residential, commercial, industrial, and civic and institutional uses of land and structures,

and to provide for the orderly development thereof within the City of Brewer. On occasion, where competing and incompatible uses conflict, traditional zoning methods and procedures, such as variances and site plan approval, are inadequate. In these special situations, more flexible and adaptable zoning methods are needed to permit differing, land uses in both developed and undeveloped areas, and at the same time recognize the effects of change. In consideration of a change in zoning classification for a particular property or group of properties, it may be determined that public necessity, public convenience, or the general welfare require that provision be made to impose certain limitations or restrictions on the use or development of the property. Such conditions are deemed necessary to collectively protect the best interests of the property owner, the surrounding property owners and the neighborhood, all other property owners and citizens of the City, and to secure appropriate development consistent with the City's Comprehensive Plan. The provisions of this Section shall not exempt the use of development of any property from other minimum standards or requirements otherwise provided in this Land Use Code, or as otherwise provided by law.

## **109.2 MANDATORY CONDITIONS**

Any zone change adopted pursuant to this Section shall:

1. Be consistent with the Comprehensive Plan of the City of Brewer, as amended;
2. Be consistent with the existing and permitted uses within the original zone;
3. Only include conditions and restrictions which relate to the physical development or operation of the property;
4. Be subject to an agreement executed by authorized representatives of both the property owner and the City providing for the implementation and enforcement of all

terms and conditions imposed and agreed to by the parties pursuant to this Section.

5. Be passed by a two-thirds majority vote of the City Council present and voting in the instance of a Planning Board recommendation against such contract zone change.

### **109.3 DISCRETIONARY CONDITIONS**

Any zone change adopted pursuant to this Section may include reasonable conditions or restrictions relating to one or more of the following:

1. Limitations on the number and type of authorized uses of the property;
2. Limitations on the height and lot coverage of any structure or structures built on the property;
3. Increased setbacks and sideyards for any structure or structures built on the property;
4. The installation, operation and maintenance of physical improvements for the convenience of the general public, including but not limited to, off-street parking lots, traffic control devices, fencing, shrubbery and screening;
5. The creation, operation and maintenance of open space areas or buffer zones;
6. The dedication or conveyance of property for public purposes, including but not limited to, streets, scenic and conservation easements, parks and utility systems.

### **109.4 FINDINGS OF FACT**

1. When reviewing any proposal for contract zoning, the Planning Board shall consider the following criteria in making its written recommendations to the City Council. Before granting approval, the City Council shall determine that the proposed contract zoning meets these criteria as well as the mandatory conditions.

That the proposed zone change shall meet all the area, front yard, side yard, rear yard, height and structure coverage of the District; any of the discretionary conditions of this Section as applied shall be in addition to the District's minimum requirements.

2. That the proposed use will not create unreasonable traffic congestion on contiguous or adjacent streets. The proponent of the zone change shall submit the following evidence;
  - A. The estimated peak-hour traffic to be generated by the proposed change.
  - B. Existing traffic counts on surrounding streets and roads;
  - C. Traffic accident data covering the most recent four-year period. Such data shall be by date, and indicate both personal and property damage by accident;
  - D. The capacity of surrounding roads and streets and any improvements necessary to accommodate anticipated traffic generation, including traffic signals, signs, other directional markers as well as geometric street/road changes.
3. That the proposed zone change and use(s) authorized shall be insured by providing and maintaining adequate and appropriate utilities, drainage, access, parking and loading and the necessary site improvements. The proponent shall submit materials, documents and plans which employ

standard engineering methods to the City Planner for review not less than 15 work days prior to the public hearing. The City Planner shall provide a written commentary on the adequacy of same. Copies of the City Planner's commentary shall be made available to the applicant and Planning Board.

4. That the proposed use(s) will conform to the general character of the neighborhood. In making such a determination the following shall be considered:

A. Building & Structure

- 1) Do the color and materials match or complement those used on nearby structures?
- 2) Is there similarity or successful transition in scale, building form and proportion between the proposed expansion and existing structures located within four hundred (400') thereof?
- 3) Does the proposed structure/use propose to use plant materials, fencing and walkways which are compatible with the character of the neighborhood in size, scale, material and color?

B. Preservation of Landscape.

The landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree removal and any grade changes shall be in keeping with the general appearance of neighboring developed areas.

C. Set Backs and Landscape

The proposed use(s) shall be provided with sufficient setbacks and/or screening to provide a visual and sound barrier sufficient to minimize any adverse impact on other land uses in the neighborhood.

Determination of the adequacy of visual screening shall be based on line of sight observations from existing structures. Upon request of the Planning Board the proponent of the zone change shall present an accurate vertical and horizontal control map depicting existing buildings and structures adjacent to the proposed contract zone base elevation and proposed improvements in the proposed zone change area.

Determination of the adequacy of setbacks and screening for noise shall be based on procedures found in "Noise Assessment Guidelines" published by the U.S. Department of Housing and Urban Development, Office of Policy Development and Research, 1983.

The day-night sound level (LDN) is computed to be 50 DBA, based on  $LDN = 22 + 10 \text{ Log} P$  with P = the persons per square mile (1990 Census by Individual Tract). Activities likely to generate an LDN of 55 or more at the receiving site are considered an adverse impact.

D. Parking/Loading (#2)

Off-street parking areas for four or more vehicles and loading spaces as may be required shall be screened from the view of the adjoining property by trees, shrubs, fences and other landscaping material, such as a stockade fence or a dense evergreen hedge (6 feet or more in height). Where a potential safety hazard to children would be likely to arise, physical screening sufficient to deter small children from entering the premises shall be provided and be maintained in good condition.

E. The extent, uses, character and value of existing development in the neighborhood.

In making such a determination the Planning Board and the City Council, at the expense of the applicant, may engage the services of qualified professionals such as architects and landscape architects to help them in making their determination.

5. That there would be no significant adverse effect resulting from the proposed zone change and use(s) authorized upon the public health, safety and general welfare of the neighborhood. The proponent of the zone change shall submit evidence demonstrating that the proposed use(s) will not exceed the Performance Standards set forth under Article 4 of this Land Use Code.

#### **109.5 PROCEDURE (#2)**

All proposed amendments to this Land Use Code being considered under this Section shall be processed in accordance with the provisions of this Article and Title 30-A MRSA Section 4352, Subsection 8. Notice of any public hearing required shall be published at the applicant's expense. If at all possible, the processing of the application under both procedures shall be accomplished concurrently. All application fees and advertising fees must be paid prior to public notification. All Contract Zoning Agreements shall, at the applicants expense, be recorded in the Penobscot County Registry of Deeds. Any Contract Zoning Agreement must be signed by the applicant and recording fees paid to the City prior to the contract agreement going before the City Council or within ten (10) days whichever is applicable. Any contract not signed and submitted with recording fees paid within ten (10) days or prior to the next scheduled Council meeting, which eve is applicable, will be deemed null and void.

## **ARTICLE 2 ADMINISTRATION AND ENFORCEMENT**

### **201 ADMINISTERING BODIES**

#### **201.1 CODE ENFORCEMENT OFFICER (#2)**

Except as otherwise provided in this Land Use Code, the Code Enforcement Officer for the City of Brewer, or a duly appointed Assistant Code Enforcement Officer shall administer and enforce this Land Use Code, including the receiving of applications, the inspection of premises and the issuing of building permits. No building permit or certificate of occupancy shall be issued by them except in compliance with the provisions of this Land Use Code. The Code Enforcement Officer shall have the following powers and duties:

1. Enforce the provisions of this Land Use Code;
2. Act upon building, construction and use applications, refer permits requiring Site Plan Review to the City Planner, refer subdivision applications to the City Planner, and refer requests for variances and administrative appeals to the Board of Appeals;
3. Enter any property at reasonable hours or enter any building with the consent of the owner, occupant or agent to inspect the property or building for compliance with this Land Use Code and land use laws set forth in Title 30-A M.R.S.A. Section 4452 Subsection 5. A municipal official' entry onto property under this paragraph is not a trespass; (#14)
4. Investigate complaints and reported violations;
5. Keep written inspection reports and thorough records;
6. Issue violation notices;
7. Participate in appeals procedures;
8. Appear in court when necessary and represent the City (Title 30-A M.R.S.A. Section 4452);
9. Respond to citizen questions in the administration and enforcement of this Land Use Code;
10. Revoke a permit after notice if it was issued in error or if it was based on erroneous information.

11. Issue Cease & Desist, consistent with Main State law.
12. May take any action authorized by Maine State law and the Codes and Ordinances of the City of Brewer.

### **201.2 CITY PLANNER**

The City Planner shall be responsible for assisting the Planning Board in the administration of Site Plan Reviews (Article 6) , Subdivision Reviews (Article 7), and Shoreland Zoning Reviews (Article 3, Section 308), and shall otherwise assist in the administration of this Land Use Code.

### **201.3 PLANNING BOARD**

The City Planning Board shall be responsible for reviewing and acting upon applications for Site Plan Review Approval in accordance with the provisions of Article 6 of this Land Use Code. Following Site Plan Review approval, the applicant shall return to the Code Enforcement Officer for building and other permits. The Planning Board shall also review subdivision applications in accordance with the provisions of Article 7 of this Land Use Code. Following subdivision approval, the applicant shall return to the Code Enforcement Officer for any building or land use permits.

The Planning Board shall have such other responsibilities as may be given to it under this Land Use Code.

### **201.4 BOARD OF APPEALS**

The Board of Appeals shall be responsible for deciding administrative and variance appeals in accordance with the requirements of Article 13 of this Land Use Code and Chapter 34 of the City of Brewer Charter, Codes and Ordinances. Following the issuance of any decision favorable to the applicant, the applicant shall return to the Code Enforcement Officer for building and other permits.

## **202 CODE ENFORCEMENT OFFICER PERMIT REQUIRED**

A permit from the Code Enforcement Officer shall be required before beginning or undertaking any of the following activities:

### **202.1 BUILDING PERMIT**

No building or structure shall be erected, added to or structurally altered until a permit therefore has been issued by the Code Enforcement Officer. All applications for such permits shall be in accordance with the requirements of this Land Use Code and Chapter 16 of the City of Brewer Charter, Codes and Ordinances, and unless upon written order of the Zoning Board of Appeals no such building permit or Certificate of Occupancy shall be issued for any building where said construction, addition or alteration or use thereof would be in violation of the provisions of this Land Use Code and Chapter 16 of the City of Brewer Charter, Codes and Ordinances.

## **202.2 MOVING OR DEMOLITION PERMIT**

All buildings which are removed from or moved onto, or moved around within a lot, or demolished.

## **202.3 CHANGE OF USE**

The change of any premises from one category of land use to any other land use.

## **202.4 ACTIVITIES LISTED IN THE SCHEDULE OF LAND USES**

Any activity listed in Article 3 Section 306.5 of this Land Use Code as requiring a permit from the Code Enforcement Officer. No permit may be issued under this provision for an activity which is part of a site or project requiring Site Plan Review Approval until such approval has been granted by the Planning Board.

## **202.5 SITE PLAN REVIEW ACTIVITIES**

Any activity approved by the Planning Board under the Site Plan Review provisions of Article 6 of this Land Use Code.

## **202.6 ADDITIONAL USES IN PREVIOUSLY APPROVED SITE PLANS**

Any addition of uses inside a building having previously received Site Plan Review Approval from the Planning Board.

## **202.7 MINOR EXPANSIONS OF PREVIOUSLY APPROVED SITE PLANS**

Construction or expansion of accessory structures or uses, addition of an accessory uses, expansion of a primary building or structure, or expansion of an unvegetated area on a site or project which has received Site Plan Review Approval from the Planning Board or approval from the City Planner pursuant to Article 6, Section 610 of this Land Use Code.

## **203 PERMIT APPLICATION PROCEDURE**

### **203.1 APPLICATION**

All applications for a permit shall be submitted in writing to the Code Enforcement Officer on forms provided for the purpose. All applications shall be signed by the owner or owners of the property, lessee, or other person(s) authorizing the work, certifying that the information in the application is complete and correct.

### **203.2 SUBMISSIONS (#2)**

There shall be submitted with all applications, unless deemed unnecessary by the Code Officer, one copy of a layout or plot plan drawn to scale showing the following:

1. The actual dimensions of the lot to be built upon;
2. In the Shoreland Zoning Protection District and Stream Protection District, the location and size of all buildings, structures, and other significant features currently existing on the lot, as well as all water bodies and wetlands within two hundred fifty (250) feet of the property boundaries;
3. The exact size and location on the lot of the buildings and accessory buildings to be erected and such other information as may be necessary to determine and provide for the enforcement of this Land Use Code;
4. The existing and intended use of each building or structure;

5. Where applicable, the location of soils test pits, subsurface sewage disposal systems, parking lots, driveways, signs, buffer strips, fences and private wells; and
6. Such other information as may be reasonably required by the Code Enforcement Officer to provide for the administration and enforcement of this Land Use Code.

### **203.3 BURDEN OF PROOF (#2)**

The applicant shall have the burden of proving that a proposed land use activity is in conformity with the provisions of this Land Use Code.

## **204 ACTION ON THE APPLICATION**

### **204.1 DEADLINE FOR DECISION**

The Code Enforcement Officer shall, within thirty (30) calendar days of receipt of a completed application, issue the permit if all proposed construction and land use activity meets the provisions of this Land Use Code, or deny the application, or refer the applicant to the City Planner for Site Plan Review or Subdivision Review. All decisions of the Code Enforcement Officer shall be in writing.

## **204.2 TO WHOM ISSUED (#2)**

No permit shall be issued except to the owner of record, lessee, or his/her authorized agent. In the case of a lessee or authorized agent the application shall be accompanied by a letter authorizing the lessee or the authorized agent to apply for the permit application.

## **205 APPLICANT RESPONSIBILITY**

### **205.1 POSTING (#2)**

The applicant shall conspicuously post any permit issued, on the lot where the activity will occur, at a location clearly visible from the street unless other means of posting are authorized by the Code Officer.

### **205.2 COMMENCEMENT AND COMPLETION OF WORK (#2)(#14)**

Construction and alteration activities on projects for which a permit has been granted under this Section shall commence within six (6) months of the date of issuance of the permit and shall be substantially completed within twelve (12) months of that date. Activities which are not commenced or substantially completed within the time limits provided above shall be subject to a new application and the permit issued under this Section shall be considered void. Activities may be extended, one or more times for additional periods of 90 days each, by the Code Enforcement Officer, if an application for an extension is submitted not later than thirty (30) days prior to expiration of the prior permit.

### **205.3 APPEALS**

Appeals from decisions of the Code Enforcement Officer may be taken to the Board of Appeals in accordance with the provisions of Article 13 of this Land Use Code and Chapter 34 of the City of Brewer Charter, Codes and Ordinances.

### **205.4 CERTIFICATE OF OCCUPANCY (#2)**

1. No land shall be occupied or used and no building hereafter erected, altered or extended, shall be used or changed in use until a Certificate of Occupancy shall have been issued by the Code Enforcement Officer, stating that the building or proposed use thereof complies with the provisions of this Land Use Code.
2. No non-conforming use shall be renewed, changed or extended without a Certificate of Occupancy having first been issued by the Code Enforcement Officer within one year from date of non-occupancy.
3. All Certificates of Occupancy shall be applied for coincident with the application for a building permit. Said certificate shall be issued within ten (10) days after the erection or alteration shall have been completed and approved.
4. The Code Enforcement Officer shall maintain a record of all certificates and copies shall be furnished, upon request, to any person having a proprietary or tenancy interest in the building affected.
5. Under such rules and regulations as may be established within this Land Use Code and Chapter 16 of the City of Brewer Charter, Codes and Ordinances, a temporary Certificate of Occupancy may be issued by the Code Enforcement Officer.

## **206 ENFORCEMENT**

### **206.1 CODE ENFORCEMENT OFFICER**

It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Land Use Code. If the Code Enforcement Officer shall find that any provisions of this Land Use Code are being violated, he or she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it within thirty (30) days unless deemed an emergency that could affect the health, safety or wellbeing of any person, persons or the City of Brewer. He or she shall order discontinuance of illegal use of land, buildings, or

structures, removal of illegal buildings, structures, additions, or work being done, or shall take any other action authorized by this Land Use Code and applicable laws to ensure compliance with or to prevent violation of their provisions. (#4)

**1. ON-SITE INVESTIGATIONS**

The Code Enforcement Officer shall conduct on-site inspections to ensure compliance with all applicable laws and conditions attached to permit approvals, and shall investigate all complaints of alleged violations of this Land Use Code.

**2. RECORDS**

The Code Enforcement Officer shall keep a complete record of all essential transactions, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, appeals, court actions, violations investigated, violations found, and fees collected. In the case of shoreland zoning violations, the Code Enforcement Officer shall, on an annual basis, submit a summary of the record of such violations to the Director of the Bureau of Land Quality Control within the Department of Environmental Protection.

## **206.2 LEGAL ACTIONS, FINES**

### **1. LEGAL ACTION**

When any violation of any provision of this Land Use Code shall be found to exist, the City Solicitor or other attorney, as designated by the City Council, upon notice from the Code Enforcement Officer, is hereby authorized to institute any and all actions and proceedings, either legal or equitable, that may be appropriate or necessary to enforce the provisions of this Land Use Code in the name of the City of Brewer. The Code Enforcement Officer is also authorized to represent the City of Brewer pursuant to Title 30A, M.R.S.A. §4452.

### **2. FINES**

Any person, firm, corporation or other legal entity, being the owner or having control of use of any building or premises who violates any of the provisions of this Land Use Code shall be penalized in accordance with Title 30-A MRSA Section 4452.

### **3. ADMINISTRATIVE CONSENT AGREEMENT (#2)**

Upon recommendation of the City Solicitor or other attorney designated by the City Council as to form and compliance with this Land Use Code, certain violations of this Land Use Code may be resolved by an Administrative Consent Agreement executed by the violator and the City Council or its designee. An Administrative Consent Agreement shall require, unless the City Council expressly finds that the violation was the direct result of erroneous advice or approval by City officials based on facts fully and accurately presented, that:

- A. The violation will be corrected in all respects;
- B. The violator admits to the violation; and

- C. The violator pays an appropriate monetary penalty of not less than \$100 nor more than the maximum civil penalty allowed as provided by law and the City's reasonable legal fees and costs.

**207 INSTALLATION OF PUBLIC UTILITY SERVICE - SHORELAND ZONE**

No public utility, water district, sanitary district or any utility company of any kind may install services to any new structure located in the shoreland zone unless written authorization attesting to the validity and currency of all local permits required under this or any previous Ordinance, has been issued by the appropriate municipal officials, indicating that installation has been completed.

# ARTICLE 3 ZONING DISTRICTS

## 301 GENERAL

### 301.1 SHORT TITLE

This Article shall be known and may be cited as the "Zoning Ordinance of the City of Brewer, Maine," and will be referred to herein as this "Ordinance" or "Article."

### 301.2 BASIC REQUIREMENTS

All buildings or structures hereinafter erected, reconstructed, altered, enlarged or moved, and uses of premises in the City shall be in conformity with the provisions of this Ordinance. No building, structure, land or water area shall be used for any purpose or in any manner except as permitted within the district in which such building, structure, land, or water area is located.

## 302 ESTABLISHMENT OF DISTRICTS

For the purposes of this Ordinance, the City of Brewer is hereby divided into the following districts as set forth in this Ordinance and as shown on the Official Zoning Map:

Rural	Rural
LDR	Low Density Residential
MDR-1	Medium Density Residential-1
MDR-2	Medium Density Residential-2
HDR	High Density Residential
HDR-2	High Density Residential-2
CB	Convenience Business
GB	General Business
PB	Professional Business (#3)
IND	Industrial
IND-2	Industrial-2
OR	Office Residential
SZP	Shoreland Zoning Protection District
RP	Resource Protection District
SP	Stream Protection District
OP	Overlay Protection District
MF	Manufactured Housing District

Note that the Shoreland Zoning Protection District, which consists of a “resource protection district.” A “stream protection district” and an “overlay district” and also the “Manufactured Housing district” are overlay districts which are depicted on maps which are elements of the Official Zoning Map as adopted by the City of Brewer.

### **303 OFFICIAL ZONING MAP**

The zoning map officially entitled "City of Brewer Zoning Map," shall consist of the following map elements: I. A “Zoning Base map” depicting the several zoning districts in the City of Brewer;

- II. A “Shoreland Zoning Protection map” depicting those areas subject to Shoreland zoning; viz. All land areas within 250 feet, horizontal distance, of the normal high-water mark of the Penobscot River, within 250 Feet of a state-designated coastal or freshwater wetland, and within 75 feet, horizontal distance of Sedgeunkdunk Stream or 85 feet, horizontal distance of Felts Brook and Eaton Brook; and III. A “Manufactured Housing Overlay District zoning map.” The map series shall bear the date(s) of adoption, and subsequent to adoption shall become a part of this ordinance.

Regardless of the existence of other printed copies of the Zoning Map, Base or stated overlays, which from time to time may be made or published, the Official Zoning Map, which shall be located in the office of the City Clerk, shall be the final authority as to the current zoning status of the land and water areas, buildings and other structures in the City of Brewer.

### **304 INTERPRETATION OF DISTRICT BOUNDARIES**

#### **304.1 INTERPRETATION**

District boundaries shown within the lines of a road, stream or transportation right-of-way shall be deemed to follow the center line of such road, stream or right-of-way. The vacating of a road shall not affect the location of a district boundary.

#### **304.2 UNCERTAINTY OF BOUNDARY LOCATION**

When the Code Enforcement Officer cannot definitely determine the location of a district boundary by reference to the zoning map and such center lines using the scale of dimensions stated on said zoning map, or by the fact that a line does not clearly coincide with a property line, he shall refuse action, and the Board of Appeals, upon appeal, shall interpret the location of the district boundaries with reference to the scale of the map and/or the intent of the City Council at the time the zoning map was adopted. The intent of the City Council shall be presumed to be the intent of the Planning Board when it approved the Ordinance, as

determined from the minutes of its meetings unless the City Council otherwise acted at the time of enactment.

**304.3 SHORELAND OVERLAY DISTRICTS**

The Shoreland Overlay Districts consisting of the Resource Protection District, the Stream Protection District and the Overlay Protection District adopted as part of this Land Use Code are illustrative only and subject to field measurement.

**304.4 MANUFACTURED HOUSING DISTRICT**

The Manufactured Housing District Overlay adopted as part of this Land Use Code depicts boundaries.

**305 DISTRICTS CROSSING LOT LINES**

Where a district boundary crosses a lot in individual ownership, but not on the lot line, then the less restrictive zone provisions shall extend 30 feet into the more restrictive zone of said lot.

**306 SCHEDULE OF USES**

**306.1 ACTIVITY CATEGORIES AND PURPOSES OF ZONING DISTRICTS**

With the exception of the Shoreland Protection District and the Manufactured Housing Overlay District, land uses permitted in the City's zoning districts, in conformance with the performance standards contained in Article 4 of this Land Use Code, are shown in a matrix in Section 306.5 below. The various land uses contained in the matrix are organized into the following activity classifications:

Open Space	Industrial
Residential	Institutional
Commercial	Miscellaneous

Shoreland Protection District requirements and purpose are contained in Section 308 of this Article. Manufactured Housing District Overlay provisions and purpose are contained in Section 309 of this Article.

The purposes of the several zoning districts are as follows:

**“Rural”** The purpose of this district is to provide for areas within the city for the development of very low density residential areas while protecting the rural character of these portions of the city. Development within the area should be sensitive to the rural nature of the district and should preserve open space to the maximum extent possible.

**“Low Density Residential”** This district is intended to provide for housing mixed with complementary recreational and institutional uses in a low density setting immediately adjacent to the urban area.

**“Medium Density Residential”** This district is aimed at providing zones where a majority of the city’s population can reside with a balance between urban living and open space. The district is intended to serve good quality single family housing. These lots are designed to be served by off lot utilities. Protection of established residential neighborhoods from undesirable impacts is an important value in this district. **Medium Density Residential One** shall provide for single family housing and closely related ancillary uses. **Medium Density Residential Two** provides for single family and two family living in a minimum net density of six housing units per acre.

**“High Density Residential”** This district encompasses portions of the city which were developed in the 19<sup>th</sup> and early 20<sup>th</sup> centuries. Serviced by public utilities, it exhibits a mix of residential housing types, plus attendant community service units such as churches-

**“High Density Residential-Two”** The purpose of this district is to provide for a harmonious mixture of residential uses in close proximity to urban services.

### **Commercial and Industrial Districts**

**“Convenience Business District”** The purpose of this district is to permit a variety of uses which are predominantly retail and service oriented. Residential uses are to be combined with governmental and retail uses, so as to provide vitality to the neighborhood. The district developed in the 19<sup>th</sup> and early 20<sup>th</sup> centuries is served with off-lot water and sewer facilities. The Penobscot River provides a welcome neighbor to much of the district and her proud heritage should be husbanded for life and living.

**“General Business District”** The purpose of this district is to provide for a variety of commercial uses, including highway oriented types. The area is intended to be the location for the communities major shopping facilities, including shopping centers. The standards of the district are intended to encourage developments which have controlled vehicular access. The basic utilization unit is one acre; on lot water and sewer are required.

**“Professional Business District”** The purpose of this district is to provide for professionally-oriented commercial development in areas located near significant public infrastructure. The area is intended to include office-oriented uses, professional services, and research and development applications along with retail and commercial enterprises that are supportive of such development. The standards of the district are intended to encourage refined and compatible aesthetic themes across property liens, including landscaping and signage, and provide for the development of thematic or campus-style projects. (#3)

**“Office Residential District”** The purpose of this district is to provide an orderly transition of older residential areas along major traffic arteries to low intensity office and service uses, as well as multifamily housing. The district, located on arterial roads, contains a mix of residential types and construction styles dating to the 19<sup>th</sup> century and is serviced by utilities. The aim of the district is to provide for a variety of housing types and planned professional office/institutional uses that are compatible with neighborhood character and architectural styles. Conditional use provisions of this ordinance are aimed at achieving the integration of the office and institutional uses into the existing residential stock-

**"Industrial District"** The purpose of this district is to provide for industry and warehousing in which high value industrial and warehousing installations in campus arrangements are encouraged.

**“Industrial District Two “** The purpose of this district is to provide for industrial and warehousing uses which are compatible with the Brewer Airport and do not require on lot water and sewer utilities.

### **306.2 SYMBOLS USED IN SCHEDULE OF USES**

The following symbols contained in the Schedule of Uses have the following meanings:

#### **1. DISTRICT SYMBOLS**

<b>Rural</b>	<b>Rural</b>
LDR	Low Density Residential
MDR-1	Medium Density Residential-1
MDR-2	Medium Density Residential-2
HDR	High Density Residential
HDR-2	High Density Residential-2
CB	Convenience Business
GB	General Business
PB	Professional Business
IND	Industrial
IND-2	Industrial-2
OR	Office Residential

## **2. PERMIT REQUIRED SYMBOLS**

Y	Uses allowed without a permit
P	Uses requiring a building permit or other type of permit from the Code Enforcement Officer
S	Uses requiring Site Plan Review Approval from the Planning Board in accordance with the requirements of Article 6 of this Land Use Code
1,2, etc.	Numbers adjacent to letter symbols refer to notes at the end of the Schedule of Uses which contain additional requirements.
Blank	Not permitted

### **306.3 USES SUBSTANTIALLY SIMILAR TO PERMITTED USES**

#### **1. USES ALLOWED WITH OR WITHOUT A PERMIT**

Uses substantially similar to those allowed with or without a permit, but which are not listed in the Schedule of Uses, may be permitted upon a ruling of the Code Enforcement Officer that such use is substantially similar to such uses.

#### **2. USES REQUIRING SITE PLAN APPROVAL**

Uses substantially similar to those requiring Site Plan approval under this Ordinance, but which are not listed in the Schedule of Uses, may be permitted by the Planning Board.

#### **3. PROHIBITED USES**

Uses substantially similar to a prohibited use in the Schedule of Uses, as determined by the Code Enforcement Officer, are prohibited.

### **306.4 COMPLIANCE WITH PERFORMANCE STANDARDS**

All uses which are permitted must occur and be maintained in compliance with the applicable requirements of Article 4, Performance Standards.


**THE LAND USE CODE MATRIXS  
ARE CONTAINED IN THEIR OWN  
SEPARATE FOLDER.**















### **307.2 ACCESSORY STRUCTURES**

Accessory structures shall have the same front yard setback as the primary structure. Side yards and rear yards shall have a minimum setback of five feet, except the setback can be reduced to zero in the CB Zone, if there is a fire wall separation.

### **307.3 ACCESSORY USES**

1. Accessory uses, other than sidewalks, walkways, driveways, outdoor parking lots, and their attendant paving, shall have the same front yard setback as the primary structure. Side yards and rear yards shall have a minimum setback of five feet, except the setback can be reduced to zero in the CB Zone, if there is a fire wall separation.
2. Outdoor parking lots shall have minimum depth frontages of not less than one half of the minimum depth frontages required for the principal structure on the lot. There shall be no setback requirements for sidewalks, walkways, driveways, and their attendant paving.

### **307.4 USE OF TRIANGULAR AREA ADJACENT TO PUBLIC STREET CORNERS**

The following provisions shall apply to the triangular area adjacent to public street corners:

1. On residential properties, the triangle shall be located by measuring a line five (5) feet along each edge of the traveled ways and connecting the ends of the two lines that are farthest from the corner. On commercial properties, the triangle shall be located by measuring a line 10 (ten) feet along each edge of the traveled ways and connecting the ends of the two lines that are farthest from the corner.
2. No structure, trees, or plantings shall be allowed within the triangular area if they interfere with or obstruct sight distance.
3. The provisions of this standard shall apply prospectively from the effective date of this Land Use Code.
4. The Code Enforcement Officer shall order the removal of any structure, tree or planting that interferes with or obstructs sight distance.
5. City signs and utilities shall be exempt from the provisions of this standard.

## **308 SHORELAND ZONING PROTECTION DISTRICT**

### **308.1 PURPOSE**

The purposes of this district are to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources; to protect freshwater and coastal wetlands; to control building sites, placement of structures and land use; to conserve shore cover, and visual as well as actual points of access to inland and coastal waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas.

The Shoreland Zoning Protection District encompasses three sub-districts:

1. The Resource Protection District
2. The Stream Protection District
3. The Overlay Protection District

### **308.2 APPLICABILITY**

The Shoreland Zoning Protection (S.Z.P.) District shall apply to all land areas within 250 feet, horizontal distance, of the normal high-water line of the Penobscot River; within 250 feet, horizontal distance, of the upland edge of a state designated coastal or freshwater wetland; and within 75 feet, horizontal distance, of the normal high-water line of a qualifying stream. It also applies to any structure built on or abutting a dock, wharf or pier, or other structure extending beyond the normal high-water line of a water body or within a wetland.

### **308.3 RESOURCE PROTECTION DISTRICT**

The Resource Protection District includes areas in which development would adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values. This district shall include the following areas when they occur within the limits of the shoreland zone, exclusive of the Stream Protection District.

1. Areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands, salt marshes and salt meadows, and wetland associated with great ponds and rivers, which are rated "moderate" or "high" value by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) as of January 1, 1973.

2. Flood Plains along the Penobscot River are designated by the National Flood Insurance Program, map number 2301040005B, and as may be amended by letters of map amendments (LOMA) and letter of map revisions (LOMR), except areas that were developed as of December, 1991.
3. Areas of two or more contiguous acres with sustained slopes of 20% or greater.
4. Land areas along the river subject to severe bank erosion or undercutting.
5. Properties currently listed in the National Register of Historic Places.
6. "Class C" focal points for wintering bald eagles.
7. Natural sites of significant scenic value.

#### **308.4 STREAM PROTECTION DISTRICT**

The Stream Protection District (S.P.) includes all land areas within 85 feet, horizontal distance, of the normal high-water line of Eaton Brook, Felts Brook, and 75 feet, horizontal distance, of the normal high-water line of Sedgeunkedunk Stream, exclusive of those areas within 250 feet, horizontal distance, of the normal high-water line of the Penobscot River or within 250 feet, horizontal distance, of the upland edge of a freshwater or coastal wetland. Where a stream and its associated shoreland area is located within 250 feet, horizontal distance, of the above water bodies or wetlands, that land shall be regulated under the terms of the shoreland district associated with that water body or wetland.

#### **308.5 THE OVERLAY PROTECTION (O.P.) DISTRICT**

This district includes all areas of the Shoreland Zoning Protection District, exclusive of the Resource Protection District and the Stream Protection District.

#### **308.6 PERMITTED USES (#7)**

All uses allowed in the Shoreland Zoning Protection District are subject to review and approval by the City of Brewer Code Enforcement Officer for compliance with this and other City of Brewer Codes. No building permits will be issued until all approvals from any required State or Federal agencies are obtained. Additional municipal review is required for certain uses as noted below.

Exception from Site Plan approval (Article 6) residential accessory uses of less than 600 square feet of ground coverage and residential expansions of less than 50% of the volume which existed as of September 15, 1995.

1. **PERMITTED USES: RESOURCE PROTECTION DISTRICT**

- A. Filling and earthmoving. Review and approval shall also follow Article 4, Section 413 of this ordinance. (#7)
- B. Soil & Water Conservation Practices
- C. Forest Management and Landscaping
- D. Piers, docks, wharfs, bridges, and other structures and uses extending over or below the normal high-water line or within a wetland.. Review and approval shall also follow Article 6, Site Plan Review of this ordinance. (#7)
- E. Small non-residential facilities for educational, scientific, or nature interpretation purposes. Review and approval shall also follow Article 6, Site Plan Review of this ordinance. (#7)
- F. Public and private recreational areas involving minimal structural development. Review and approval shall also follow Article 6, Site Plan Review of this ordinance. (#7)
- G. Parking and/or signs as accessory to allowed uses
- H. Driveways: Upon a finding by the Planning Board that no reasonable location is available outside the district, in which case the driveway shall be set back as far as practicable from the normal high-water line or upland edge of a wetland.

All other uses are expressly forbidden.

2. **PERMITTED USES: STREAM PROTECTION DISTRICT**

- A. Filling and earthmoving. Review and approval shall also follow Article 4, Section 413 of this ordinance. (#7)
- B. Soil & Water Conservation Practices
- C. Forest management activities
- D. Road and driveway construction
- E. Single and two family residential if a setback variance from the Board of Appeals is granted. Review and approval shall also follow Article 6, Site Plan Review of this ordinance. (#7)
- F. Agriculture within Low Density Residential (LDR) and Rural districts only; no manure storage, nor stockpiling allowed in districts; new livestock grazing and tilling within fifty (50) feet horizontal distance of normal high water mark of stream is not permitted; existing grazing activities (as of December, 1991) closer than 25 feet may continue, providing that such grazing is in accordance with a Soil & Water Conservation Plan which is filed within the Planning Board.

- G. Electric transmission lines and gas pipelines, which are not within three thousand (3000) feet of the high water mark of the Penobscot River, (not including transmitter, communication, radio and television towers). (#7)

All other uses are expressly forbidden.

### **3. PERMITTED USES: OVERLAY PROTECTION DISTRICT**

Any use permitted in the district which this district overlays, provided such use meets the requirements of the district which this district overlays and the requirements of Article 4.

Additional Permitted Uses in the Overlay Protection District. (#7)

- A. Piers, wharfs and docks. Review and approval shall also follow Article 6 Site Plan Review of this Ordinance. (#7)
- B. Marine railways. Review and approval shall also follow Article 6 Site Plan Review of this Ordinance. (#7)
- C. Marinas. Review and approval shall also follow Article 6 Site Plan Review of this Ordinance. (#7)
- D. Marine ramp
- E. Electric transmission lines and gas pipelines, which are not within three thousand (3000) feet of the high water mark of the Penobscot River, (not including transmitter, communication, radio and television towers). (#7)

## **308.7 LOT AND YARD REQUIREMENTS:**

### **1. RESOURCE PROTECTION DISTRICT**

- A. Minimum lot size for recreational facilities with structures 40,000 square feet
- B. Minimum shore frontage for recreation facilities with structures 200 feet.

### **2. STREAM PROTECTION DISTRICT**

The Stream Protection District provides for a minimum 75 foot setback from the high water mark of the stream.

### **3. OVERLAY PROTECTION DISTRICT**

Requirements are the same as those for the district which this district overlays.

## **308.8 SHORELAND STANDARDS**

### **1. SHORELAND SETBACKS**

Any building or structure, except those requiring direct access to the water as an operational necessity and which may be classified as a pier, wharf, dock, marine railway, marine ramp and marina, shall be set back at least either A. or B. below, as applies from the normal high water mark of the Penobscot River or upland edge of the wetland as follows:

- A. seventy-five (75) feet in residential zoning districts
- B. fifty (50) feet in commercial zoning districts

### **2. HARVESTING OF VEGETATION**

No growth of any kind, except grass, shall be cut or harvested within 75 feet of any normal high water mark in all other areas along said Penobscot River, other than (a) to provide road use to the water front, but the entire cutting shall not be wider than 50 feet in width, as measured along the shoreline of said river; (b) to provide for a pier, wharf, dock, marine railway, marine ramp and marina, but the entire cutting shall not be more than 50 feet in width as measured along the shoreline of said river; and (c) to provide for forest management and landscaping, as the same may be approved by the Planning Board.

### **3. EROSION CONTROL**

No use of land in the Shoreland Zoning Protection District shall be made which in any way will allow soil, rocks, liquids or other material to enter the water abutting the land other than that which is necessary for the construction and maintenance of a pier, wharf, dock, marine railway, marine ramp and marina and which affects the quality of the water adjacent to the land. All activities which involve filling, grading, excavation or other activities which result in unstabilizing soil conditions shall require an erosion and sediment control plan following the provisions of Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices, March 1991 edition.

### **4. ELEVATION OF STRUCTURES**

The first floor elevation of any building or structure which is not a pier, wharf, dock, marine railway, marine ramp and marina, shall be built not less than one (1) foot above the 100 year flood plain of record. The top of any foundation or the bottom of any opening in foundation shall not be built less than one (1) foot above the 100 year flood plain of record.

**5. PIERS, DOCKS, ETC.**

Piers, docks, wharves and other structures and uses extending over or below normal high-water line shall conform to the following:

- A. Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion and situation;
- B. The facility shall be no larger than necessary to carry on the activity and be consistent with existing conditions, use and character of the area;
- C. No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high water line unless the structure requires direct access to the water as an operational necessity.

**6. DEP PERMITS**

A person performing any of the following activities shall require a permit from the Department of Environmental Protection, pursuant to Title 38 M.R.S.A., Section 480-C, if the activity occurs in, on, over or adjacent to any freshwater or coastal wetland, great pond, stream or brook and operates in such a manner that material or soil may be washed into them:

- A. Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials;
- B. Draining or otherwise dewatering;
- C. Filling
- D. Any construction or alteration of any permanent structure.

**7. TIMBER HARVESTING**

A. Within seventy-five (75) feet, horizontal distance, from any water body, tributary stream, or the upland edge of a wetland, a buffer strip of vegetation shall be preserved as follows:

- 1) There shall be no cleared opening greater than 250 square feet in the forest canopy as measured from the outer limits of the tree crown. However, a footpath not to exceed ten feet in width as measured between tree trunks is permitted provided that a cleared line of sight to the water through the buffet strip is not created.

- 2) Selective cutting of trees within the buffer strip is permitted provided that a well distributed stand of trees and other vegetation is maintained. Adjacent to water bodies, tributary streams, and wetlands, a "well-distributed stand of trees and other vegetation" is defined as maintaining a minimum rating score of 8 per 25-foot square area per the following rating system:

<u>Diameter of Tree at 4½ feet Above Ground Level (inches)</u>	<u>Points</u>
2 - 4 inches	1
4 - 12 inches	2
12 inches	3

- 3) Pruning of tree branches, on the bottom of 1/3 of the tree is permitted.
- 4) In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe, or dead trees results in the creation of cleared openings, these opening shall be replanted with native tree species unless existing tree growth is present.
- 5) Notwithstanding the above provisions, no more than 40% of the total volume of trees four (4) inches or more in diameter, measured at 4 1/2 feet above ground level may be removed in any ten (10) year period.
- 6) NOTE: In any Resource Protection District the cutting of vegetation is limited to that which is necessary for use expressly authorized in that District (all uses permitted are subject to Site Plan Review, Article 6, of this Land Use Code).
- B. At distances greater than 75 feet, horizontal distance, from the normal high water line of the Penobscot River or the upland edge of any designated wetland except for the development of permitted uses (which have obtained Site Plan Review approval), there shall be permitted on any lot, in any ten (10) year period, selective cutting of not more than forty (40) per cent of the volume of trees four inches or more in diameter at breast height (d.b.h.=4 1/2). Tree removal in conjunction with the development of permitted uses shall be included in the forty percent calculation.

In no event shall cleared openings for development, including but not limited to principal and accessory structures, and driveways, exceed the aggregate, twenty-five per cent (25%) of the lot area or ten thousand (10,000) square feet, whichever greater, including land previously developed. This provision shall not apply to the Convenience business (CB) or Industrial District (IND).

- C. Cleared openings legally in existence as of December, 1991, may be maintained, but not enlarged, except as permitted.
- D. Timber harvesting procedures shall conform to Section O "State of Maine Guidelines for Municipal Shoreland Zoning Ordinance" pp 23024, 06-096 Dept. of Environmental Protection, Chapter 1000. Effective date 3/24/90 as may be amended.

**8. SOILS**

All land uses shall be located on soils in or upon which the proposed uses or structures can be established or maintained without causing adverse environmental projects including severe erosion, mass soil movement, improper drainage, and water pollution whether during or after construction. Site plan applications on proposed commercial and industrial project which would alter 20,000 square feet of land or more shall submit a soils report based on on-site investigation prepared by a State-certified professional. The report shall present evidence that all major limitations in the proposed development presented by soil characteristics will be overcome by proper engineering techniques.

**9. PARKING AREAS**

Parking areas shall meet the setback requirements for the district in which such areas are located. Parking areas shall be buffered with a natural screen masking the parking area from the surrounding area. The screen shall consist of evergreen trees of a minimum size of three feet in height at time of planting with a mature size of at least five feet in height or a demonstrated equivalent approved by the Planning Board. Parking areas shall be designed to prevent stormwater from flowing directly into a water body.

**309 MANUFACTURED HOUSING DISTRICT**

**309.1 PURPOSES (#2)**

The purpose of this district is to provide for the setting of manufactured housing units within the context of the City's existing development patterns. It is designed to provide for integration of manufactured housing units in a variety of residential districts throughout the City, recognizing both the need for safe, decent economical housing which manufactured housing can provide and the established patterns of residential development within the City.

### **309.2 USES PERMITTED**

The manufactured housing district consists of an overlay of the existing residential districts, either district-wide or as parts of districts. Where parts of districts are excluded as locations for manufactured housing the following criteria were employed, either singly or in combination:

1. Presence of established neighborhoods with roughly uniform housing styles with very few vacant lots.
2. Urban areas where existing vacant lots would not accommodate manufactured housing.

### **309.3 BASIC DESIGN CRITERIA**

The provisions of this criteria are intended to apply to manufactured housing units (single section, multiple section or expanded types) for use as a single family dwelling. The following are excluded:

The criteria does not apply to manufactured housing used for other than dwelling purposes.

The provisions of this section shall not apply to trailers as defined in Article 14 of this Land Use Code.

This section shall not be construed as relieving the installers of a manufactured housing unit on the lot of the responsibility for compliance with the manufacturer's installation instructions, federal, state and local ordinances, codes, and regulations.

Basic design criteria for manufactured housing units within the Manufactured Housing District shall be as follows:

1. Only manufactured housing meeting the definitions of manufactured housing set forth in Article 14.
2. All manufactured housing units shall be placed on either a concrete slab or full foundation meeting Chapter 16 of the City of Brewer Charter, Codes and Ordinances entitled "Brewer Building Code" as the same may be amended from time to time.

When a manufactured housing unit is installed on a basement or split entry type foundation over a habitable lower-level area, or when more than one-fourth of the area of the manufactured housing unit is installed so that the bottom of the main frame members are more than 3 feet above

ground level, the foundation system shall be designed by a registered professional engineer or architect (in conformity with the Maine Manufactured Housing Board Installation Standards as adopted by the Maine Manufactured Housing Board in March, 1993, and as the same may be amended from time to time).

Any tongue or towing attachment on manufactured housing units shall be removed immediately upon the unit's placement on a foundation.

3. In order to meet the conventions of residential housing as practiced in the City, exterior siding shall consist of one or more of the following:
  - A. Clapboards in wood, metal or vinyl
  - B. Shingles
  - C. Brick
4. Manufactured housing units shall have a minimum roof pitch of 3/12 (about 14 degrees) with a shingle or shingle-like (traditional "standing seam" metal roof) exterior.
5. Manufactured housing units shall be sited with its long axis substantially parallel with the front lot line. Substantially parallel shall include an angle from 0 to 35 degrees.
6. The minimum horizontal dimension of manufactured housing units shall be 14 feet.
7. No person, firm, corporation or other legal entity shall locate, or move from one lot or parcel of land to another, an older mobile home, trailer, or manufactured housing unit which fails to meet the requirements of number 1 through 6, above.
8. Older mobile homes and trailers, and manufactured housing units which fail to meet the standards set forth in numbers 1 through 6 above, which were lawfully established prior to the effective date of this zoning amendment, shall be considered non-conforming structures and may continue and may be maintained, repaired, and improved but not expanded or added onto. No non-conforming mobile home or trailer may be moved to another non-conforming structure but shall be replaced by a manufactured housing unit that meets the requirements of this Article.
9. Manufactured housing units shall be landscaped in keeping with neighborhood standards (structures within 400 feet of the proposed housing site). At a minimum landscaping shall include at least six

evergreen shrubs closely proximate to the foundation which are oriented toward the public way so as to provide a softened, natural complement to the housing unit. Such trees shall be a minimum of three feet tall at the time of planting and shall be maintained at a minimum of three feet thereafter. Establishment of permanent vegetative cover on exposed soils where perennial vegetation is needed for long term protection shall be provided. Landscape materials are specified as number 1 grade as determined by the American Association of Nurserymen. Landscape materials shall be maintained and dead plant material replaced within one year or by the next planting season, whatever occurs first.

10. All fill used for the foundation system of the manufactured housing unit shall be compacted. Grading around the manufactured housing unit shall be done in such a manner that water will drain from the unit at a slope of 6 inches vertical for every 12 feet horizontal (unless otherwise determined by a site plan review by the Brewer Planning Board). The grading shall not cause an increase of water flow or run-off onto abutting properties. The City may require ditching or some other type of watershed system.
11. All manufactured housing units which contain less than 1,500 square feet shall have on the same lot an accessory building containing at least 96 square feet (i.e. 8 feet x 12 feet) with like exterior siding.
12. All manufactured housing units shall have skirting as provided by the manufacturer of the manufactured housing unit. Skirting shall be installed in accordance with the manufacturer's installation instructions. It shall be secured, as necessary, to assure stability, to minimize vibrations, to minimize susceptibility to wind damage, and to compensate for possible frost heaves. Access opening(s) not less than 18 inches in any dimension and not less than 3 square feet in area shall be provided and shall be located so that any water supply and sewer drain connections located under the manufactured home are accessible for inspection. Such access panel(s) or door(s) shall not be fastened in a manner requiring the use of a special tool to remove or open same.
13. Manufactured housing units shall be installed with an anchoring system designed and constructed to resist sliding and overturning of the unit.
14. Masonry piers shall be constructed at all locations of support under any manufactured housing unit with a steel frame.

The Overlay District is depicted on an addendum to the official zoning map of the City of Brewer and is a part of the Brewer Zoning Ordinance.

Manufactured housing units are also allowed in mobile home parks under the provisions of Article 10 of this Land Use Code (Mobile Home Parks).

Notwithstanding any of the foregoing, modular homes that meet construction standards for State certified manufactured homes pursuant to Title 10, M.R.S.A. §9042 are allowed in all zones where single-family dwellings are permitted.

#### **309.4 LOT AND YARD REQUIREMENTS**

Lot and yard requirements are the same as those which this district overlays; e.g. The manufactured housing district overlaying the LDR District shall have lot and yard requirements as found in the LDR District.

# **ARTICLE 4 PERFORMANCE STANDARDS**

## **401 GENERAL (#2)**

All land use activities in the City of Brewer shall comply with the land use standards contained in Article 4. In reviewing applications submitted pursuant to the Land Use Code, the Code Enforcement Officer, City Planner, or the Planning Board shall determine that the standards of Article 4 are or will be met by the applicant. In all instances, the burden of proof shall be upon the applicant.

## **402 ACCESSORY LIVING QUARTERS**

The following provisions shall govern accessory living quarters as defined in Article 14.

### **402.1 OCCUPANCY**

Accessory living quarters shall not be occupied in excess of four (4) months during any twelve (12) month period.

### **402.2 SIZE OF THE UNIT**

The size of the accessory living quarters shall not exceed four hundred fifty (450) square feet.

### **402.3 DISTRICTS WHERE PERMITTED**

Accessory living quarters shall be permitted in the same districts as single-family dwellings.

## **403 AIRPORT APPROACH**

No structure shall be erected, nor vegetation allowed to exist, within airport landing zones in the vicinity of any airport operating in the City of Brewer, at any height greater than is prescribed by the FAA.

**404    ARCHAEOLOGICAL/HISTORIC SITES**

Any proposed land use activity involving structural development or soil disturbance on or adjacent to historic or archeological resources or listed on, or eligible to be listed on the National Register or Historic Places, shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comments, at least 20 days prior to action being taken by the Code Enforcement Officer (CEO) or Planning Board (PB). The CEO or PB shall consider comments received from the Commission prior to rendering a decision on the application and shall require

that historic and archaeological resources be protected to the maximum extent possible in accordance with the Commission's recommendations. As used in this Section, the term "eligible" shall mean an application having been filed with the relevant state or federal agency.

**405 AUTOMOBILE GRAVEYARD, AUTOMOBILE RECYCLING FACILITY AND JUNKYARDS**

No person or landowner shall allow any automobile graveyard, junkyard or automobile recycling facility, hereinafter referred to as facility, to be established, operated, maintained or suffered to exist without first obtaining Site Plan Review approval by the Planning Board, a non-transferable land use permit issued by the City Council in accordance with State licensing and local requirements, and complying with the following provisions:

**405.1 LOT SETBACKS**

Facilities shall be located a minimum of one hundred feet (100') from the edge of the right-of-ways; and shall be set back one hundred feet (100') from all side and rear lot lines.

**405.2 PUBLIC PARK SETBACKS**

Facilities shall be located a minimum of three hundred feet (300') from any public park, facility, or grounds.

**405.3 CRITICAL AREAS**

1. No motor vehicles shall be located on a sand and gravel aquifer or wetland, as shown in the 1995 Comprehensive Plan, or within the 100-year flood plain as mapped by the Federal Emergency Management Agency.
2. A motor vehicle with an intact engine or motor may not be stored within 100

feet of any body of water or freshwater wetland, as defined by 38  
MRSA,  
section 436-A, subsection 5.

3. No permit shall be granted within 100 feet of a well that serves as a public or private water supply. This prohibition does not include a private well that serves only the facility or the owner's or operator's abutting residence. This prohibition does not apply to wells installed after the effective date of this subsection if the facility has already received a permit under these regulations.

#### 405.4 SCREENING (#2)

1. The facility shall be screened from ordinary view of the adjoining public and/or private property. Such screening may be accomplished by natural or manmade objects, plantings, or properly constructed fences; any of which must completely screen the facility from ordinary view throughout the entire calendar year. Such screening must complement the colors, textures and tones found in the surrounding area. Certain facilities may be required to provide internal screening because of size and topography.
2. Ordinary view shall be based on line of sight determination of the public and adjoining property owners' buildings. Line of sight views from adjoining property buildings shall be taken from the highest vantage point in normal, everyday use by occupants of such buildings not to exceed eighteen (18) feet from ground level.
3. Where buildings and/or fences are employed as screening for distances of one hundred lineal feet or more, evergreen plantings which attain a height of six feet or greater at maturity shall be planted and maintained as a textural foil. Such plantings shall be a minimum of three feet high at planting and planted at a rate of four per one hundred lineal feet, approximately twenty-five feet on center (with an allowance of ten feet so as to allow an element of randomness over the course of the plantings).
4. The intent of such provision is to preclude conditions which meet the definition of a "miscellaneous nuisance; under 17 MRSA Section 2802; viz"...as to be unsightly, detracting from the natural scenery and injurious to the comfort and

happiness of individuals and the public, and injurious to property rights..."

5. No motor vehicles or major parts may be stacked or piled on top of each other so as to protrude above the screening. In any event, stacking shall not exceed twelve feet above ground level.
6. Stacking and/or parking of motor vehicles shall be arranged in a grid fashion which employs, at maximum either a 70-foot square pattern or a 25' by 200' block pattern. Fifteen-foot aisle spaces shall be provided for fire fighting apparatus access to such squares or blocks. Parking along screening in a continuous manner is also permitted.

#### **405.5 FLUIDS**

Fluids from a vehicle may not be permitted to flow or be discharged into or onto the ground. Engine lubricant, transmission fluid, brake fluid and engine coolant must be drained into watertight, covered containers and must be recycled or disposed of in accordance with applicable federal or state laws, rules or regulations.

#### **405.6 SCREENING**

All junk and salvage materials shall be stored within the screened/fenced areas and the operation shall be conducted in such a manner as to prevent unsightliness to the adjacent areas.

#### **405.7 BURNING**

No open burning of salvage material or junk shall be permitted on the premises. Waste fluids and unusable materials shall be disposed of in an environmentally sound manner.

#### **405.8 SANITATION**

1. The facility shall be at all times maintained in a sanitary condition.
2. No water shall be allowed to stand in any place on facility's grounds in such manner as to afford a breeding ground for mosquitoes or other insects.
3. No garbage or other waste liable to give off a foul odor or attract vermin shall be kept on the property; nor shall any refuse of any kind be kept in said premises unless said refuse is defined under this Land Use Code or applicable State law.
4. Weeds and vegetation on the property, other than trees and shrubs, shall be kept at a height of not more than ten (10) inches.

#### **405.9 HOURS OF OPERATION**

1. No material shall be delivered to the facility on Sundays, legal holidays, nor before the hour of 6:00 A.M. or after the hour of 7:00 P.M. on other days, except that special permission may be granted by a member of the Brewer Police Department in the event of extenuating circumstances.
2. Any equipment used to crush motor vehicles shall only be operated within the area enclosed by screening of junked motor vehicles. No such equipment shall be operated on Sundays, Legal holidays, nor before the hour of 6:00 A.M. or after the hour of 7:00 P.M. on other days, except that special permission may be granted by a member of the Brewer Police Department in the event of extenuating circumstances.

**406 CAMPING PARK**

Camping parks shall conform to the minimum requirements imposed under  
State  
licensing procedures and the following (in cases of possible conflict, the  
stricter rules  
shall apply):

## **406.1 MANAGEMENT**

The camping park management shall be responsible for operating their premises in accordance with all City codes and ordinances and all State laws and regulations. The maintenance of all open space areas, roads, and utilities in a park shall be the responsibility of the park management.

## **406.2 LOCATION AND MINIMUM SIZE**

All parks shall be located on a well drained site properly graded to insure rapid drainage and freedom from stagnant pools of water. No park sites shall be developed within the one hundred (100) year floodplain.

Camping parks shall be located on property not less than two (2) acres in size.

## **406.3 SETBACKS AND SCREENING**

Camping parks shall be designed to provide a setback of at least 200 feet between the individual camping lots and the front boundary of the park and 50 feet between the individual camping lots and the side and rear boundaries of the park. The camping park shall be enclosed by a fence, wall, landscape, screening, earth mounds or other approved barriers which will prevent access to adjoining properties other than streets.

The Planning Board may provide a waiver of these standards where exceptional or unique topography of the lot would cause unusual hardship provided that a written finding determines the proposed development is in keeping with the spirit and intent of this Land Use Code, including protection and preservation of the public health, welfare and safety and that the uniqueness of topographic form provides an equivalent form of separation due to its elevation.

## **406.4 ROAD AND STREETS (#2)**

All recreation vehicle and tent parking sites shall be provided with safe and convenient vehicular access.

Access shall be in accordance with the provisions of the text, A Policy of Geometric

Design of Highways and Streets, 1984 edition by American Association of State Highway and Transportation Officials Chapter V, Recreation Roads with the following design criteria:

- Design Speed: Maximum 25 (mph)
- Maximum Grade: 7%
- Superelevation Rate: 6%
- all access roads which abut a public street shall be paved for a minimum of 100 feet and meet the entrance standards in Article 9, Road and Streets of the Land

Use Code

- Loops, rather than dead-end streets, shall be encouraged. All dead-end roads shall provide a cul-de-sac meeting design standards for a thirty (30) foot motor home. Dead-end streets shall not exceed 1,000 feet in length.

#### **406.5 RECREATION AREA**

No less than eight (8) percent of the total area of any camping park established under these ordinances shall be devoted to common recreational areas and facilities, such as playgrounds, swimming pools or community buildings. Each park shall have at least one principal recreation and community center which shall contain not less than five (5) percent of the total area of the park. Recreation land shall be of slope and size configuration to provide for the stated purpose. The principal recreation center shall provide a minimum of 8,000 square feet.

#### **406.6 LANDSCAPING**

The applicant shall submit a landscape plan showing the preservation of existing trees twelve (12) inches in diameter at breast height and larger, the placement of trees and vegetation, graded contours, streams and the preservation of scenic, historic or environmentally desirable areas which

are included in a duly recognized comprehensive, land use or conservation plan.

1. Where possible, existing trees shall be preserved. Natural landscape features, such as woods and ravines shall be preserved in their natural state.
2. Screen planting, providing a dense visual barrier at all times, shall be provided around laundry drying yards, garbage and trash collection stations and non-residential uses.

The Planning Board may on the basis of site review criteria require screen plantings (or similar architectural techniques) around the boundaries of the park. Screens shall consist of shrubs or trees at least four feet in height and eventually reaching a mature height of at least six feet.

3. Other planting shall be provided and shall be adequate in size, quantity and character to provide an attractive setting for the park, to provide adequate privacy, to minimize reflected glare, and to afford summer shade.

The objective is to provide for a minimum tree canopy coverage of forty percent exclusive of roadways and buildings. "Tree canopy" is the area in square feet of a tree's spread at maturity with the following values used:

<u>1,000 sq. ft.</u>	<u>700 sq. ft.</u>	<u>300 sq. ft.</u>
Maple	Pine	Arborvitae

Beech	Spruce	Larch
Oak	Fir	Crabapple
Ash	Hemlock	N. White Cedar
	Aspen	
	Linden	

#### **406.7 SANITARY FACILITIES**

1. Sewage Disposal: A sanitary sewer system shall be installed at the expense of the applicant.

An applicant shall submit plans for sewage disposal designed by a licensed civil engineer in full compliance with the requirements of the State of Maine Plumbing Code and/or Department of Environmental Protection.

State sanitary disposal standards for tent and recreational parks shall be followed, except that privies are not allowed. Inclusion of State sanitary disposal standards for tent and recreational parks includes provisions for "sanitary station", including performance.

2. Water Supply: Water supply to camping parks shall conform to the rules of the Department of Human Services, relating to tent and recreational vehicle parks and wilderness recreational parks, section 3, revised May, 1990, and as may be amended from time to time.

3. Garbage and Trash Disposal: In all parks, rubbish and garbage cans shall be provided with tight fitting covers or other means of disposal, approved by the City of Brewer Code Enforcement Officer. Adequate garbage and rubbish collection must be provided by the licensee.

4. Lighting: All public areas and facilities shall be sufficiently illuminated to

ensure the security and safety of persons using such facilities. A lighting level of 0.3 minimum average horizontal footcandles shall be the standard.

#### **406.8 FIRE**

In a camping park, open fires shall be permitted only in areas designated on the plan of said park as cooking areas. Facilities for such fires must meet the approval of the Fire Chief of the City of Brewer as to adequacy for protection to persons and property from fire with respect to their location and construction.

#### **406.9 SURFACE DRAINAGE**

Where a camping park is traversed by a watercourse; drainageway; future sewer line as

indicated by the comprehensive land use or sewer plan or plans; or where the Planning Board feels that surface water drainage to be created by the camping park should be controlled for the protection of the camping park, there shall be provided an easement or drainage right-of-way and culverts, catch basins or other means of channeling surface water within such camping park and over other properties, of such nature, width and location as the City Engineer deems adequate.

The applicant shall provide a statement that the proposed camping park will not create erosion, drainage, or runoff problems either in the camping park or other properties. Accompanying such a statement and integral to its findings shall be calculations, maps and materials used in determining the impact of the camping park on surface drainage. The applicant shall submit a surface drainage plan showing ditching, culverts, easements and other proposed improvements to the City Engineer.

Topsoil shall be considered part of the camping park. Except for surplus topsoil from roads, parking areas and camper stand excavations, it is not to be removed from the site.

#### **406.10 SERVICE BUILDINGS**

Each camping park shall have erected therein, a service building which shall contain the following:

1. Separate toilet room for each sex at the ratio of one toilet room for each eight trailers, camp trailers, tents or fraction thereof. Every male toilet facility shall have an urinal for each sixteen trailers, camp trailers, tents or fraction thereof.
2. Toilet rooms shall contain lavatories with hot and cold running water in the ratio of one lavatory to every two or less water closets.
3. Separate shower or bathing facilities shall be provided for each sex in the same ratio of toilets.
4. Laundry facilities shall be provided.

#### **406.11 LOTS**

A minimum width of thirty (30) feet for each unit in a camping park shall be provided. An accessway shall not be included as part of a unit space requirement. A minimum site of 1200 square feet shall be provided for each unit in a camping park. Each site shall contain a stabilized vehicular parking pad. No part of the trailer or other unit placed on such site shall be closer than seven (7) feet to a camping site line.

Land meeting the State of Maine wetland designation shall not be included in calculating land area per site.

#### **406.12 REGISTRATION**

In camping parks, the licensee shall keep a current register which shall contain the following information:

1. the name of the owner of each trailer or tent and the lot number on which said trailer or tent is located;
2. State of registration and number on the license plate on any trailers located therein; and
3. inclusive dates of stay.

NOTATION: No camp trailer or tent shall be used as a permanent place of dwelling or for indefinite period of time. Continuous occupancy extending beyond three (3) months in any one calendar year or any five weeks during the period from November, December, January, February and March, shall be presumed to be permanent occupancy.

#### **406.13 DISCLOSURE OF REGISTRATION INFORMATION**

The foregoing information shall be made available to the City Manager of the City of Brewer or the Chiefs of Police and/or Fire Department of said City upon request. Refusal to keep or render up said records shall be grounds for revocation or refusal to renew any license granted hereunder. Licensees shall keep such records for a period of at least three (3) years.

#### **406.14 INSPECTION**

The City Council, its departments or their respective agents shall have the right to inspect the park or any park thereof at any time.

## **407    CONDITIONAL USES**

Business offices, professional offices and community service organizations located on arterial streets as defined in Article 14 of this Land Use Code shall be allowed within the residential districts subject to Planning Board approval under the provisions of Article 6 of this Land Use Code and the following criteria:

**407.1** Shall not exceed 3,000 square feet in gross floor area;

**407.2** Shall meet the off-street parking requirements of this Land Use Code without a variance for any required spaces;

**407.3** The development standards and use conditions of the District in which the  
property in question is located shall be complied with. Conditional use which  
requires a variance of development or other standards shall not be granted;

**407.4** The proposed use will not create unreasonable traffic congestion or hazardous conditions on contiguous or adjacent streets;

**407.5** The proper operation of the conditional use will be insured by providing and maintaining adequate and appropriate utilities, fire protection, drainage, parking and loading and other necessary site improvements;

**407.6** Lighting shall be residential in character, not exceeding 0.3 minimum average foot-candles;

**407.7** Signage shall be residential in character and shall not exceed six square feet in area not to be internally illuminated and shall be attached to the principal structure or visible through a window in the principal structure;

**407.8** Parking and loading areas shall have sufficient screening to provide buffering of light, noise and visual impacts of the proposed use so that abutting properties are not adversely impacted;

**407.9** The proposed use, although not appropriate for every site in the zone, is appropriate for the location for which it is sought, because the proposed use will conform to the general character of the development in the immediate area as to architectural style, building bulk and extent, and intensity of site use. As to architectural style, the applicant must show that the proposed structure conforms to the exterior facade, rooflines, shape and materials used on buildings in the immediate area. As to building bulk, the applicant shall cause his proposed building to conform with the height and existing ratio of land area to building area for other properties in the immediate area.

**407.10** Conditional Use approval secured under the provisions of this Land Use Code shall expire if the use, work or change is not commenced within one (1) year of the date on which such conditional use is finally approved by the Planning Board, or if the work is not substantially completed within two (2) years of the date on which such conditional use is finally approved.

**408 COMMERCIAL VEHICLES IN RESIDENTIAL DISTRICTS (#2)**

In all residential districts, the keeping, storage and/or parking of any commercial type vehicles shall not be permitted, except that one commercial vehicle used for transportation to and from a place of employment by the occupant of the residence where said vehicle is parked shall be permitted, provided that such vehicle shall not exceed 27 feet in overall length and shall be parked on the owner's premises. In any proceedings for violation of this section, where a motor vehicle displays commercial license plates, such registration shall constitute a prima facie presumption that it is a commercial vehicle at the time of any alleged violation.

#### **409 CONSTRUCTION IN FLOOD HAZARD AREAS**

When any part of a development is located in a Flood Hazard Area as identified by the Federal Emergency Management Agency, the plan of the proposed development shall indicate that all principal structures on lots in the development shall be constructed with their lowest floor, including the basement, at least one (1) foot above the one hundred (100) year flood elevation, and in conformance with the provisions of Article 8 of this Land Use Code. Such a restriction shall be included in the deed to any lot which is included or partially included in the flood hazard area.

#### **410 CONVERSIONS - SINGLE FAMILY TO MULTI-FAMILY**

Conversions of existing structures into multi-family dwellings, in districts permitting multi-family dwellings, shall be subject to the permit requirements set forth in Article 3, Section 306.5 of this Land Use Code and the following:

##### **410.1 BUILDING SIZE (#2)**

Before conversion, the structure must have a minimum gross floor area of one thousand five hundred (1,500) sq. ft. which meets Chapter 16, Article 1, Building Code and Chapter 30, Housing Code of the City of Brewer Charter, Codes and Ordinances, for living area. The gross floor area shall not include porches, garages, accessory buildings or floor area of any portion of which is below grade.

##### **410.2 APPEARANCE**

Converted buildings must retain the appearance of a single family dwelling with no major structural alterations to the exterior other than required means of egress from dwelling units. All fire escapes

or stairways leading to floor areas above the first floor must be completely enclosed.

#### **410.3 AGE OF STRUCTURE**

The structure must have been constructed prior to January 1, 1976.

#### **410.4 OFF-STREET PARKING**

The required off-street parking spaces must be provided.

#### **410.5 MINIMUM UNIT SIZE**

After conversion, the structure shall contain at least one dwelling unit, which must have a minimum of 800 sq. ft. of floor area, and any combination of the following which, in conjunction with the said dwelling unit, falls within the gross floor area of the structure: (a) An efficiency unit must contain a minimum of 250 sq. ft. of floor area; (b) One bedroom dwelling units must have a minimum of 600 sq. ft. of floor area except for mother-in-law apartments; (c) Dwelling units with two or more bedrooms must have a minimum of 800 sq. ft. of floor area. Required minimum of sq. ft. per dwelling unit shall be exclusive of halls and entries for each unit.

#### **411 DAY CARE**

##### **411.1 All Day Care types shall be: (#2)**

1. Licensed by the Maine Department of Human Services, Bureau of Social Services, Day Care Division.
2. Subject to annual City of Brewer permit.
3. Day Care Facilities shall meet the criteria of Article 4, Section 411, of this Land Use Code. Child Care Centers shall meet the criteria of Article 4, Section 411 of this Land Use Code, meet the criteria of Article 6, Site Plan Review of this Land Use Code and follow the procedures outlined in Article 6, Site Plan Review of this Land Use Code.

#### **411.2 OUTDOOR PLAY AREA**

All daycare types shall provide a safe, hazard-free outside play area with a minimum of seventy-five square feet per child. The play area shall be provided with fencing to provide security and screening. Play equipment shall meet the "Standard Consumer Safety Specifications for Playground Equipment for Public Use - Designation F 1487-95," and be maintained in good repair.

#### **411.3 HOURS OF OPERATION (#2)**

"Day Care Facilities" shall not operate between the hours of 6:00 p.m. and 6:00 a.m. unless specifically approved by the Planning Board.

#### **411.4 PARKING**

"Day Care Facilities" shall provide one off-street parking space per four (4) children plus one (1) space per employee who does not reside on the premises. Parking shall be provided in the side or rear yard only.

Such parking requirements shall be in addition to parking required for the initial use. (For example: a single-family dwelling requires two parking spaces, plus three for day care for 12 children plus two for two outside employees = 7 off-street parking spaces required). All parking shall comply with the parking standards of this Article.

#### **411.5 SIGNS**

"Day Care Facilities" may have an unlighted sign not to exceed two (2) square feet. Sign permit is required for all signs.

#### **411.6 EMPLOYEES**

"Day Care Facilities" may employ two (2) persons who do not reside on the premises.

### **412 ELECTROMAGNETIC RADIATION**

#### **412.1 REQUIREMENTS**

All uses shall be controlled to prevent any intentional source of electromagnetic radiation which does not comply with the current regulations of the Federal Communications Commission regulations regarding such sources of electromagnetic radiation. Further, any operation in compliance with the Federal Communications Commission regulations shall not be permitted if such radiation causes an abnormal degradation in performance of other electromagnetic radiators or electromagnetic receptors of quality and proper design because of proximity, primary field, blanketing, spurious re-radiation conducted energy in power or telephone systems or harmonic content.

#### **412.2 METHOD OF MEASUREMENT**

For the purposes of determining the level of radiated electromagnetic interference, standard field strength measuring techniques shall be used for measuring interference transmitted or conducted by power or telephone lines, a suitable, turntable peak reading, radio frequency voltmeter shall be used. This instrument shall, by means of appropriate isolation coupling, be alternatively connected from line to line from line to ground during the measurement.

#### **412.3 DETERMINATION OF ELECTROMAGNETIC INTERFERENCE**

The determination of "abnormal degradation in performance" and "of quality and proper design" shall be made in accordance with good engineering practices as defined in the latest principles and standards of the American Institute of Electrical Engineers, the Institute of Radio Engineers, and the Radio Manufacturers Association. In case of any conflict between the latest standards

and principles of the above groups, precedence in the interpretation shall be in the following order: (1) American Institute of Electrical Engineers, (2) Institute of Radio Engineers, and (3) Radio Manufacturers Association.

#### **413 EXCAVATION, REMOVAL AND FILLING OF LANDS (#4)**

The use of land for the excavation, removal, filling or depositing of any type of earth material, topsoil, gravel, rock, or by-products not prohibited by law is permitted in the districts set forth in this ordinance provided that such activity will not entail the following:

1. Increase runoff or cause flooding on property of others; or
2. Cause erosion or sedimentation; or
3. Alter any stream , watercourse, natural drainage way or wetland without first having obtained requisite State and/or Federal permits.

##### **413.1 APPROVAL REQUIRED**

- A. Such excavation, removal and filling shall be in accordance with a fill and grading plan, for approval to the Planning Board. The City Engineer must approve the plan prior to the approval of the Planning Board. This regulation does not apply to normal soil removal for basement or foundation work when a building permit has previously been issued by the Code Enforcement Officer or filling or removal of material indicated on an approved site plan pursuant to article 6 of this Land Use Code.
- B. Filing or removal of material less than 200 cubic yards per property per calendar year shall not require an approved fill and grading plan when such filling and grading does not encroach on any wetland areas. However, all such filling or removal shall require written approval from the Code Enforcement Officer and City Engineer to be filed with the Code Enforcement Officer.

## **413.2 FILL AND GRADING PLAN**

- A. The procedure for Planning Board review and approval of a fill and grading plan shall be the same as outlined in Article 6 of this ordinance for a minor site plan.
- B. Fees for a fill and grading plan shall be a non-refundable application fee set forth in the City Council adopted fee schedule, payable to the City of Brewer, and legal notice fees for the required public hearing.
- C. The fill and grading submission shall contain the following:
1. Application form.
  2. Demonstration of sufficient right, title or interest in the property. (see Section 606.1 of this ordinance for options).
  3. A fill and grading plan drawn at a scale of not less than fifty (50) feet equals one (1) inch, show existing and proposed grades, including erosion control measures meeting “Best Management Practices” an erosion and sedimentation control plan using 12 point items outline in Erosion and Sedimentation Control: Best Management Practices, published by the Maine Department of Environmental Protection, Bureau of Land and Water Quality, dated March 2003 plus other data as may be required by the City Engineer, Code Enforcement Officer or City Planner. Upon Completion of all such excavation, removal and filling of lands, it shall be graded, loamed and seeded.
  4. Demonstration that the items listed under Section 413 above will be met.

## **413.3 MINERAL EXTRACTION**

Any operation within any twelve (12) month period which removes more than one hundred (100) cubic yards of soil, topsoil, loam sand, gravel, clay, rock, peat, or other like material from its natural location and to transport the product removed away from the extraction site shall not be permitted within 75 feet of any property line, without the written permission of the owner of such adjacent property.

**414 FIRE AND SAFETY**

Only such buildings and structures which are constructed in conformity with all codes and the Building and Fire Codes and ordinances of the City of Brewer shall be permitted.

**415 HOME OCCUPATIONS**

**415.1 WITHIN DWELLING**

Home occupations shall be carried on wholly within a dwelling unit or building accessory to a dwelling unit.

**415.2 FAMILY LIMIT**

No person other than members of the family residing in the dwelling unit shall be employed in a home occupation, provided that in Rural and LDR districts, there may be two (2) employees who are not members of the family.

**415.3 INCIDENTAL**

Home occupations shall be clearly incidental and secondary to the use of a dwelling unit (or building accessory thereto) for residential purposes.

**415.4 EXTERIOR PROVISIONS**

In connection with a home occupation there shall be no exterior signs other than permitted by Section 430, no exterior storage of materials, and no other exterior indication of the home occupation or variance from the residential character of the premises.

**415.5 HAZARDS AND NUISANCES**

A home occupation shall not create noise, dust, vibration, odor, smoke, glare, electrical interference, fire hazard or any other hazard or nuisance to any greater or more frequent extent than that normally experienced in an average residential dwelling in the district in which located.

#### **415.6 ON-PREMISE PRODUCTS**

No goods, merchandise, or products shall be sold upon the premises, other than those produced on the premises.

#### **415.7 CLIENT LIMIT**

Home occupations providing (for a fee) professional, educational and/or personal services to groups of persons on the premises shall be limited to serving no more than four (4) persons at any given time.

#### **415.8 OFF-STREET PARKING**

Home occupations providing professional, educational, and/or personal services to persons on the premises shall provide two (2) off-street parking spaces in addition to off-street parking spaces required for the primary residential use.

#### **415.9 SIZE**

The home occupation shall not exceed 25 percent of the floor area of the primary structure and/or accessory structure.

#### **415.10 INVENTORY AND SUPPLIES**

Inventory and supplies shall not occupy more than 50 percent of the area permitted to be used as a home occupation.

**415.11** There shall be no stock in trade regularly maintained or any new commodity sold on the premises.

**415.12** The following are specifically excluded as home occupations: convalescent or nursing home, tourist home, animal hospital, restaurants, doctors' offices, dentists' offices, real estate offices, beauty shops and barber shops, except those that are owner-occupied, one (1) chair, appointment-only shops that meet all the other home occupation criteria.

## **416 IN-LAW APARTMENT**

An in-law apartment meeting the following standards shall be considered to be part of a single-family detached dwelling and shall not be considered to be a dwelling unit. In-law apartments shall be permitted only in those districts which allow single-family dwellings. Apartments not meeting these requirements shall be considered to be separate dwelling units.

**416.1** The in-law apartment shall be located within the same structure as the principal residential use;

**416.2** The in-law apartment shall be accessory to the use of the premises as a single-family dwelling and only one (1) in-law apartment shall be created in a single-family dwelling;

**416.3** The total floor area of the in-law apartment shall be a minimum of five hundred twenty-five (525) square feet or thirty (30) percent of the gross floor area of the principal building, not to exceed seven hundred (700) square feet, whichever is greater;

**416.4** The creation of the in-law apartment shall not alter the single-family character of the property. The following standards shall be met in creating the unit:

1. The in-law apartment shall not be clearly identifiable from the exterior as a result of the design of the structure; and
2. Provisions for parking, service areas, and storage shall not exceed the levels found in adjacent single-family residences.

**416.5** The in-law apartment must not be occupied by more than two (2) people.

**416.6** One of the occupants of the in-law apartment must be within the second degree of kinship with at least one of the owners of the property.

**416.7** The Code Enforcement Officer on or about the anniversary date of the issuance of a Certificate of Occupancy to insure that the above criteria are being met shall inspect the in-law apartment.

**417 LAND NOT SUITABLE FOR DEVELOPMENT**

**417.1** The following lands shall not be included in the calculations of lot area for the purpose of meeting the requirements of the minimum lot size requirements of this Land Use Code:

**1. WATER BODIES**

Land which is situated below the normal low water mark of any water body;

**417.2** The following lands may be included in the calculations of lot area for the purpose of meeting the requirements of the minimum lot size requirements of this Land Use Code, provided that no more than 50% of the required minimum lot area shall be met by including one or a combination of the following land areas (this section does not apply to single lots of record proposed to be utilized for single family residents only):

**1. FLOOD PLAINS**

Land which is located within the one hundred (100) year frequency flood plain as identified by the Federal Emergency Management Agency or the Department of Housing and Urban Development, Flood Insurance Administration, unless the developer shows proof through the submittal of materials prepared by a Registered Land Surveyor which shows that the property in question lies at least one foot (1') above the one

hundred (100) year flood level. The elevation of filled or made land shall not be considered;

## **2. WETLANDS**

Land that has been determined to be a freshwater wetland, as defined in Title 38, M.R.S.A., Section 480-B, regardless of size.

## **418 LIGHTING**

Any operation or activity producing light shall be conducted so that direct or indirect illumination from the source of light shall not cause illumination in excess of 0.5 candles in any residential district. Illumination levels shall be measured with a photoelectric photometer having a spectral response similar to that of the human eye, following the standard spectral luminous efficiency curve adopted by the International Commission on Illumination.

## **419 MULTI-FAMILY DWELLINGS IN LDR DISTRICT**

### **419.1 LAND AREA**

Land area required per dwelling unit shall be at least the same as that required for single residences in the same zone.

### **419.2 NUMBER OF UNITS**

No building shall contain more than eight (8) family units.

### **419.3 DISTANCE BETWEEN BUILDINGS**

Distance between buildings shall be at least forty (40) feet.

#### **419.4 HEIGHT**

Buildings shall not exceed two (2) stories in height.

#### **420 MULTIPLE USES ON A SINGLE LOT**

No structure shall hereinafter be erected, altered, or utilized if the effect of such erection, alterations, or utilization is to create more than one (1) use on the lot unless the following conditions are met:

**420.1** The lot has the minimum amount required for the zoning district of continuous frontage on a public way for the first use and fifty additional feet (50') of continuous frontage on a public way for the second use and twenty-five additional feet (25') of continuous frontage for each additional use. (#12)

**420.2** All of the other requirements of the District in which the uses are located are met, with the exception that uses may be in the same building.

**420.3** Unless approved by the Planning Board, no parcel shall have more than two entrances spaced any closer than 120 feet away from other entrances as measured from the closest adjacent edge of each driveway, whether these be located on the subject lot, or adjacent lots. (#4)

This spacing distance is based on 30 mph posted speed limits. Where posted speed limit is 45 mph an access separation distance of 230 feet shall be used.

**420.4** Two or more non-residential uses on a lot are subject to site plan review.

Multiple Residential Uses are subject to criteria set forth in Section 306.5 Schedule of Uses, Article 7 Subdivision Review when required and all other Laws, Codes and Ordinances of the City of Brewer and State of Maine. (#4)\*#27)

#### **421 NOISE**

All noise shall be muffled so as not to be objectionable due to intermittence, beat frequency or shrillness, and shall otherwise comply with the noise standards contained in the Site Location of Development Regulations (Rule 06-096), Chapter 375, Noise, of the Department of Environmental Protection.

#### **422 ODORS**

Any condition or operation which results in the creation of odors of such intensity and character as to be detrimental to the health and welfare of the public or which interferes unreasonably with the comfort of the public shall be removed, stopped or so modified as to remove the odor.

#### **423 OUTSIDE STORAGE**

All approved outside storage areas shall be completely obscured from surrounding property by a solid screen not less than six (6) feet in height. Storage of debris, junk or construction materials, which are not associated with an approved use or permitted construction at that site, shall be prohibited.

## 424 PARKING AND LOADING

### 424.1 OFF-STREET PARKING REQUIRED (#17)

Off street parking spaces shall be provided in accordance with the specifications in this section in any district whenever any new use is established or existing use is enlarged. Such parking spaces shall be located on the same (or adjacent) lot as the use served, and such parking spaces shall be maintained for year-round use. When required, parking spaces cannot be reasonably provided on the same or adjacent lot, the Code Enforcement Officer may authorize parking on another lot within 500 feet distance of the premises to be served by such parking, provided that such lot is held under the same ownership or lease and is located in the same zone as the use served. Where any business employing 25 or more employees cannot accommodate parking requirements either on site or on an adjacent lot or within the 500 foot distance requirement outlined above; then the Code Enforcement Officer may also approve an off-site employee parking lot with an approved shuttle service plan, providing the business can meet the following criteria:

1. The lot is in the same ownership or lease as the business, and
2. The business and parking lot are on a route or routes that has or have  
public bus transportation that connect them, or
3. The business has a contract with a provider of bus transportation to  
transport its employees to and from the place of business and the lot, or
4. The business provides evidence that it has the capacity to transport its  
employees to and from the place of business and lot.

The Shuttle service plan must guarantee service between the place of business and the parking lot for as many employees and shifts as that business requires for the off-site parking lot.

**424.2 GENERAL PARKING REQUIREMENTS**  
**(#2)(#4)(#11)(#12)(#16)(#19)**

1. In determining parking space requirements, all partial space requirements shall be rounded to the next highest number of usable parking space.
2. No parking space to be provided shall be located with the right-of-way of any public street or roadway.
  
3. In GB and PB zones all parking spaces shall be paved striped surfaces and screened from abutting properties. In all other zones parking areas with more than seven(7) parking spaces shall be on paved striped surfaces and screened from abutting properties. The Code Enforcement Officer may waive the screening requirement in the General Business, Industrial, Industrial-2, HDR and HDR-2 Districts if the proposed project does not abut a Residential District. If screening is waived, tree planting may be less than required in section 424.2.4 but shall not be less than a rate of one tree per fifty feet of parking perimeter for screening. The Code Enforcement Officer may waive the paving and striping requirement for Residential housing and in circumstances proven by the landowner/applicant to be better for the environment.
- 3.a. Notwithstanding the above, all Adult Use Establishment parking areas must be screened to be twice the standard as identified in 424.2.4. No waiver will be granted for the reduction in screening.

- 3.b. All narcotic Treatment Facility parking areas must be screened to the standard as identified in 424.2.4 for the side and rear yards. Front yard screening shall consist of tree planting at a rate of one tree per fifty feet of parking perimeter with no additional screening that would obstruct view of parking and building.
- 3.c. Medical Marijuana Registered Dispensary, and/or Medical Marijuana Cultivation Facility parking areas must be screened to the standard as identified in Section 424.2.4 of this Article for the side and rear yards. Front yard screening shall consist of tree planting at a rate of one tree per fifty feet of parking perimeter with no additional screening that would obstruct view of parking and of the building(s). (#16)
4. Parking areas shall be buffered with a natural screen masking the parking area from the surrounding area. The screen shall consist of evergreen trees of a minimum size of three feet in height at time of planting with a mature size of at least five feet in height or so as to cause a solid buffer or a demonstrated equivalent approved by the Planning Board. Parking areas shall be designed to prevent stormwater from flowing directly into a water body.
5. Parking spaces shall be located no closer than fifteen (15) feet from the street right-of-way line and ten feet from the side and rear lot lines. Parking setbacks for planned unit developments may be reviewed under site plan review. Space in shared driveways shall not be counted as parking.
- 5.a. Notwithstanding the above, all required parking spaces for an Adult Use Establishment must be thirty (30) feet from the street right-of-way line and twenty (20) feet from the side and rear lot lines.

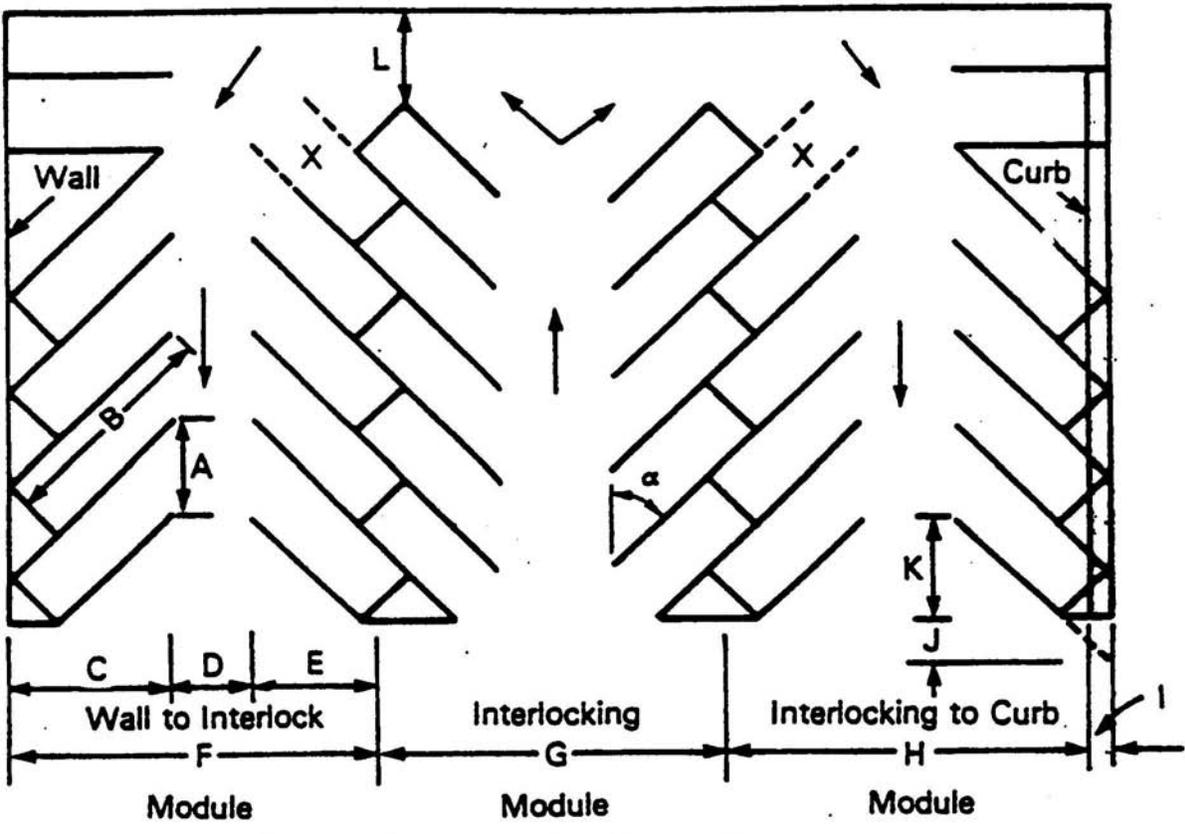
6. Net leasable area as used in this provision is gross floor area less the sum of entry halls; stairways and janitor, electrical, mechanical or maintenance rooms.

7. Parking lot layout shall be governed by the following table:

Parking layout dimensions (in feet) for 9-ft by 18-ft stalls at various angles:

DIMENSION	ON DIAGRAM	ANGLE ( $\theta$ )			
		45°	60°	75°	90°
Stall width, parallel to aisle	A	12.7	10.4	9.3	9.0
Stall length of line	B	26.8	23.0	20.0	18.0
Stall depth to wall	C	29.0	20.0	19.5	18.0
Aisle width between stall lines	D	12.0	16.0	23.0	24.0
Stall depth, interior	E	16.0	18.0	18.5	18.0
Module, wall to interior	F	47.0	54.0	61.0	60.0
Module, interior	G	44.0	52.0	60.0	60.0
Module, interior to curb face	H	45.0	51.7	57.5	58.5
Bumper overhang (typical)	I	2.0	2.3	2.5	2.5
Offset	J	6.2	2.5	0.6	0.0
Setback	K	12.7	9.0	4.7	0.0
Cross aisle, one-way	L	14.0	14.0	14.0	14.0
Cross aisle, two-way	--	24.0	24.0	24.0	24.0

NOTE: All Diagonal parking must be located on one-way aisles which shall be clearly marked sAs such at all times. (#12)



X = Stall not accessible in certain layouts.

### 424.3 NUMBER OF SPACES REQUIRED

SE	PARKING SPACES REQUIRED
Boarding Home and Bed and Breakfast	1 per unit or room plus 1 for the owner or manager
Residential	2 per dwelling
Church	1 per 3 seats of assembly
Private club or lodge	1 per 4 members
Theater* Auditorium	1 per 4 seats
Hospital	1 per 3 beds, and 1 for each employee based on the expected average employee occupancy
Nursing Homes	1 per 6 beds, and 1 for each employee based on the expected average employee occupancy
Professional offices and business services, and retail businesses in CB District	1 for every 350 ft. of gross floor area
Eating and drinking establishments	1 for every 4 seats (including bar stools) <b>plus one space for each employee</b>
Medical Clinics, Medical Offices Narcotic Treatment Facilities (#11) Medical Marijuana Registered Dispensary (#16) Medical Marijuana Cultivation Facility (#16)	1 per each 175 sq. ft. of gross floor area 1 per each 175 sq. ft. of gross floor area 1 space per each 175 sq. ft. of gross floor area  1 space per 350 sq. ft. of gross floor area of office, sales, or display area (minimum of four spaces) plus 1 space per 5,000 sq. ft. of growing or storage area
Industrial Manufacturing, compounding processing or packing of goods and/or products	1 per 1,000 sq. feet plus 1 per each 350 sq. ft. of office, sales or other space to be used by visitors, customers or salesmen
Warehousing & Storage	1 space per 1½ employees on each shift, plus 1 per each 350 sq. ft. of office, sales or other space to be used by visitors, customers or salesmen
Apartment Houses/Multi-Family Housing, Studio Apartment	1¼ spaces per unit
One Bedroom Apartment	1½ spaces per unit

Two Bedroom Apartment	1¾ spaces per unit
Three (+) Bedroom Apartment	2 spaces per unit
Hotels or Motels	1 per hotel or motel room; plus additional spaces as required for other functions such as bar, restaurant, meeting rooms, etc.
Recreation – Indoor	Spaces equal to 30% of total permitted occupancy (BOCA CODE)
Recreation – Outdoor	1 per 4 users
Housing specifically designed, constructed and managed for the elderly	1.2 spaces per dwelling unit
Retail business, business services and personal	1 per each 350 sq. ft. of net leasable area; (except) automobile service stations and garages for minor repairs which shall have a minimum of 6 spaces
Funeral Homes; Other	1 per each 3 chapel seats unless otherwise provided for, each primary building or structure shall be required to have a minimum of 2 off-street parking spaces, plus 1 additional off-street parking space for each 250 ft. of floor space or fraction thereof.
Convenience Business District	1 for every 350 sq. ft. of display or sales area plus 1 for each employee on duty at any one time

**424.4 LOADING**

Space logically and conveniently located for bulk pickups and deliveries, scaled to delivery vehicles expected to be used, and accessible to such vehicles when required off-street parking spaces are filled, shall be provided for all commercial and industrial uses. Required off-street loading space is not to be included as off-street parking space in computation of required off-street parking space.

**425 PLANNED UNIT DEVELOPMENT**

**425.1 PURPOSE**

Planned unit development provisions are established to promote the public health, safety and general welfare by (1) preserving and making open space available for recreation and conservation in

rural and residential areas, and (2) assuring convenient and well designed unified business and industrial areas.

The overall objective of planned unit development provisions is to promote more efficient and creative patterns of land utilization by allowing flexibility in the application of certain land development regulations, and to preserve open space in accordance with the City's 1995 Comprehensive Plan.

#### **425.2 GENERAL REQUIREMENTS**

1. **Minimum Size.** Planned unit development proposals shall involve the simultaneous construction of at least three (3) buildings on one tract of land subdivided for such purposes. Land Subdivision without simultaneous construction of buildings does not qualify as a planned unit development.
2. **Uses Allowed.** No use shall be allowed in a planned unit development which is not allowed in the district for which it is being proposed.
3. **Maximum Building Density.** The density of buildings in the entire planned unit development shall not exceed the density normally permitted in the district for which it is being proposed, provided that there shall be a density bonus of ten percent (10%) for developments which retain fifty percent (50%) of the land areas as permanent open space. In planned unit developments involving construction of new streets within the proposed development, density shall be determined by subtracting 15% of the gross area of the tract (for streets), from the gross area of the tract, and dividing the remainder by the minimum lot area required in the

district. Gross area of the tract shall include only land that is not encumbered with easements or other legal restrictions that prevent full use of the land. Accessory buildings shall not be considered in determining building density.

4. Open Space. In planned unit development of dwellings, land area not allocated to building lots, streets or parking lots shall be permanently and legally preserved as open space. In developments which are within 500 feet of the Penobscot River, Felts Brook or Eaton Brook open space suitable for use as elements of the Brewer Open Space and Trail System (BOSTS) shall be so dedicated as open space. Land dedicated to permanent open space shall be in such condition, size and shape as to be readily usable for recreation or conservation. The developer of any planned unit development of dwelling shall make suitable provision for the permanent maintenance of open space areas, by one of the following methods:

- A. Dedication of such open space to public use if the City or other public agency has indicated it will accept such dedication;

- B. Retention of ownership and responsibility for maintenance of such open space; or

- C. Provide for and establish one or more organizations for the ownership and maintenance of all common open space and property. Such organization shall be either a non-profit homeowners corporation or a community open space trust. If a homeowners corporation or open space trust is formed, it shall be governed by the following:

- 1) The organization shall be organized by the developer and operating, with financial subsidization by the developer if necessary, before the sale of any lots within the development;

insurance and

- 2) Membership in the organization shall be mandatory for all purchasers of homes therein and their successors;
  - 3) The organization shall be responsible for maintenance of common open space and property and for taxes on such common open space and property;
  - 4) The members of the organization shall share equitably the cost of maintaining and developing common open space and property in accordance with procedures established by them; and
  - 5) The organization shall have or hire adequate staff to administer common facilities and maintain the common open space.
5. Common Property. In any planned unit development where common property or facilities exist, such as streets, sewage treatment facilities, parking lots, elevators, stairwells, heating units; etc., the developer shall make provision for their continual ownership and maintenance either through a homeowners corporation or by retaining ownership and responsibility for maintenance himself. In the case of a homeowners corporation, the corporation shall be governed by the same rules listed in Section C above, and such corporation shall be one and the same as any corporation established for ownership and maintenance of common open space.
6. Setback. All set backs as required by the zoning district in which the project is located shall apply except as follows:
- A. In the case of duplexes in separate ownership, the front, side and rear

setbacks shall be determined from the exterior boundary  
liens of the  
common area property with no separation distance  
requirement between  
the two units of the duplex with appropriate firewall  
construction.

B. In the case of duplexes in separate ownership, the distance  
between

buildings shall be equal to or greater than two (2) times the  
“minimum  
width side yard” for the zoning district in which the project  
is located.

C. In the case of duplexes in separate ownership, if access to  
the project

is by a private road or drive, said private road or drive shall  
not require

a front yard setback. (#5)

## **425A PLANNED GROUP DEVELOPMENT (#9)**

### **425.A.1 PURPOSE**

Planned group development provisions are established to promote the public health, safety and general welfare by (1) allowing flexibility and creativity for well designed unified commercial and institutional areas (2) to allow for campus style development for individual or multiple ownerships while ensuring access to all owners and tenants to all common areas necessary for conducting daily operations.

The overall objective of planned group development provisions is to promote more efficient and creative patterns of land utilization by allowing flexibility in the application of certain land development regulations without exceeding the

overall density within the zoning district in which it lies.

#### **425.A.2 PLANNED GROUP DEVELOPMENT**

A planned Group Development for any commercial or institutional complex Permitted under other provisions of this Ordinance shall be considered as one site development parcel under the applicable site development standards of the zoning district in which it lies and for subdivision purposes, regardless of the proposed method of ownership for the land area, buildings, building footprint, portion of buildings, site improvements or any combination thereof, provided that:

- (a) The planned group development shall not create increases in prescribed densities and or lot coverage or reduce the required area for yards and off street parking or violate any other site development standard applicable to the district.
- (b) Any method of ownership for the land area, buildings, portions of buildings, site improvements or any combination thereof shall afford those acquiring such ownership interest access to land and use of such other portions of the planned group development as are necessary for:
  - (1) Access to all portions of the planned group development from a public way;
  - (2) Access to the parking areas required under this Ordinance;
  - (3) Access to the common areas of the planned group development including the yards and open space required under this Ordinance; or
  - (4) Compliance with the site development standards required under this Ordinance in the district in which the planned group development lies.
- (c) The applicant shall have the burden of demonstrating that the proposed method of ownership complies with the foregoing requirements. To that end, the applicant shall submit, as part of the land development review process, copies of all proposed documents relating to the creation of ownership interest, the dedication of all common areas or elements and the organizational arrangements for the ownership, maintenance, use and preservation of all common areas or elements of the planned group development as required under this Ordinance.
- (d) A planned group development must receive site plan approval in accordance with this Ordinance.
- (e) The applicant shall not be relieved of the approval requirements set forth under Maine subdivision law where applicable.

**426 PLANTING**

Planting set-back for all trees and shrubs with a potential height of over three (3) feet shall be governed by the following:

**426.1** There shall be a minimum set-back of seven (7) feet from the street right-of-way line, on all straight-of-ways.

**426.2** At street intersections where a radius of curvature is shown on the plan or deed, the minimum set-back line shall be determined by locating the edge of the right-of-way trees, plants or shrubs seven (7) feet behind said right-of-way.

**426.3** At street intersections where there is no radius or curvature allowed, the minimum set-back line shall be determined by locating a line parallel to and fifteen (15) feet wider than the existing street lines concerned. These fifteen (15) foot set-back lines shall then become the minimum set-back line for planting.

**427 RECYCLING CENTER OTHER THAN AUTOMOBILE RECYCLING FACILITY**

**427.1** Outside collection of materials shall be allowed in containers as approved by the Code Enforcement Officer.

**427.2** Outside storage is not permitted.

**427.3** No processing shall be conducted on-site except to bundle/bail the materials for pick-up.

**427.4** No processing, pickup or delivery of recyclable materials shall take place before 7:00 a.m. or after 9:00 p.m. during any day.

**427.5** The facility shall store the materials on-site for a period of time not to exceed thirty (30) days.

**427.6** All facilities shall be subject to site plan review.

**427.7** Facilities shall be maintained in a neat, clean and orderly manner.

**427.8** Facility shall be clearly identified.

## **428 SANITARY PROVISIONS**

### **428.1 SEPTIC SYSTEMS**

When not serviced by the public sewerage system, the approval of building permit applications shall be subject to presentation of a completed Maine Department of Human Services Bureau of Health Engineering site evaluation form (HHE-200) which evidences adequate soil conditions for subsurface wastewater disposal.

### **428.2 SYSTEMS SERVING MORE THAN ONE LOT**

Two or more lots or buildings in different ownership may not share a common subsurface disposal system.

### **428.3 COMMERCIAL/INDUSTRIAL WASTES**

Industrial or commercial waste waters may be discharged to municipal sewers only in accordance with Chapter 31, City of Brewer Sewer and Pre-Treatment Ordinance of the City of Brewer Charter, Codes and Ordinances.

### **428.4 REQUIRED CONNECTION TO CITY SYSTEM**

All proposed developments other than single-family and two-family dwellings shall be connected to the City's water and sewer systems when these systems are within 200 feet of the property on which the proposed development is to be located. The Board of Appeals may waive this requirement for either the water or sewer system when the applicant can demonstrate that such connection would not be practical because of capacity problems with either system, or physical barriers such as a large hill or extensive ledge.

### **428.5 PUBLIC AND PRIVATE SEWERS**

No building intended for human habitation shall be built, constructed, renovated, placed, or occupied on any lot in any

district which is not serviced by either an operational public sewer or by an approved subsurface septic system designed by a licensed soil scientist or soil engineer on a Form HHE-200 or other Maine Department of Human Services, division of Health Engineering approved form for subsurface wastewater disposal.

#### **429 SHIPPING CONTAINERS AS STORAGE BUILDINGS PROHIBITED**

**429.1** It is the intent of the City of Brewer to prohibit, except in strictly regulated circumstances as shown in 429.2 below, the placement and use of any shipping container as an accessory structure or storage building within the city limits.

**429.2** No person shall place or cause to be placed or use or permit the use of any shipping container as an accessory structure, storage building or living unit within the City limits except that licensed and bonded contractors may utilize shipping containers for temporary housing of equipment and/or materials during construction for a period not to exceed one year where a building permit has been approved until such time as a Certificate of Occupancy is issued.

#### **430 SIGNS (#24)**

Refer to Chapter 28, Brewer Sign Ordinance of the City of Brewer Codes and Ordinances for sign regulations.

#### **431 TEMPORARY STRUCTURES**

Temporary structures used in conjunction with construction work shall be permitted by the Code Enforcement Officer during the period that the construction work is in progress. Permits for temporary structures shall be issued for a six (6) month period. A Certificate of Occupancy in a basement or foundation structure before the completion of the total structure, shall not be granted.

**432 TRAILERS**

No individual trailer shall be allowed to locate in any district in the City of Brewer, and no trailer shall constitute a single residence use, whether on a foundation or not, unless located in a duly licensed camping park. An occupied travel trailer shall not be permitted except in a duly licensed camping park pursuant to Article 4, Section 406.

**433 VIBRATION**

No vibration shall be produced which is transmitted through the ground and is discernible without the aid of instruments at or at any point beyond the lot line.

**434 WATER QUALITY**

Title 38, Maine Revised Statutes Annotated, Chapter 3, "Protection and Improvement of Waters" and such rules and regulations adopted by the Maine Board of Environmental Protection pursuant to the referenced purpose shall apply.

**435 WILDLIFE/NATURAL AREAS PRESERVATION**

**435.1 MITIGATION MEASURES**

Any project involving significant wildlife or fisheries habitat or a unique natural area as identified by a government agency such as the Maine Department of Conservation or the Maine Department of Inland Fisheries and Wildlife, or in Brewer's 1995 Comprehensive Plan, shall include mitigation measures aimed at minimizing the adverse impacts of development on these resources. Such mitigation shall include as a minimum:

1. The clustering of the project to protect to the greatest extent the wildlife habitat pursuant to the Planned Unit Development standards of this Land Use Code (Section 425);

2. Setting back of any construction from the upland edge of any wetland area over 20,000 contiguous square feet to meet the most restrictive requirements of the district(s) in which it is located;
3. The setting back of any construction from any stream or waterway to meet the most restrictive requirements of any district(s) in which it is located;
4. Efforts to preserve the existing vegetation in such a manner that the only vegetation cut or removed shall be necessary for the actual construction involved. Specific vegetation to be retained and to be removed shall be indicated on the development plan;
5. Provisions to eliminate noise disturbance in the area. This shall include the construction of sound barrier fencing, and the planting of additional vegetation such as trees.

#### **435.2 MITIGATION TO BE SHOWN**

Mitigation measures shall be indicated clearly on the development plan prior to final approval.

#### **436 YARDS AND SETBACKS**

##### **436.1 MULTIPLE STREET FRONTAGES**

Lots which abut on more than one street shall provide the required front yards along every street. Side and rear yard shall then be determined by the location of the main entrance of the building as determined by the house number.

##### **436.2 PROJECTIONS (#18)**

All structures, whether attached to the principal structure or not, and whether open or enclosed, including porches, carports, balconies for platforms above normal grade level, shall not project into any minimum front, side or rear yard.

Structural elements such as ramps, enclosures, balconies, devices and appliances such as wheelchair platform lifts and similar accommodations necessary for providing access to a existing buildings for the handicapped may project into the setback requirements provided the encroachment in the setback is the minimum necessary to meet the provisions for handicap access where required by State or Federal Law or Regulation. All structural elements require prior approval of the Code Enforcement Officer. Structural elements no longer necessary or utilized for intended purpose must be removed within 30 days at the owner's expense.

Structural elements such as fire escapes, stairs, and platforms necessary for means of egress from existing buildings may project into the setback requirements provided the encroachment in the setback is the minimum necessary to meet the rules and provisions as defined by the Local Building Codes and National Fire Protection Agency Regulations. All structural elements require prior approval of the Code Enforcement Officer. Structural elements no longer necessary or utilized for intended purpose must be removed within 30 days at the owner's expense.

Also except as may be authorized in section 436.2.A of this Article. (#9)

**436.2.A                    YARD    SPACE    FOR    PLANNED    GROUP  
DEVELOPMENT (#9)**

Where a parcel of land is to be occupied by more than one building, other than an accessory building, each principal building shall be treated as though on a

authorize separate lot, unless the Planning Board, after site plan review, redistribution of required yard space in harmony with the intent and purpose of this Ordinance, Section 425.A.

#### **436.3 FUTURE STREET LINES (#12)**

All buildings, parking, and landscaping shall be set back from future street lines as though it were a street. Future streets are those either approved by the Planning Board and/or City Council or those whose location has been established by the Maine Department of Transportation. This provision also applies to the planned widening, relocation or realignment of existing streets which have either been approved for funding or whose location has been established with layout plans.

#### **436.4 PENOBSCOT RIVER**

Buildings in which humans live or work on lots adjacent to the Penobscot River shall be set back 75 feet from the normal high water mark of the river except as otherwise provided in the ordinance.

#### **436.5 INDUSTRIAL/RESIDENTIAL BOUNDARY**

Along any industrial district boundary which abuts any residential district on a side or rear lot line, there shall be an open space beyond any visual barriers, of at least fifty feet wide provided within the industrial district. Such open space shall not be used for off-street parking, off-street loading, storing or processing of any kind.

#### **436.6 EXISTING STRUCTURES (#25)**

All existing legal non-conforming primary structures that do not meet the setback requirements set forth by this land use code are allowed to construct up to the furthest projection of the structure that is within the setback area, provided the construction does not encroach upon any additional setback lines and fire separation is still being achieved.

#### **437 NARCOTIC TREATMENT FACILITIES (#11)**

The property for Narcotic Treatment Facilities shall be adequate to accommodate sufficient interior space as not to have patient queuing on sidewalks, parking area, and other areas outside of the facility. A letter of compliance from the Brewer Code Officer shall be submitted to the planning Board as part of the site plan application. The size of the inside waiting area shall be calculated at a minimum of 15 square feet per person based on total client capacity. Chapter 20 Licenses and Permits, Article 8-A, of the City of Brewer Charter, Codes and Ordinances shall also be met.

**438. MEDICAL MARIJUANA REGISTERED DISPENSARIES and  
MEDICAL MARIJUANA CULTIVATION FACILITIES (#16)**

1. The property for a Medical Marijuana Registered Dispensary and/or Medical Marijuana Cultivation Facilities shall be adequate to accommodate sufficient interior space so as not to have outside patient queuing on sidewalks, parking area, and other areas outside of the building (s). A letter of compliance from the Brewer Code Officer shall be submitted to the Planning Board as part of the site plan application. The size of the inside waiting area shall be calculated at a minimum of 15 square feet per person based on total client capacity (registered patients and the registered primary caregiver of each registered patient). Medical Marijuana Registered Dispensaries and/or Medical Marijuana Cultivation Facilities shall adhere to the laws of the State of Maine and the State of Maine Rules Governing the Maine Medical Use of Marijuana Program (10-144 CMR Chapter 122), as the same may be amended from time to time and to Chapter 20 Licenses and Permits, Article 8-B, of the City of Brewer Charter, Codes and Ordinances, as the same may be amended from time to time.

2. No Medical Marijuana Registered Dispensary and/or Medical Marijuana Cultivation Facility shall be located within 1,000' of the property line upon which the Dispensary and/or Facility is or are located and the property line of a preexisting public or private school. Additionally, no Medical Marijuana Registered Dispensary and/or Medical Marijuana Cultivation Facility shall be located within 500' of the property line upon which the Dispensary and/or Facility is or are located and the nearest property line of any of the following, which is or are in existence when an application for a Medical Marijuana Registered Dispensary and/or Medical Marijuana Cultivation Facility is made:

- a. Preexisting public or private school,
- b. Preexisting church or other facility for religious worship,
- c. Preexisting private residence,
- d. Preexisting licensed daycare facility, or
- e. Preexisting methadone clinic.

3. No more than one (1) Medical Marijuana Registered Facility and/or one (1) Marijuana Cultivation Facility shall be located in the City of Brewer. The Medical Marijuana Registered Dispensary and Medical Marijuana Cultivation Facility shall be located on the same property that shall be under common ownership.

4. A Medical Marijuana Registered Dispensary shall only be open for business between the hours of 8:00a.m. and 8:00p.m. daily.

5. Medical Marijuana Registered Dispensary and/or Medical Cultivation Facility shall conform to the City of Brewer's Sign Ordinance. In addition thereto, any freestanding or sign attached to building(s) in which the Dispensary and/or Facility is located in shall clearly state that it is a Medical Marijuana Dispensary and/or Medical Cultivation Facility. There shall be no signage in any window and or door, except for the hours of operation.

6. Security measures at a Medical Marijuana Registered Dispensary and /or Medical Marijuana Cultivation Facility shall include the following at a very minimum:

- a. Security surveillance cameras installed and operating twenty-four (24) hours a day, seven (7) days a week to monitor all entrances, along with the interior and exterior of the Dispensary and/or Facility, to discourage and facilitate the reporting of criminal acts and nuisance activities occurring on the property;
- b. Door and window intrusion, robbery and burglary alarm systems with an audible on-site system and Police Department notification components that are professionally monitored and maintained in good working condition, using hard line traditional telephone communications and cellular communications;
- c. A safe affixed to the building in which it is located that is suitable for the storage of all prepared and/or processed marijuana and cash stored overnight in the Dispensary and/or Facility;
- d. Exterior lighting that illuminates all exterior walls of the licensed Dispensary and/or Facility and
- e. Deadbolt locks on all exterior doors and locks or bars on any other access point.

All security recordings shall be preserved for thirty (30) days by the management of the licensed Dispensary and/or Facility.

7. Employees of a Medical Marijuana Registered Dispensary may assist registered patients as that term is defined in 22 M.R.S.A. § 2422(12), as the same may be amended from time to time, with the use of medical marijuana inside the building(s) on the licensed property. An employee of a Medical Marijuana Registered Dispensary and/or Medical Marijuana Cultivation Facility, who is also a registered patient, may use medical marijuana inside the building(s) on the licensed property. Any such use of medical marijuana must not be visible from

the street or from outside the building(s). Any Medical Marijuana Facility where use of medical marijuana takes place shall have in place protocols and policies to educate registered patients and registered patients who are employees about the dangers of driving a vehicle while medicated and, when possible, to discourage or prevent driving while medicated. (#22)

8. Visibility of activities; control of emissions; disposal plan for a Medical Marijuana Registered Facility and/or Medical Marijuana Cultivation Facility shall be as follows:

- (1) All activities of Medical Marijuana Registered Dispensaries and/or Medical Marijuana Cultivation Facilities, including, without limitation, cultivating, growing, processing, displaying, selling and storage shall be conducted indoors.
- (2) No marijuana or paraphernalia shall be displayed or kept in a Dispensary or Facility so as to be visible from outside the building (s).
- (3) Sufficient measures and means of preventing smoke, odors, debris, dust, fluids and other substances from exiting a Dispensary and/or Facility must be provided at all times. Sufficient measures shall be provided for the proper disposal of all such materials, items and other substances in a safe, sanitary and secure manner and in accordance with all applicable state and local laws and regulations.
- (4) All Medical Marijuana Registered Dispensaries and/or Medical Marijuana Cultivation Facility shall have in place an operation plan for proper disposal of marijuana related byproducts.

9. No food products shall be sold, prepared, produced or assembled by a Medical Marijuana Registered Dispensary except in compliance with all operation and other requirements of state and local law and regulation, including without limitation, food establishment licensing requirements. Any goods containing marijuana for human consumption shall be stored in a secure area.

10. A Medical Marijuana Registered Dispensary and/or Medical Marijuana Cultivation Facility shall meet all operating and other requirements of state and local law and regulation. To the extent the State of Maine has adopted or adopts in the future any stricter law or regulation governing medical marijuana dispensaries, the stricter law or regulation shall control.

# **ARTICLE 5 - NON-CONFORMANCE**

## **501 PREAMBLE**

Each building, structure or land area in the City of Brewer shall conform to the use restrictions, lot size requirements, site development requirements and all other applicable provisions of this Land Use Code which govern the zone (district) in which it is located, except as provided in Section 502. Uses not listed as permitted uses or uses subject to site plan review in Article 3 are not permitted.

Unless otherwise provided for in this ordinance, all uses shall comply with the following regulations, as follows:

## **502 NON-CONFORMING LOTS AND USES**

### **502.1 NON-CONFORMING LOTS AND LOTS OF RECORD**

#### **1. SINGLE LOT OF RECORD**

- A. In any district, notwithstanding limitations imposed by other provisions of this Land Use Code, a single lot at the effective date of adoption of this Land Use Code may be built upon. Such a lot must be in separate ownership or lotted in a development approved by the Planning Board and City Council prior to the adoption of this Land Use Code. It must not be of continuous frontage with other such lots in the same ownership except as aforesaid. This provision shall apply even though such lots fail to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and other requirements not involving area or width, of the lot shall conform to the regulations for the district in which the lot is located. Variance of area, width and yard requirements may be obtained only by approval of the Board of Appeals.

B. Abutting lots in subdivisions approved by the City Council which were in separate ownership at the time of a zone change, altering the lot and yard requirements, may be altered upon Site Plan approval of the Planning Board. The Site Plan approval, if granted, would allow alteration of a lot to no less than the minimum lot and area requirements in existence for the district in which the lot was created at the time of subdivision approval.

C. The intent of this provision is to provide a method of relief to abutting property owners in instances where surveyor's errors, placement of structures by previous owners or similar instances of an error which are not due to the action of the current or the previous owner, affect the reasonable use of the lot.

**2. CONSIDERATION**

The Planning Board, in reviewing the site plan application, shall consider the following:

- A. The original approved subdivision and the pattern of lotting.
- B. A surveyor's plan showing the lot as it currently exists and as it is proposed. A statement by the owner detailing the reason(s) for the special exception request.
- C. The impact of the proposed special exception alteration upon the pattern of development within the subdivision and its impact upon the property values within the subdivision.

The applicant shall bear the responsibility for providing items A thru C above and the costs for advertising for a public hearing. The Planning Board shall hold a public hearing following the notification and public hearing procedures set forth for site plan review (Article 5).

**3. CRITERIA**

Before granting a special exception, the Planning Board shall determine that the proposed alteration of abutting lots:

- A. Will not significantly alter the pattern of existing development in the original subdivision. Lots smaller than 90 per cent of median lot size of the original subdivision are considered as to have the effect of significantly altering the platting pattern.
- B. Will not contravene the purpose and intent of the zoning ordinance by creating a new lot.
- C. Will not cause harm to the public welfare by adversely affecting property values in the subdivision.

#### **4. ADJACENT LOTS**

If two (2) or more lots or combinations of lots and portions of lots with continuous frontage are in undivided ownership at the time of the passage or amendment of this Land Use Code, and if all or part of the lots do not meet the requirement for lot width and area as established by this Land Use Code, then the lands involved shall be considered to be an individual parcel for the purpose of this Land Use Code. No portion of such parcel shall be sold, leased, developed or used which does not meet lot width and area requirements established by this Land Use Code.

#### **502.2 NON-CONFORMING USES**

##### **1. CONTINUATION OF USE**

A non-conforming use or facility may be continued, but may not be extended or changed unless to a conforming use, except as permitted in accordance with the provisions of this Land Use Code.

##### **2. REBUILDING**

Any non-conforming structure damaged by fire, flood, explosion or other casualty may be rebuilt within one (1) year of said damage so long as the structure conforms to the following:

- A. Has the same size foundation, slab or foundation support as it had prior to the damage being sustained;

- B. Has the same number of square feet or less of usable floor area in the structure as before the damage was sustained;
- C. Is built with the same type of building materials or better as is determined by Marshall & Swift, Residential Cost Handbook, 1998 or some comparable publication;
- D. Is the same design as the structure replaced; and
- E. Complies with all other City Codes and Ordinances at the time the rebuilding takes place.

Any structure so damaged which is not rebuilt within said one (1) year period of time shall no longer be considered a non-conforming building and may only be rebuilt if it conforms to all of the other provisions of this Land Use Code.

### **3. CRITERIA FOR REBUILDING**

Any non-conforming structure can be rebuilt in whole or in part so long as the rebuilt structure conforms to the following:

- A. Has the same sized structure, slab or foundation support as it had prior to being rebuilt;
- B. Has the same number of square feet or less of floor area in the structure as it had prior to being rebuilt;
- C. Is built with the same type of building materials or better as is determined by Marshall & Swift, Residential Cost Handbook, 1998 or some comparable publication;

- D. Is the same design as the previous structure;
- E. Complies with all other Codes and Ordinances at the time the structure is rebuilt; and
- F. All rebuilding must be completed within one year from the date the building permit is obtained.

#### **4. CESSATION OF USE**

In the event that any non-conforming use conducted in a structure, or otherwise, ceases, for whatever reason, for a period of one (1) year, such non-conforming use shall not be resumed. In a mobile home park when a mobile home leaves a space smaller than this Land Use Code requires, then no replacement mobile home shall occupy that space unless it is enlarged to meet the requirements of this Land Use Code.

A building, structure or use on a lot with frontage and access on Wilson Street, State Street, North Main Street, South Main Street or Parker Street, which is a non-conforming use may be reviewed for the purposes of expansion or enlargement if the following preconditions are met:

- A. The non-conforming use has a "manufacturing," "retail," "wholesale trade," "insurance" or "service" designation according to the Standard Industrial Classification Manual published by statement of Policy Division of the Executive Office of the President of the United States,

- B. The non-conforming has not been abandoned for more than one (1) year,
  
- C. The non-conforming use was a legitimate use under the Zoning Ordinance of the City of Brewer, either directly or by interpretation of the Code Enforcement Officer of the City of Brewer, in the zone in which it was located when it was created and has become a non-conforming use only as the result of the enactment or modification of the Land Use Code of the City of Brewer, or a modification of the Brewer Zoning Map.

## **5. REVIEW PROCESS**

In the event the preconditions are all met, the review process shall be as follows:

- A. The applicant shall submit three (3) copies of the proposed site plan of the expansion or enlargement, containing the information set forth in Article 6 of this Land Use Code to the City Clerk, along with a fee established by City Council. The City Clerk shall refer one (1) copy of the plan to the Chairman of the Planning Board; one (1) copy of the plan to the Code Enforcement Officer and one (1) copy to the City Engineer.
  
- B. The Planning Board shall notify the applicant in writing within thirty (30) days from the receipt of the site plan, or such time as is agreed upon in writing, whether the site plan is complete.
  
- C. The Planning Board shall hold a public hearing on the site plan. The public hearing shall be held within thirty (30) days from the receipt of the complete site plan or as mutually agreed upon, and the Planning Board shall cause notice of the date, time and place of such hearing to be

given to the applicant and to the owners of properties immediately adjoining the use to be expanded or enlarged and to be published at least two (2) times in a newspaper or general circulation in the City of Brewer, the date of the first publication to be at least seven (7) days prior to the date of the hearing.

- D. The Planning Board, within thirty (30) days of the public hearing or as mutually agreed upon, shall make a written recommendation to deny, grant or grant upon such terms and conditions as it may deem advisable subject to the criteria hereinafter set forth.
- E. The Chairman of the Planning Board shall then refer the matter to the Brewer City Council along with the Planning Board's written recommendation and a written statement of findings supporting said recommendation. The City Council shall hold a public hearing within thirty (30) days after receipt of the above material from the Chairman of the Planning Board. The City Council shall cause notice of the date, time and place of such hearing to be given to the applicant and to the owners of properties immediately adjoining the use to be expanded or enlarged and to be published at least two (2) times in a newspaper or general circulation in the City of Brewer, the date of the first publication to be at least (7) days prior to the date of the hearing.
- F. Within thirty (30) days after the City Council holds a public hearing, it shall issue its decision, denying, approving or approving the site plan subject to certain restrictions. In the event of approval or approval subject to certain restrictions, a majority of the City Council members present and voting shall sign the site plan, the site plan shall also be dated. All terms and conditions shall be affixed to the plan.

- G. The applicant shall file the approved site plan with the terms and conditions thereon, in the Penobscot County Registry of Deeds within sixty (60) days thereafter. In the event the site plan is not recorded within said sixty (60) day time period, the approval by the City Council shall be null and void. The applicant at his expense shall be responsible to record the site plan at the Penobscot County Registry of Deeds.
- H. The Code Enforcement Officer shall not issue a building permit until the approved site plan has been recorded in the Penobscot County Registry of Deeds.

## **6. REVIEW CRITERIA**

In reviewing the site plan, the Planning Board and City Council shall use the following criteria:

- A. The proposed expansion or enlargement is for the existing non-conforming use, which was a legitimate use under the Land Use Code of the City of Brewer when the use was created.
- B. The proposed expansion or enlargement will not include the acquisition and use of additional land which exceeds 25% of the total area of the lot upon which the use was located at the time it became non-conforming.
- C. The existing non-conforming use and the proposed expansion and enlargement thereof will not exceed the Performance Standards set forth under Article 4 of this Land Use Code.
- D. The proposed expansion or enlargement shall meet all the area, front yard, side yard, rear yard, height and structure coverage requirements of the District in which the proposed expansion or enlargement is to be located.

E. Off-street parking and loading spaces shall be provided for both the existing and proposed expansion enlargement. The off-street parking and loading spaces shall meet the following requirements.

be totally

- 1) All off-street parking areas and loading spaces shall be screened from the view of the adjoining property by trees, shrubs, fences and other landscaping material.
- 2) No new parking areas or loading spaces shall be located within the front yard, side yard or rear yard set back requirements of the District in which the proposed expansion or enlargement is to be located.
- 3) No maneuvers for off-street parking or loading spaces shall take place in any public way.

F. All signs, including existing and proposed, shall conform to the sign provisions of Article 4, except as follows: A. Where the posted speed limit is 30 miles per hour (MPH) more or less a total of 22 square feet of signage is permitted, with no single sign exceeding 12 square feet; and B. where the posted speed limit is greater than 30 MPH, a maximum of 35 total square feet of signage with no single sign exceeding 25 square feet.

G. Access for vehicles to off-street parking areas and loading spaces shall meet the following conditions:

standards in

- 1) Access shall be located so as to meet the design standards in Section 906.1.4 of Article 9 of this Land Use Code.

- 2) Access to the public way, shall be a maximum of 30 feet in width; at least 100 feet from an intersection; and have a grade of no more than 3% (3 foot rise in 100 feet).
- H. The proposed expansion or enlargement of buildings, shall be designed and located (and renovations to existing structures are designed) to fit in with established neighborhood patterns in a complementary fashion. In making such a determination the following shall be considered:
- 1) Do the color and materials match or complement those used on nearby structures?
  - 2) Is there similarity or successful transition in scale, building form and proportion between the proposed expansion and existing structures located within four hundred (400') feet thereof?
  - 3) Does the proposed expansion propose to use plant materials, fencing and walkways which are compatible with the character of the neighborhood in size, scale, material and color?
- In making such a determination the Planning Board and City Council at the expense of the applicant may engage the services of qualified professionals such as architects and landscape architects to help them in making their determination.
- I. The hours of operation may be restricted so as to not exceed the present hours of operation.

- J. The proposed expansion or enlargement will conform to the general character of the neighborhood in which it is located.

# **ARTICLE 6 - SITE PLAN REVIEW**

## **601 PURPOSE**

Site Plan Review regulations are established to promote the public health, safety and general welfare by requiring plans to be submitted to, and reviewed by, the Planning Board for certain uses which have a potential for significant impact, but which when properly designed with respect to their surroundings can become acceptable uses. The overall purpose of such review shall be to ensure orderly and beneficial development and the most appropriate use of land in keeping with the purposes of the district in which a development is proposed. As such, the provisions set forth in this Article are intended to protect the public health and safety, promote the general welfare of the community, and conserve the environment by assuring that nonresidential and multifamily construction is designed and developed in a manner which assures that adequate provisions are made for traffic safety and access; emergency access; water supply; sewage disposal; management of storm water, erosion, and sedimentation; protection of groundwater; protection of the environment, wildlife habitat, fisheries, and unique natural areas; protection of historic and archaeological resources; minimizing the adverse impacts on adjacent properties; and fitting the project harmoniously into the fabric of the community.

## **602 PRE-APPLICATION (#2)**

Upon receipt of a request or application for development, including use change, the Code Enforcement Officer shall decide if site plan review is necessary and shall inform the applicant of the project classification and the application process set forth in this Article.

### **602.1 MAJOR DEVELOPMENTS (#2)**

Projects involving any of the following shall be classified as a major development:

602.1.1 Any project which contemplates drilling for or excavating natural resources, including mineral extraction, on land or under water where the area effected is in excess of 30,000 square feet.

602.1.2 Hazardous activities involving the consumption, generation, or handling of:

Hazardous wastes as defined in Title 38, MRSA, Section 1303, as

the same may be amended from time to time;

Hazardous wastes as defined in Title 38, MRSA, Section 1317, as

the same may be amended from time to time;

Oil, as defined in Title 38, MRSA, Section 1451, as the same may be amended from time to time; and

Low-level radioactive wastes, as defined in Title 38, MRSA, Section 1451, as the same may be amended from time to time.

602.1.3 Any building or buildings on a tract or parcel of land constructed or

erected with a fixed location on or in the ground or attached to

something on or in the ground which occupies a ground area in excess

of 20,000 square feet.

602.1.4 Any project where parking lots, roads, paved areas, or other areas to be stripped or graded and not to be revegetated causes the total project, including any buildings, to occupy a ground area in excess of 60,000 square feet.

602.1.5 Any multi-unit housing development involving a building or buildings for the purpose of providing three (3) or more housing units located on a tract or parcel of land.

602.1.6 Any project which is a conversion of an existing project meeting the description stated above.

## **602.2 MINOR DEVELOPMENTS (#2)**

Minor Development – Projects not classified as a Major Development shall be classified as a minor development.

## 603 APPLICATION PROCEDURE

### 603.1 SUBMISSION TO CITY PLANNER (#2)(#6)

Persons seeking site plan review shall submit four (4) copies of the site plans and accompanying written information including the application form, meeting the specifications of Section 606 with the City Planner along with a non-refundable application fee as set forth in the City Council adopted fee schedule, payable to the City of Brewer four weeks prior to the Planning Board meeting. In addition, an applicant applying for site plan approval shall pay a separate technical review and consultant fee of \$1000.00 for minor developments of \$2,500.00 for major developments upon submitting the application. Said funds shall be held in an account and used to cover the cost for any of the following support services which the City of Brewer reasonably incurs in the review, approval or disapproval of the application:

- A. attorney, including the City Solicitor
- B. professional engineer
- C. licensed architect
- D. professional land surveyor
- E. certified geologist
- G. licensed site evaluator
- H. and any other expert the Planning Board, City Council, City Planner and/or Code Officer feels is necessary to adequately evaluate the proposed site plan. All technical review consultants shall be chosen by the City and not the applicant.

If the balance in this account is drawn down by 50% or more, the Board or City Planner shall notify the applicant, and may require that the account be fully replenished by the applicant. The Board or City Planner shall continue to notify the applicant and may require the account be fully replenished as necessary whenever the balance of the account is drawn down by 50% of the original deposit. Any monies not expended shall be returned to the applicant or his designee, without interest, by the City.

No application shall be deemed complete until the required money has been posted with the City. No application shall be acted upon by the Board and/or City Council until sufficient funds have been posted to cover the total cost of the support services required by the City in reviewing the application.

Upon receipt of these materials, the City Planner shall review the application to determine whether all the information requested in Section 606 has been

provided. The applicant shall be notified of any deficiencies within five business days and given the opportunity to correct them.

### **603.2 TECHNICAL REVIEW**

After it has been determined that the application and site plan conform to the requirements for submission, the applicant shall file four copies of the plan and supporting information, including a written request for waivers of any item(s) specified therein with the City Planner four weeks prior to the Planning Board meeting.. The City Planner shall conduct a technical review of the materials to determine compliance with the provisions of this Land Use Code. During this process, the City Planner shall consult with the City Engineer, Police Chief, Fire Chief, Water Department Superintendent, Treatment Plant Superintendent, Code Enforcement Officer, and any other individuals or agencies, as deemed necessary. (#4)(#6)

Within ten working days after the application has been deemed complete, the City Planner shall notify the applicant in writing of any technical deficiencies in the application or site plan, and recommend modifications. The applicant may then revise the plan addressing the staff recommendations or request Planning Board review without amendment. The City Planner shall submit written recommendation(s) to the Planning Board and provide a copy of such to the applicant.

### **603.3 FILING OF APPLICATION AND SITE PLAN FOR PUBLIC HEARING**

(#2) (#4)

The applicant shall submit two mylar site plans and fifteen copies of the site plan submission plus the applicable fee to the City Planner at least fifteen days prior to a scheduled Planning Board meeting. The City Planner shall give one copy of the application and site plan to the Code Enforcement Officer.

### **604 PUBLIC HEARING (#2)**

Before taking final action thereon, the Planning Board shall hold a public hearing on the application. Notice of said hearing shall be mailed to

abutting landowners and published in a local newspaper at the applicant's expense at least seven (7) days in advance of said hearing. A notice of said hearing shall be mailed by the City Clerk to each landowner abutting the proposed development. Land owners shall be considered to be those against whom property taxes are assessed. Failure of any abutting landowner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action of the Planning Board. The purpose of the public hearing shall be to receive input from the general public relative to the elements listed in Section 607.

#### **604.1 PROCEDURE**

An applicant may be represented by an attorney or other representative at such hearing. Any scheduled public hearing shall not be continued, except for good cause, and when such continuance is requested by the applicant, all advertising costs shall be borne by the applicant. Failure of the applicant or the designated representative to appear at the public hearing shall result in the proposal being tabled until the next regular scheduled meeting with resultant advertising and notification costs borne by the applicant. Failure to appear at the next meeting shall be deemed withdrawal of the application.

#### **605 PLANNING BOARD REVIEW AND ACTION**

Within thirty-five (35) days after the public hearing on an application, the Planning Board shall approve, approve with conditions, or disapprove the site plan. This deadline may be extended by mutual agreement of the Board and the applicant, either in writing or orally on the record at a public meeting. The board shall limit its review to the criteria set forth in Section 607. The board may consult with the applicant or any other party in making its review. The board shall inform the applicant of its decision in writing, and in cases of disapproval or approval with modifications, reasons for such action shall be stated within thirty-five (35) days.. A copy of the Board's decision shall be filed with the City Planner and the Code Enforcement Officer. (#4)

#### **605.1 EXPIRATION OF PLANNING BOARD APPROVAL (#2)**

The ability and procedure of a major site plan to be approved and constructed in phases shall be determined on a case-by-case basis by the Planning Board. If permitted, details of such phasing shall be outlined on the site plan and written Planning Board Order. Previously approved site plans may be eligible for phasing if brought before the Planning Board for an amended site plan review within eighteen months of approval.

Site plan approval granted by the Planning Board shall expire if the work or use involved is not commenced within one year of the date which the approval is granted, or if the work is not substantially completed within eighteen months of the site plan approval date. For projects approved for completion in phases, site plan approval shall expire if the work does not meet the phasing conditions approved for the project.

Expiration of the applicable dates prior to commencement or substantial completion shall void the site plan approval unless the Code Enforcement Officer has granted an extension for a period not to exceed ninety days based on the Code Enforcement Officer's written finding of a reasonable cause. If additional extensions are required, the Planning Board may grant such additional extensions based on a written finding of reasonable cause.

## **606 REQUIRED INFORMATION (#2)**

Application for the establishment of uses requiring site plan review shall be accompanied by plans (one inch equals twenty feet is preferred) drawn to scale, and accompanying written materials bound either in a punch and bind or 3-ring binder. For purposes of site plan review, the "site" consists of the entire parcel of land and not just the portion developed. The required submission containing at a minimum the following information:

### **606.1 INFORMATION FOR ALL SUBMISSIONS (#2)(#4)**

1. A brief narrative describing the overall goals and objectives of the project, the nature of the operations of the site use, along with the expected schedule of operation and number of employees.
2. Applicant. An application will be considered only when an applicant has demonstrated sufficient title, right or interest in all of the property which is proposed for development or use. If the applicant is a business or corporation, a current Certificate of Good Standing from the State of Maine shall be supplied. If the applicant is incorporated, a copy of the Articles of Incorporation shall be supplied. An applicant shall demonstrate in writing sufficient title, right or interest as follows:
  - A. When an applicant claims ownership of the property, copies of the deeds to the property shall be supplied.
  - B. When the applicant has an option to buy the property, a copy of the option agreement shall be supplied. Option agreements shall contain terms deemed sufficient by the Board to establish future title. Copies of the current deeds to the property shall also be supplied.
  - C. When the applicant has a lease on the property, copy of the lease shall be supplied. The lease shall be of sufficient duration, as determined by the Board, to permit construction and reasonable use of the development. Copies of the current deeds to the property shall also be supplied.
  - D. When the applicant has eminent domain power over the property, evidence shall be supplied of the ability and intent to use the eminent domain power to acquire sufficient title, right or interest as determined by the

Board. Copies of the current deeds to the property shall also be supplied.

E. When the applicant has a bond for a deed on the property, a copy of the bond for a deed shall be supplied. Copies of the current deeds to the property shall also be supplied.

F. When the applicant has a purchase and sales agreement to purchase the property, the applicant shall provide a copy of the purchase and sales agreement. Copies of the current deeds to the property shall also be supplied.

3. Graphic scale with appropriate labels
4. A location map showing the relation of the proposed development to the surrounding area.
5. Current boundary survey showing boundaries of the tract of land, improvements, easements, and rights of ways therein, bearing the surveyor's seal, indicating north arrows, corners of parcel, date of survey and total acreage, prepared in accordance with the Board of Licensure for Professional Land Surveyors.
6. Location, height in stories, ground floor area and first floor elevation of existing and proposed buildings and other structures, including use and proposed use thereof.
7. Location, ground floor area and height in stories of buildings within 100 feet of the proposed project.
8. Location, names and traveled way widths of existing public streets.
9. Location of proposed drives to the lot from public streets, depicting, curb radii, centerline radii, grade (s) and sight distances.
10. Location and arrangement of proposed off-street parking loading areas and their appurtenant drives and maneuvering areas.
11. Specifications for landscaping/screening including species, spacing and height at time of planting of trees or shrubs are used; where earthen beams are used, slope, base dimensions

and vegetation cover used; where fencing is employed, height, type and material of fencing.

12. Location of existing and proposed pedestrian walkways.

13. Location, size, material, and elevations of existing and proposed utilities

and easements therefore, including sanitary sewerage, water, (including existing and/or proposed hydrants), telephone and electricity.

14. If the site is not to be served by a public sewer line, plan shall show the

location of test pits, and the proposed location of the sub-surface disposal system, including reserve leach field locations. An on-site soils investigation report by a licensed site evaluator shall be provided. The report shall contain the types of soil, location of test pits, and proposed locations and design of the best practical subsurface disposal system for the site, including reserve leach field locations.

15. Location of existing natural drainage ways, critical areas and proposed

storm drainage facilities, including size, material and elevations culverts, pipes, etc. Where channels are used, the depth, slope, grade and type of channel covering of lining shall be shown. Where subsurface drainage is employed, the layout of the system and the disposition of the flow shall be shown.

16. Lighting intensity, type, size and direction of all outdoor lighting.

17. Location and proposed use of areas proposed for outdoor recreation.

18. Location and type of existing and proposed landscaping, fences, hedges and trees of ten inch caliper and over, measured at a point 4.5 feet above ground level.

19. All existing and proposed contours of the entire site with spot elevations at critical areas. No more than two foot contour intervals shall be used, unless the City Engineer

- determines that large contour intervals are adequate to evaluate the effect on adjacent property and site conditions.
20. Locations and size of signs and all permanent outdoor fixtures, existing or proposed.
  21. All existing and proposed set setback dimensions.
  22. The type, size and location of all incineration devices and dumpsters.
  23. The type, size and location of all machinery likely to generate noise at the lot lines.
  24. The quantity and type of any raw, finished or waste materials to be stored outside of roofed buildings, including their physical and chemical properties, as appropriate.
  25. The location of all wetlands over 4,000 sq. ft. cumulatively on the site, prepared by a State Certified Soil Scientist or Geologist registered in the State of Maine, or other qualified professional showing expertise in wetland delineation, and based on an on-site investigation. Said submission shall include a narrative describing method of delineation and location and description of such wetland features including functions and values.
  26. An appropriate place on the site plan for the signatures of the Planning Board.
  27. The location of stone walls, graveyards, fences, stands of trees, and other important or unique natural areas and site features, including but not limited to, floodplains, deer wintering areas, significant wildlife habitats, fisheries, scenic areas, habitat for rare and endangered plants and animals, unique natural communities and natural areas, sand and gravel aquifers, and historic and/or archaeological resources, together with a description of such features.
  28. The location of the project site drawn to scale on the Federal Emergency Management Agency Flood Insurance Rate Map for the City of Brewer, Maine.

29. Supporting design calculations for (a) sanitary sewage and (b) water demand.
30. Supporting calculations indicating the average daily volume of traffic to be generated by the project along with the expected peak hour volume as determined from the ITE manual "Trip Generation".
31. Stormwater drainage provisions showing existing and proposed methods of handling stormwater runoff and directional arrows showing the flow.
32. An erosion and sedimentation control plan detailing the methods of controlling erosion and sedimentation during and after construction.
33. Written request for waivers of any item(s) specified.

**606.2 ADDITIONAL INFORMATION REQUIRED FOR MAJOR DEVELOPMENTS (#2)**

1. A stormwater management plan, prepared by a professional traffic engineer with supporting storm drainage calculations based on a 10 year storm, unless stipulated higher by the City Engineer, and a separate map of the drainage area(s) using either the rational method TR-20 or the TR-55, "Urban Hydrology" method.
2. A traffic impact analysis, prepared by a professional traffic engineer, demonstrating the impact of the proposed project on the capacity, level of service and safety on adjacent streets including supporting calculations indicating the average daily volume of traffic to be generated by the project along with the expected peak hour volume as determined from the ITE manual "Trip Generation".
3. A written statement from a professional engineer stating the adequacy of the water supply for both domestic and fire protection.

4. A groundwater impact analysis prepared by a groundwater hydrologist for projects involving common on-site water supply or sewage disposal facilities with a capacity of 2,000 gallons or more per day.
5. The location, width, typical cross-section, grades and profiles of all proposed streets and sidewalks.
6. An assessment of the impact of the development on wetlands, streams, ponds, flood plains, archaeological resources and significant wildlife habitats, including review letters from appropriate State Officials.
7. A written statement from a professional engineer or licensed architect stating the adequacy of the water supply for both domestic and fire protection.

### **606.3 OTHER INFORMATION**

1. In cases where construction or operation of the proposed project may adversely affect such things as light, noise, public safety or cause electromagnetic effects, the applicant may be required to provide expert outside testimony at the applicant's expense.
2. Such additional information as requested in writing by the

City Planner

to insure compliance with the terms of this Land Use Code.

### **607 STANDARDS GOVERNING SITE PLAN REVIEW**

The following standards are to be used by the Planning Board in evaluating Site Plan Review applications and shall serve as minimum requirements for approval of the site plan. Upon consideration of these factors and standards, the Planning Board may attach such conditions, in addition to those listed elsewhere in this ordinance, that it finds necessary to further the purposes of this ordinance. Such conditions may include, but are not limited to, specifications for: increased setbacks and yards; landscaping and planting screens; period of operation; locations of parking and signs; or any other conditions necessary to fulfill the

purposes of this Land Use Code. Violation of any conditions so attached to an approved Site Plan shall constitute a violation of this Land Use Code.

#### **607.1 COMPATIBILITY WITH LAND USES**

The proposed development is compatible with land use of adjacent properties and other property in the district.

1. The proposed development is a use which is allowed within that district.
2. Historic and Archaeological Sites - any proposed land use activity in the Shoreland Zoning protection District or soil disturbance on or adjacent to sites listed on, or eligible to be listed on the National Register of Historic Places, as determined by the permitting authority shall be submitted by the application to the Maine Historic preservation Commission for review and comment, at least twenty (20) days prior to action being taken by the permitting authority. The permitting authority shall consider comments received from the Commission prior to rendering a decision on the application. The development shall include appropriate measures for protecting these resources, including but not limited to, modification of the proposed design of the site, timing of construction, limiting extent of excavation.
3. The layout and arrangement of structures are visually and/or functionally related to one another or adjoining properties in a reasonable manner.
4. The development must provide for the buffering of adjacent  
uses where  
there is a transition from one type of use to another use and  
for the  
screening of mechanical equipment and service and storage  
areas. The  
buffer may be provided by distance, landscaping, fencing,  
changes in  
grade, and/or a combination of these or other techniques.

## **607.2 COMPATIBILITY WITH LANDSCAPE**

The plan for the development will reflect the natural capabilities of the site to support development. Buildings, lots, and support facilities will be clustered in those portions of the site that have the most suitable conditions for development. Environmentally sensitive areas, including but not limited to, wetlands, steep slopes, floodplains, significant wildlife habitats, fisheries, scenic areas, habitat for rare and endangered plants and animals, unique natural communities and natural areas, and sand and gravel aquifers will be maintained and preserved to the maximum extent. The development shall include appropriate measures for protecting these resources, including but not limited to, modification of the proposed design of the site, timing of construction, and limiting the extent of excavation.

1. The proposed development does not use excessive cuts or fills
2. The development attempts to create focal points with respect to avenues of approach, terrain features, or other buildings.
3. The development is consistent with the City's Open Space and Trail Plan, if any, and preserves open space to the maximum extent possible.

## **607.3 EROSION**

All building, site, and roadway designs and layouts must harmonize with existing topography and conserve desirable natural surroundings to the fullest extent possible such that filling, excavation and earth moving activity must be kept to a minimum. Parking lots on sloped sites should be terraced to avoid undue cut

and fill, and/or the need for retaining walls. Natural vegetation must be preserved and protected wherever possible.

Soil erosion and sedimentation of water courses and water bodies will be minimized by an active program meeting the requirements of the Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices, dated March, 1991.

#### **607.4 STORM WATER**

Adequate provision must be made for the collection and disposal of stormwater that runs off proposed streets, parking areas, roofs, and other surfaces, through a stormwater drainage system and maintenance plan, which must not have adverse impacts on abutting or downstream properties.

1. To the extent possible, the plan must retain stormwater on the site using the natural features of the site.
2. Unless the discharge is directly to the Penobscot River, stormwater runoff systems must detain or retain water such that the rate of flow from the site after development does not exceed the predevelopment rate.
3. The applicant must demonstrate that on and off-site downstream channel or system capacity is sufficient to carry the flow without adverse effects, including but not limited to, flooding and erosion of areas, or that he/she will be responsible for whatever improvements are needed to provide the required increase in capacity and/or mitigation.
4. All natural drainage ways must be preserved at their natural gradients and must not be filled or converted to a closed system unless approved as part of the site plan review system.
5. The design of the stormwater drainage system must provide for the disposal of stormwater without damage to streets, adjacent properties, downstream properties, soils, and vegetation.
6. The design of the storm drainage systems must be fully cognizant of upstream runoff which must pass over or

through the site to be developed and provide for this movement.

7. The biological and chemical properties of the receiving waters must not be degraded by the stormwater runoff from the development site. The use of oil and grease traps in manholes, the use of on-site vegetated waterways, and vegetated buffer strips along waterways and drainage swales, and the reduction in use of deicing salts and fertilizers may be required.

#### **607.5. ACCESS (#4)**

The location of points of access to public streets and the design and location of access roads are such that traffic congestion and unsafe conditions on public streets are minimized.

1. If the development is located in a commercial or industrial district, the entrances shall comply with Section 906.4 of this ordinance.
2. Driveways and access roads intersect streets at an angle as close to 90 degrees as possible for a minimum of 50 feet.
3. Curb cuts or access drives are located and designed to provide safe sight distances in each direction as outlined in the table below:

Design Speed	25	30	35	40	45
Sight Distance	300'	380'	480'	580'	710'

Sight distances shall be measured at a distance of 15' back from the edge of the travel lane and at a height of 3.5' above the proposed access road grade to an object 4.25 feet above the pavement.

4. Curb cuts are located so as to allow a minimum clearance as prescribed in 906.4 of this Land Use Ordinance from unsignaled intersections of streets. The minimum clearance distance at signalized intersections shall be 150 feet.

Clearance distances are to be measured from the point of tangency (pt) for the corner to the pt for the access drive.

5. Left turning traffic will not block or impede turning traffic out of another driveway or intersection.
6. Accessways must be designed and have sufficient capacity to avoid queuing of entering vehicles on any public street.
7. Where a lot has frontage on two (2) or more streets, the primary access to and egress from the lot should be provided from the street where there is less potential for traffic congestion and for traffic and pedestrian hazards. Access from other streets may be allowed if it is safe and does not promise shortcutting through the site.
8. Where it is necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, the applicant shall be responsible for providing turning lanes, traffic directional islands, and traffic controls for public streets or other remedies.
9. The following criteria must be used to limit the number of driveways serving a proposed project:
  - a. No use which generates less than one hundred (100) vehicle trips per day shall have more than (1) two-way driveway onto a single roadway. Such driveway must be no greater than thirty (30) feet wide.
  - b. No use which generates one hundred (100) or more vehicle trips per day shall have more than two (2) points of entry from and two (2) points of egress to a single roadway unless otherwise approved by the Planning Board. The combined width of all accessways must not exceed sixty (60) feet.

## **607.6 ROAD SYSTEM IMPACT**

The proposed development will not cause an unreasonable burden on existing road systems.

Levels of service "D" (see Article 14) as determined by capacity analysis shall be considered the minimum necessary to provide safe, reasonable traffic movement.

Where such a level of service is determined to operate at a lower level of the project's build-out year, a finding of safe, reasonable traffic movement shall be made given the following:

1. Improvements will be made to raise the level of service to "D" or above;

OR

2. If the above is found not to be reasonable by the Board, improvements will be made such that the proposed development will not increase delay at a signalized intersection, decrease the reserve capacity at an unsignalized intersection, or otherwise worsen the operational condition of the road or intersection in the project build-out year.

#### **607.7 LANDSCAPING AND PLANTING**

Landscaping must be provided as part of site design. The landscape plan for the entire site must use landscape materials to integrate the various elements on site, preserve and enhance the particular identity of the site and create a pleasing site character. The landscaping should define street edges, break up parking areas, soften the appearance of the development, and protect abutting properties.

Landscaping may include plant materials such as trees, shrubs, groundcovers, perennials and annuals, and other materials such as rocks, water, sculpture, art, walls, fences, paving materials, and street furniture.

1. Areas with four (4) or more parking spaces are screened from view of abutting properties. Front yard screening for Narcotic Treatment Facilities shall meet the requirement of Section 424.2. (#11)

2. Parking areas larger than 12,000 square feet shall have interior landscaping equivalent to seven percent of the total parking; except in the industrial zone where the requirement is five per cent. Each separate interior landscaped area contains a minimum of 50 square feet and have a minimum dimension of five feet. Interior landscaped areas shall be planted with trees, shrubs, ground cover or other acceptable landscaping material which shall not exceed three feet in height where necessary for site distances. Such interior landscaping is located as an aid to traffic and pedestrian safety and circulation and shall included raised landscaped islands at the end of parking rows and raised parking row dividers with landscaping for every other row of double parking..
3. Additional plantings of shrubs and trees beyond that specifically required elsewhere in this Land Use Code are included to break up extensive building facades, front, side or rear yards of more than 50 feet in length; or open space areas not used for active recreation of more than 500 square feet in area.
4. Landscaping materials are specified as number 1 grade as determined by the American Association of Nurserymen. Landscape materials will be maintained and dead plant material replaced within one year or by the next planting season, whichever occurs first.
5. A Medical Marijuana Registered Dispensary and/or Medical Marijuana Cultivation Facility shall meet the requirements of Article 4, Section 424.2.3.c. of this Ordinance. (#16)

NOTE: The Planning Board may waive the requirement for screening of more than five parking spaces in the General Business District, the Industrial District and the Industrial-two District, upon written request provided that the proposed project does not abut a Residential District. If the proposed project does abut Residential District screening of parking from the Residential District is required. If screening is waived, tree planting, at a rate of one tree per fifty feet of parking perimeter, shall be substituted for screening.

5. The minimum plant sizes, unless specifically indicated otherwise by the Planning Board, shall meet the following minimum standards:

- A. Shade trees: highcrowned species with ascending or lateral branching habit indigenous to the area, tolerant to existing soils and urbanized conditions, caliper measured six inches up from the base 1 1/2 inches to two inches
- B. Flowering and evergreen trees will be a minimum of five to six foot size.
- C. Shrubs, deciduous will be a minimum of two to three foot size.
- D. Shrubs, evergreen will be a minimum of 36 to 42 inch size (for those specified by height); 18 to 24 inches for those specified by spread.

#### **607.8 OUTDOOR LIGHTING**

Outdoor lighting is designed so that it will not cause glare (either directly or indirectly) on adjacent properties or on a public way so as to impair the vision of the driver of any vehicle upon that public way.

- 1. If the proposed development is within, or abuts a residential area, the lighting is designed so that it will not cause an illumination in excess of 0.5 footcandles at the property line abutting the residential area, as measured by a photoelectric photometer having a spectral response similar to that of the human eye.
- 2. All exterior lighting, except security lighting, must be turned off between 11 P.M. and 6 A.M. unless located on the site of a commercial or industrial use which is open for business during that period. Wiring to light poles and standards must be underground.

#### **607.9 OUTDOOR RECREATION**

Outdoor recreation areas are located so as to minimize potential effect on adjacent properties.

1. Screening is of such a nature to mitigate noise levels to Noise Performance standards in Article 4 of this Land Use Code.

#### **607.10 WASTEWATER**

The proposed development does not impose an unreasonable burden on sanitary sewers or the Wastewater Treatment Plant (WWTP).

1. The development will not over tax the existing downstream sanitary system or, where necessary, improvements to the existing system are proposed so as to avoid overtaxing the system.
2. The development will not cause the WWTP to operate beyond its licensed discharge or any limitations or allowances placed thereon by State and Federal agencies. The WWTP superintendent will be formally consulted for each site plan review involving municipal wastewater treatment.
3. If the development is to be served by an on-site wastewater disposal system, the system has been designed according to Maine Department of Human Services, Division of Health Engineering rules and is of sufficient capacity to handle wastewater from the number of people expected to use the system.
4. The requirements of Chapter 31, City of Brewer Sewer and Pretreatment Ordinance of the City of Brewer Charter, Codes and Ordinances are met.

#### **607.11 SUFFICIENT WATER (#4)**

The proposed development will not impose an unreasonable burden on the municipal water system and has sufficient water available

to meet its needs for the foreseeable future for both domestic water and fire protection.

1. The Water Department Superintendent and the Fire Chief will be formally consulted for each site plan review involving municipal water service.
2. Hydrants shall also be placed such that one (or more if required by the AHJ) shall be located within five hundred (500) feet of all structures. The hydrants are to be standard hydrants as approved by the AHJ. Said hydrants to supply seven hundred fifty (750) gpm or more each with a residual pressure of 20 psi. Further, for selected developments, subject to the AHJ, more hydrants and larger fire flows may be required for greater than normal hazards or large structures.
3. A minimum storage capacity of 10,000 gallons shall be provided for a project not served by a public water supply. Additional storage of 2,000 gallons per lot or commercial development unit shall be provided. If multiple principal buildings are present in the project, storage capacity shall be provided sufficient for initial flows to automatic fire suppression systems required by the Brewer Building Code.
4. Hydrants or other provisions for drafting water shall be provided to the  
connecting dry  
the right-of-way  
municipality shall be  
hydrant or other  
Department  
specifications of the Fire Department. Minimum pipe size hydrants to ponds or storage vaults shall be eight inches.
5. Where the dry hydrant or other water source is not within  
of a proposed or existing street, an easement to the  
provided to allow access. A suitable accessway to the  
water source shall be constructed.
6. The Board shall require an opinion of adequacy of fire  
protection water  
supply from the Fire Chief and the Brewer Water

Superintendent.

#### **607.12 SCHOOL SYSTEM**

The proposed development will not cause an unreasonable burden on the school system.

1. The superintendent of schools will be formally consulted for each site plan review involving residential developments. The number of students added to the school system as a result of the development will be estimated using the most recent available published regional multipliers.

#### **607.13 DEVELOPMENTS IN FLOOD HAZARD AREAS - See Article 8, Floodplain Management**

#### **607.14 IMPACT ON ABUTTING PROPERTIES**

The use of the proposed project will not have a significant detrimental effect on the use and peaceful enjoyment of abutting properties as a result of noise, vibrations, fumes, odor, dust, glare, or other cause.

1. Operation of the project will be in compliance with the performance standards in Article 4 of this Land Use Code.
2. The design of the proposed development takes into account the scenic character of the surrounding area.
3. A development which is not in keeping with the surrounding scenic character will be located, designed and landscaped to minimize its visual impact to the fullest extent possible.
4. The development must provide for buffering of adjacent uses where there is a transition from one type of use to another use and for screening of mechanical equipment and service and storage areas. Buffering must be designed to provide a year-round visual screen in order to minimize adverse impacts. It may consist of fencing, evergreens, berms, rocks, boulders, mounds or a combination thereof.

- A. Development must provide sufficient buffering when topographical or other barriers do not provide reasonable screening and where there is a need to:
  - 1) Shield neighboring properties from any adverse external effects of the development, or
  - 2) Shield the development from the negative impacts of adjacent uses.

The width of the buffer may vary depending on the treatment of the area. Within densely built-up areas, a buffer with dense plantings, fencing or changes in grade may be as little as five (5) feet in width. A buffer with moderate levels of plantings should be ten (10) feet to fifteen (15) feet in width. In suburban and rural settings, the width of the vegetated buffer shall be increased to a minimum of twenty-five (25) feet. Areas adjacent to service, loading or storage areas should be screened by dense planting, berms, fencing, or a combination thereof with a width of a minimum of five (5) feet.

## **608 SCREENING MAINTENANCE REQUIREMENTS**

As a condition of any site plan review approval, the applicant shall furnish the City of Brewer an irrevocable letter of credit, performance bond, cash, or other form of security approved by the Planning Board and accepted by the City Council, equal to at least 15% of all planting required for screening, buffering, and/or internal parking area. The bond shall be binding for a minimum of two years and shall be subject to the condition that such plantings be maintained in accordance with the terms of the site plan approval and in a good and healthy condition.

## **609 TEMPORARY CERTIFICATE OF OCCUPANCY**

**609.1** Where completion of a project is precluded by winter conditions and the structure meets building, electrical and sewer codes, as ascertained by the Code Enforcement Officer, a temporary

Certificate of Occupancy may be issued upon a finding of the Board that:

1. Public safety is assured at the project's state of completion, including –  
but not limited to - meeting the various building, life safety, electrical and sewer codes. The Board shall also consider: Traffic access, drainage and potential degradation to use of land based on temporary use at the existing stage of project completion.
2. A bond, or other financial assurance, acceptable in form to the  
City Solicitor, for completion of required improvements as estimated by  
the City Engineer using standard cost estimating methods and including  
a contingency figure, will be posted by the applicant.
3. Delay of project completion is solely due to conditions beyond the control of the project, and an economic hardship (rather than inconvenience) would result from not granting a  
\*temporary use of the structure.  
\*Such temporary certificate of occupancy shall have a time limit of six (6) months from the Board's decision in writing.

**609.2** The Code Enforcement Officer may issue a temporary Certificate of Occupancy for other than winter conditions if:

1. The improvements shown on the approved site plan have been substantially completed;
2. Applicant has posted a bond or other financial assurance accepted by the City Council to assure completion, and
3. Establishment of a date by which the balance of the improvements shown on the approved site plan shall be completed.

No Certificate of Occupancy shall be issued by the Code Enforcement Officer unless the applicant shall certify under oath in writing all improvements shown on the approved site plan or as amended, including screening, planting, and landscaping, have been completed. The Code Enforcement Officer may also require a Certificate of Compliance stamped by a registered professional engineer or a registered land surveyor be provided by the applicant at the applicant's expense if the Code Enforcement Officer deems it necessary prior to the issuing of the Certificate of Occupancy.

Prior to issuance of a Certificate of Occupancy, the City Planner shall provide to the Code Enforcement Officer written verification that the landscaping and/or plantings have been completed to the specifications of the site plan approval by the Planning Board.

If the Planning Board requires the applicant to submit an "as built" site plan, the Code Enforcement Officer shall not issue the Certificate of Occupancy until the "as built" site plan is received.

For the purposes of this Section, an approved Site Plan can be modified as follows:

Minor revisions to an approved site plan may be permitted by the City Planner, subject to the following conditions:

- 610.1** A revised plan showing the revision is submitted (in three copies) to the City Planner.
- 610.2** The City Engineer agrees that the proposed change is a "minor revision" and that the proposed change does not violate this Land Use Code or materially change a plan approved by the Planning Board.
- 610.3** If the City Engineer requests it, the proposed plan revision will be placed on the agenda of the next Planning Board Meeting for the Board's review.
- 610.4** Minor revisions to the Site Plan may be approved by the City Planner, provided that such "minor revision" will not materially alter the layout or scale of the development nor its impact on its surroundings, nor will it specifically:

1. Expand the size of a project by increasing the number of lots or dwelling units; or by increasing the gross floor area of a primary use structure; or by adding a primary use structure or an accessory use structure containing more than two hundred (200) square feet of gross floor area to the site;
2. Violate the provisions of any City Code or Ordinance;
3. Delete landscaping, screening or buffer yard elements;
4. Change the number of vehicular access points to the public street system or significantly alter the location of such access drives; and
5. Reduce the number of parking spaces or significantly alter on-site vehicular circulation.

## **ARTICLE 7 - SUBDIVISION REVIEW (#20)**

### **701 PURPOSES**

The purposes of these regulations are:

- 701.1** To provide for an expeditious and efficient process for the review of proposed subdivisions;
- 701.2** To clarify the approval criteria of the state Subdivision Law, found in Title 30-A M.R.S.A., Section 4404;
- 701.3** To assure new development in the City of Brewer meets the goals and conforms to the policies of the Brewer Comprehensive Plan;
- 701.4** To assure the comfort, convenience, safety, health and welfare of the people of the City of Brewer;
- 701.5** To protect the environment and conserve the natural and cultural resources identified in the Brewer Comprehensive Plan as important to the community;
- 701.6** To assure that a minimal level of services and facilities are available to the residents of new subdivisions and that lots in subdivisions are capable of supporting the proposed uses and structures;
- 701.7** To minimize the potential impacts from new subdivisions on neighboring properties and on the municipality; and
- 701.8** To promote the development of an economically sound and stable community.

**701.9** The subdivision provisions set forth in this Article are intended to protect the public health and safety, promote the general welfare of the community, and conserve the environment by assuring that nonresidential and multifamily construction is designed and developed in a manner which assures that adequate provisions are made for traffic safety and access; emergency access; water supply; sewage disposal; management of storm water, erosion, and sedimentation; protection of groundwater; protection of the environment, wildlife habitat, fisheries, and unique natural areas; protection of historic and archaeological resources; minimizing the adverse impacts on adjacent properties; and fitting the project harmoniously into the fabric of the community.

## **702 AUTHORITY AND ADMINISTRATION**

### **702.1 AUTHORITY**

1. These standards have been prepared in accordance with the provisions of Title 30-A M.R.S.A., Section 4403.
2. These standards shall be known and may be cited as "Subdivision Ordinance of the City of Brewer, Maine."

### **702.2 ADMINISTRATION**

1. The Planning Board of the City of Brewer, hereinafter called the Board, shall administer these regulations.
2. The provisions of these regulations shall pertain to all land and buildings proposed for subdivision within the boundaries of the City of Brewer.
3. Notwithstanding the provisions of this Article, leased dwelling units are not subject to subdivision review if the Municipal Reviewing Authority has determined that the units are otherwise subject to municipal review at least as stringent as that required under Article 6 of this Land Use Code.

### **702.3 AMENDMENTS**

This Article may be amended in accordance with Article 1 of this Land Use Code.

## **703 ADMINISTRATIVE PROCEDURE**

In order to establish an orderly, equitable and expeditious procedure for reviewing subdivisions and to avoid unnecessary delays in processing applications for subdivision review, the Board shall prepare a written agenda for each regularly scheduled meeting. The agenda shall be prepared no less than one week in advance of the meeting,

distributed to the Board members and any applicants appearing on the agenda, and posted at the municipal offices. Applicants shall request to be placed on the Board's agenda by contacting the City Planner. Applicants who attend a meeting but who are not on the Board's agenda may be heard only after all agenda items have been completed, and then only if a majority of the Board so votes. However, the Board shall take no action on any application not appearing on the Board's written agenda.

## **704 PREAPPLICATION PROCEDURES AND SKETCH PLAN AND REVIEW**

### **704.1 PURPOSE**

The purpose of the pre-application meeting and on-site inspection is for the applicant to present general information regarding the proposed subdivision to the Board and receive the Board's comments prior to the expenditure of substantial sums of money on surveying, soils identification, and engineering by the applicant.

### **704.2 PROCEDURE**

1. The applicant shall present the Pre-application Sketch Plan and make a verbal presentation regarding the site and the proposed subdivision.
2. Following the applicant's presentation, the Board may ask questions and make suggestions to be incorporated by the applicant into the application.
3. The date of the on-site inspection is selected.

### **704.3 SUBMISSION**

The Pre-application Sketch Plan shall show in simple sketch form the proposed layout of streets, lots, buildings and other features in relation to existing conditions. The Sketch Plan, which does not have to be engineered and may be a free-hand penciled sketch, should be supplemented with general information to describe or outline the existing conditions of the site and the proposed development. It will be most helpful to both the applicant and the Board for site conditions such as steep slopes, wet areas and vegetative cover to be identified in a general manner. The Sketch Plan shall be accompanied by:

1. A copy of a City of Brewer five foot (5') contour topographic map or similar map with 5 foot contours, showing the outline of the proposed subdivision.
2. A copy of the Brewer assessor's map(s) on which the land is located.

### **704.4 CONTOUR INTERVAL AND ON-SITE INSPECTION**

Within thirty days of the pre-application meeting, the Board shall hold an on-site inspection of the property and inform the applicant in writing of the required contour interval on the Preliminary Plan, or Final Plan in the case of a Minor Subdivision. The applicant shall place "flagging" at the centerline of any proposed streets, and at the approximate intersections of the street centerlines

and lot corners, prior to the on-site inspection. The Board shall not conduct on-site inspections when there is more than one foot of snow on the ground.

#### **704.5 RIGHTS NOT VESTED**

The pre-application meeting, the submittal or review of the sketch plan or the on-site inspection shall not be considered the initiation of the review process for the purposes of bringing the plan under the protection of Title 1 M.R.S.A., Section 402.

#### **704.6 ESTABLISHMENT OF FILE**

Following the pre-application meeting the Board shall establish a file for the proposed subdivision. All correspondence and submissions regarding the pre-application meeting and application shall be maintained in the file.

### **705 MINOR SUBDIVISION REVIEW PROCESS**

#### **705.1 GENERAL**

The Board may require, where it deems necessary to make a determination regarding the criteria for approval from Title 30-A M.R.S.A., Section 4404, or the Performance Standards from Section 710 of this Article, that a Minor Subdivision comply with some or all of the submission requirements for a Major Subdivision.

#### **705.2 PROCEDURE**

1. **REQUEST FOR FINAL PLAN REVIEW.** Within six months after the on-site inspection by the Board, the applicant shall submit an application for approval of a final plan at least four weeks prior to a scheduled meeting of the Board. Applications shall be submitted by mail to the Board in care of the City Planner or delivered by hand to the City Planner. Failure to submit the application within six months shall require resubmission of the Sketch Plan to the Board. The final plan shall approximate the layout shown on the Sketch Plan, plus any recommendations made by the Board.
2. **APPLICATION FEE AND TECHNICAL REVIEW/RECORDING FEE.** All applications for final plan approval for a Minor Subdivision shall be accompanied by a non-refundable application fee as set forth in the City Council adopted fee schedule, payable to the City of Brewer. In addition, an applicant applying for minor subdivision approval shall pay a separate technical review and recording fee of \$200.00 per lot or dwelling upon submitting the application. Said funds shall be held in escrow and used to cover the cost for any of the following support services which the City of Brewer reasonably incurs in the review, approval or disapproval of the application:

- A. attorney, including the City Solicitor
- B. engineer
- C. architect
- D. surveyor
- E. any other expert the Planning Board, City Council, City Planner and/or Code Enforcement Officer feels is necessary to adequately evaluate the proposed subdivision plan. All technical review consultants shall be chosen by the City and not the applicant. Said funds may also be used to record the subdivision plans and documents in the Registry of Deeds.

If the balance in this account is drawn down by 50% or more, the Board or City Planner shall notify the applicant, and require that an additional \$150.00 per lot or dwelling unit be deposited by the applicant. The Board or City Planner shall continue to notify the applicant and require an additional \$150.00 per lot or dwelling unit be deposited as necessary whenever the balance of the account is drawn down 50% of the original deposit. Any monies not expended shall be returned to the applicant or his designee, without interest, by the City.

No application shall be deemed complete until the required money has been posted with the City. No application shall be acted upon by the board and/or City Council until sufficient funds have been posted to cover the total cost of the support services required by the City in reviewing the application.

3. STAFF REVIEW. The City Planner shall review the submission packet and place on the agenda of the technical review committee as needed. If the City Planner determines that the submission packet is not complete, notification of the missing information will be forwarded to the applicant. The City Planner shall not place an applicant on the Planning Board agenda until determining that the applicant has presented the submission packet required for Minor Subdivisions by this Ordinance.

If the City Planner determines that the submission packet is complete, the applicant shall be notified and placed on the agenda of the next regularly scheduled Planning Board meeting.

4. APPLICANT ATTENDANCE. The applicant, or his duly authorized representative, shall attend the meeting of the Board to present the final plan. Failure to attend the meeting to present the final plan shall result in a delay of the Board's receipt of the plan until the next meeting which the applicant attends.
5. PLANNING BOARD REVIEW. Within thirty days of the receipt of the final plan application, the Board shall determine whether the application is complete and notify the applicant in writing of its determination. If the application is not complete, the Board shall notify the applicant of the specific additional material needed to complete the application. A failure to submit a complete final plan

application within the time frame specified in Section 705.2.1 shall require the application be re-reviewed as provided in Section 704, Sketch Plan.

Upon a determination that a complete application has been submitted for review, the Board shall notify the applicant in writing of that determination. The determination of a complete application does not constitute the Planning Board's approval of the information submitted. The Planning Board reserves the right to request additional information throughout the review process up to and until Final Plan approval. Full evaluation of the final plan shall begin only after the Planning Board has determined that a complete application has been submitted. The Board shall hold a public hearing on the final plan application.

6. FINAL PLAN PUBLIC HEARING. The Board shall hold the hearing within thirty days of determining that it has received a complete application, and shall publish a notice of the date, time and place of the hearing in a newspaper of general circulation in the municipality at least two times, the date of the first publication to be at least seven days prior to the hearing. A copy of the notice shall be mailed to the applicant and abutters. Cost for mailing notices and publishing in the newspaper shall be paid for by the applicant.
7. PLANNING BOARD DECISION. Within thirty days from the public hearing or within sixty days of determining a complete application has been received, or within another time limit as may be otherwise mutually agreed to by the Board and the applicant, the Board shall make findings of fact, and conclusions relative to the criteria contained in Title 30-A M.R.S.A., Section 4404 and the standards of Section 710. If the Board finds that all the criteria of the Statute and the standards of Section 710 have been met, they shall approve the final plan. If the Board finds that any of the criteria of the statute or the standards of Section 710 have not been met, the Board shall either deny the application or approve the application with conditions to ensure all of the criteria and standards will be met by the subdivision. The Board shall issue a written notice of its decision to the applicant, including its findings, conclusions and any reasons for denial or conditions of approval.
8. PERFORMANCE GUARANTEE. Within sixty (60) days of Planning Board approval, the final plan shall be submitted to the City Council for its approval on any contracts or bonds. Submission to the City Council shall include Planning Board and city staff recommendations.
9. SIGNATURES. Upon approving the Final Plan, those members of the Planning Board voting for approval shall sign two (2) reproducible copies (mylars) and two (2) paper copies of the approved subdivision plan.

10. **DIGITAL PLAN.** The applicant shall supply the City Planner with a digital copy of the approved subdivision plan in order to facilitate the addition of the subdivision into the municipal property records. The digital file shall be supplied prior to recording the subdivision plan in the Registry of Deeds and in a format compatible with the assessor's records.
11. **FILING OF APPROVED FINAL PLAN.** After the City Council has approved any contracts and bonds and they have been filed with the City Clerk, the City shall record the subdivision plans and documents in the Registry of Deeds at the expense of the applicant using the escrowed technical review/recording fee funds as provided by the Article. Any subdivision not recorded in the Registry of Deeds within ninety (90) days of the date which the plan is approved and signed by the Planning Board or ninety (90) days after City Council approval on any contracts or bonds, whichever is later, shall become null and void.

The City Planner shall forward the second mylar to the City Assessor One paper signed paper copy shall be forwarded to the Code Office and one copy retained by the City Planner.

12. The approval by the Board of a subdivision plan shall not be deemed to constitute or be evidence of any acceptance by the municipality of any street, easement, or other open space shown on such plan. When a park, playground, or other recreation area shall have been shown on the plan to be dedicated to the municipality, approval of the plan shall not constitute an acceptance by the municipality of such areas. The Board shall require the plan to contain appropriate notes to this effect. The Board may also require the filing of a written agreement between the applicant and the municipal officers covering future deed and title dedication, and provision for the cost of grading, development, equipment, and maintenance of any such dedicated area.

### **705.3 SUBMISSIONS**

The final plan application shall consist of the following items.

1. **APPLICATION FORM AND EXHIBITS.** The application form and attachments for minor subdivisions shall be submitted as specified in Section 707.
2. **FINAL PLAN.** The subdivision plan for a Minor Subdivision shall contain information as specified in Section 707 and consist of two reproducible, stable-based transparencies, one to be recorded at the Registry of Deeds, the other to be filed at the municipal office, and fifteen copies of one or more maps or drawings drawn to a scale of not more than one hundred feet to the inch. The reproducible transparencies shall be embossed with the seal of the individual responsible for preparation of the plan. Plans for subdivisions containing more than one hundred acres may be drawn at a scale of not more than two hundred feet to the inch provided all necessary detail can easily be read. Plans shall be no

larger than 24 by 36 inches in size, and shall have a margin of two inches outside of the border lines on the left side for binding and a one inch margin outside the border along the remaining sides. Space shall be provided for endorsement by the Board. In addition, one copy of the Plan(s) reduced to a size of 8 1/2 by 11 inches or 11 by 17 inches shall be submitted.

3. APPLICATION FEES AND ESCROW ACCOUNT. The application fees and escrow account monies shall be submitted as specified in Section 705.2.2.

## **706 MAJOR SUBDIVISION REVIEW PROCEDURES**

### **706.1 PROCEDURE**

1. REQUEST FOR PRELIMINARY PLAN REVIEW. Within six months after the on-site inspection by the Board, the applicant shall submit an application for approval of a preliminary plan at least four weeks prior to a scheduled meeting of the Board. Applications shall be submitted by mail to the City Planner or delivered by hand to the City Planner. Failure to submit an application within six months shall require resubmission of the Sketch Plan to the Board. The preliminary plan shall approximate the layout shown on the Sketch Plan, plus any recommendations made by the Board.
2. APPLICATION FEE AND TECHNICAL REVIEW/RECORDING FEE. All applications for preliminary plan approval for a Major Subdivision shall be accompanied by an application fee as set forth in the City Council adopted fee schedule, payable to the City of Brewer. In addition, an applicant applying for major subdivision approval shall pay a separate technical review and recording fee of \$200.00 per lot or dwelling upon submitting the application. Said funds shall be held in escrow and used to cover the cost for any of the following support services which the City of Brewer reasonably incurs in the review, approval or disapproval of the application:
  - A. attorney, including the City Solicitor
  - B. engineer
  - C. architect
  - D. surveyor
  - E. any other expert the Planning Board, City Council, City Planner and/or Code Enforcement Officer feels is necessary to adequately evaluate the proposed subdivision plan application submission. All technical review consultants shall be

chosen by the City and not the applicant. Said funds may also be used to record the subdivision plans and documents in the Registry of Deeds.

If the balance in this account is drawn down by 50% or more, the Board or City Planner shall notify the applicant, and require that an additional \$150.00 per lot or dwelling unit be deposited by the applicant. The Board or City Planner shall continue to notify the applicant and require an additional \$150.00 per lot or dwelling unit be deposited as necessary whenever the balance of the account is drawn down by 50% of the original deposit. Any monies not expended shall be returned to the applicant or his designee, without interest, by the City.

No application shall be deemed complete until the required money has been posted with the City. No application shall be acted upon by the board and/or City Council until sufficient funds have been posted to cover the total cost of the support services required by the City in reviewing the application.

3. STAFF REVIEW. The City Planner shall review the submission packet and place on the agenda of the technical review committee as needed. If the City Planner determines that the submission packet is not complete, notification of the missing information will be forwarded to the applicant. The City Planner shall not place an applicant on the Planning Board agenda until determining that the applicant has presented the submission packet required for Preliminary Plan for Major Subdivisions by this Ordinance.

If the City Planner determines that the submission packet is complete, the applicant shall be notified and placed on the agenda of the next regularly scheduled Planning Board meeting.

4. APPLICANT ATTENDANCE. The applicant, or his duly authorized representative, shall attend the meeting of the Board to present the preliminary plan application. Failure to attend the meeting to present the preliminary plan application shall result in a delay of the Board's receipt of the plan until the next meeting that the applicant attends.
5. PLANNING BOARD REVIEW. Within thirty days of the receipt of the preliminary plan application, the Board shall determine whether the application is complete and notify the applicant in writing of its determination. If the application is not complete, the Board shall notify the applicant of the specific additional material needed to complete the application. A failure to submit a complete preliminary plan application within the timeframe specified in Section 706.1.1 shall require the application be re-reviewed as provided in Section 704, Sketch Plan.

Upon determination that a complete application has been submitted for review, the Board shall notify the applicant in writing of its determination. The determination of a complete application does not constitute the Planning Board's

approval of the information submitted. The Planning Board reserves the right to request additional information throughout the review process up to and until Final Plan approval. Full evaluation of the final plan shall begin only after the Planning Board has determined that a complete application has been submitted. The Board shall hold a public hearing on the preliminary plan application.

6. PRELIMINARY PLAN PUBLIC HEARING. The Board shall hold the hearing within thirty days of determining that it has received a complete application, and shall publish a notice of the date, time and place of the hearing in a newspaper of general circulation in the municipality at least two times, the date of the first publication to be at least seven days prior to the hearing. A copy of the notice shall be mailed to the applicant. Cost for mailing notices and publishing in newspaper shall be paid for by the applicant.
  
7. PLANNING BOARD DECISION ON PRELIMINARY PLAN. Within thirty days from the public hearing, or within another time limit as may be otherwise mutually agreed to by the Board and the applicant, the Board shall make findings of fact on the application, and approve, approve with conditions, or deny the preliminary plan application. The Board shall specify in writing its findings of facts and reasons for any conditions or denial.

When granting approval to a preliminary plan, the Board shall state the conditions of such approval, if any, with respect to:

- A. The specific changes which it will require in the final plan;
- B. The character and extent of the required improvements for which waivers may have been requested and which the Board finds may be waived without jeopardy to the public health, safety, and general welfare; and

Approval of a preliminary plan shall not constitute approval of the final plan or intent to approve the final plan, but rather it shall be deemed an expression of approval of the design of the preliminary plan as a guide to the preparation of the final plan. The final plan shall be submitted for approval by the Board upon fulfillment of the requirements of these regulations and the conditions of preliminary approval, if any. Prior to the approval of the final plan, the Board may require that additional information be submitted and changes in the plan be made as a result of further study of the proposed subdivision or as a result of new information received. No mylars or signatures on the Preliminary Plan shall be required.

8. REQUEST FOR FINAL PLAN REVIEW. Within six months after the approval of the preliminary plan, the applicant shall submit an application for approval of the final plan at least four weeks prior to a scheduled meeting of the Board. Applications shall be submitted by mail to the City Planner or delivered by hand to the City Planner. If the application for the final plan is not submitted within six

months after preliminary plan approval, the Board shall require resubmission of the preliminary plan, except as stipulated below. The final plan shall approximate the layout shown on the preliminary plan, plus any changes required by the Board.

If an applicant cannot submit the final plan within six months, due to delays caused by other regulatory bodies, or other reasons, the applicant may request an extension. Such a request for an extension to the filing deadline shall be filed, in writing, with the Board prior to the expiration of the filing period. In considering the request for an extension the Board shall make findings that the applicant has made due progress in preparation of the final plan and in pursuing approval of the plans before other agencies, and that municipal ordinances or regulations which may impact on the proposed development have not been amended.

9. STAFF REVIEW. The City Planner shall review the submission packet and place on the agenda of the technical review committee as needed. If the City Planner determines that the submission packet is not complete, notification of the missing information will be forwarded to the applicant. The City Planner shall not place an applicant on the Planning Board agenda until determining that the applicant has presented the submission packet required for Final Plan for Major Subdivisions by this Ordinance.

If the City Planner determines that the submission packet is complete, the applicant shall be notified and placed on the agenda of the next regularly scheduled Planning Board meeting.

10. APPLICANT ATTENDANCE. The applicant, or his duly authorized representative, shall attend the meeting of the Board to discuss the final plan. Failure to attend the meeting to present the final plan application shall result in a delay of the Board's receipt of the plan until the next meeting which the applicant attends.
11. PLANNING BOARD REVIEW. Within thirty days of the receipt of the final plan application, the Board shall determine whether the application is complete and notify the applicant in writing of its determination. If the application is not complete, the Board shall notify the applicant of the specific additional material needed to complete the application. A failure to submit a complete preliminary plan application within the timeframe specified in Section 706.1.8 shall require the application be re-reviewed as provided in Section 704, Sketch Plan.

Upon determination that a complete application has been submitted for review, the Board shall notify the applicant in writing of its determination. The determination of a complete application does not constitute the Planning Board's approval of the information submitted. The Planning Board reserves the right to request additional information throughout the review process up to and until Final Plan approval. Full evaluation of the final plan shall begin only after the Planning

Board has determined that a complete application has been submitted. The Board shall hold a public hearing on the final plan application.

12. FINAL PLAN PUBLIC HEARING. The Board shall hold the hearing within thirty days of determining it has received a complete application, and shall publish a notice of the date, time and place of the hearing in a newspaper of local circulation at least two times, the date of the first publication to be at least seven days before the hearing. In addition, the notice of the hearing shall be posted in at least three prominent places within the municipality at least seven days prior to the hearing. Cost for mailing notices and publishing in newspaper shall be paid for by the applicant.
13. PLANNING BOARD DECISION ON FINAL PLAN. Within thirty days from the public hearing, or within another time limit as may be otherwise mutually agreed to by the Board and the applicant, the Board shall make findings of fact, and conclusions relative to the criteria for approval contained in Title 30-A M.R.S.A., Section 4404 and the standards of these regulations. If the Board finds that all the criteria of the statute and the standards of these regulations have been met, they shall approve the final plan. If the Board finds that any of the criteria of the statute or the standards of these regulations have not been met, the Board shall either deny the application or approve the application with conditions to ensure all of the standards will be met by the subdivision. The Board shall specify in writing its findings of facts and reasons for any conditions or denial.
14. PERFORMANCE GUARANTEE. Within sixty (60) days of Planning Board approval, the final plan shall be submitted to the City Council for its approval on any contracts or bonds. Submission to the City Council shall include Planning Board and city staff recommendations.
15. SIGNATURES. Upon approving the Final Plan, those members of the Planning Board voting for approval shall sign two (2) reproducible copies (mylars) and two (2) paper copies of the approved subdivision plan.
16. DIGITAL PLAN. The applicant shall supply the City Planner with a digital copy of the approved subdivision plan in order to facilitate the addition of the subdivision into the municipal property records. The digital file shall be supplied prior to recording the subdivision plan in the Registry of Deeds and in a format compatible with the assessor's records.
17. FILING OF APPROVED FINAL PLAN. After the City Council has approved any contracts and bonds and they have been filed with the City Clerk, the City shall record the subdivision plans and documents in the Registry of Deeds at the expense of the applicant using the escrowed technical review/recording fee funds as provided by the Article. Any subdivision not recorded in the Registry of Deeds within ninety (90) days of the date which the plan is approved and signed by the

Planning Board or within ninety (90) days of City Council approval on any contracts or bonds, whichever is later, shall become null and void.

The City Planner shall forward the second mylar to the City Assessor. One signed paper copy shall be forwarded to the Code Office and one copy retained by the City Planner.

18. The approval by the Board of a subdivision plan shall not be deemed to constitute or be evidence of any acceptance by the municipality of any street, easement, or other open space shown on such plan. When a park, playground, or other recreation area shall have been shown on the plan to be dedicated to the municipality, approval of the plan shall not constitute an acceptance by the municipality of such areas. The Board shall require the plan to contain appropriate notes to this effect. The Board may also require the filing of a written agreement between the applicant and the municipal officers covering future deed and title dedication, and provision for the cost of grading, development, equipment, and maintenance of any such dedicated area.

## **706.2 SUBMISSIONS**

1. **APPLICATION FORM AND EXHIBITS.** The application form and attachments for minor subdivisions shall be submitted as specified in Section 707.
2. **PLAN.** The subdivision plan for a Major Subdivision shall contain information as specified in Section 707 and consist of two reproducible, stable-based transparencies, one to be recorded at the Registry of Deeds, the other to be filed at the municipal office, and fifteen copies of one or more maps or drawings drawn to a scale of not more than one hundred feet to the inch. The reproducible transparencies shall be embossed with the seal of the individual responsible for preparation of the plan. Plans for subdivisions containing more than one hundred acres may be drawn at a scale of not more than two hundred feet to the inch provided all necessary detail can easily be read. Plans shall be no larger than 24 by 36 inches in size, and shall have a margin of two inches outside of the border lines on the left side for binding and a one inch margin outside the border along the remaining sides. Space shall be provided for endorsement by the Board. In addition, one copy of the Plan(s) reduced to a size of 8 1/2 by 11 inches or 11 by 17 inches shall be submitted.
3. **APPLICATION FEES AND ESCROW ACCOUNT.** The application fees and escrow account monies shall be submitted as specified in Section 706.1.2.

## **707 SUBDIVISION APPLICATION, EXHIBITS, AND PLANS**

### **707.1 APPLICATION FORM**

The applicant shall include an application form supplied by the City Planner and filled out by the applicant. Said application form shall include the following information:

1. Date of application.
2. Tax map designation
3. Zoning designation of the property, including whether or not any part of the parcel is within shoreland zoning.
4. Name, address, and phone number of the applicant.
5. Name address, and phone number of the record owner.
6. Name and contact information of person in which all City correspondence is sent.
7. Estimated dates of starting and completing any proposed construction.

## **707.2 EXHIBITS AND PLANS**

The applicant shall include the following information either in the form of an exhibit(s) or shown on the plan(s):

Note: All plans shall include the date the plan was prepared, who prepared the plan, north point, and graphic scale.

### **707.2.1 INFORMATION ON THE APPLICANT, CONSULTANTS, AND PROPERTY**

1. Name of proposed or existing subdivision, number of proposed lots or units, and total acreage. If part of an existing subdivision or phase of an existing subdivision, include a history of the development including number of existing lots or units and plan recording designations.
2. Location map drawn at a size adequate to show the relationship of the proposed subdivision to the adjacent properties and to allow the Board to locate the subdivision within the municipality.
3. Copy of Brewer tax map(s) with the proposed subdivision shown.
4. If the applicant is not the record owner, a letter from the record owner stating approval of applicant to proceed with the proposed subdivision.
5. If an agent is applying on behalf of the applicant, and the name, address, phone number and email address of the applicant's authorized agent and an authorization letter from the applicant.
6. The name, address, phone number, email address, and Maine professional registration number of the Land Surveyors and any other professionals employed

by the applicant to design or consult on the proposed subdivision. All professionals must hold current professional licenses with the State of Maine.

7. Verification of right, title or interest in the property. An application will be considered only when an applicant has demonstrated sufficient title, right or interest in all of the property which is proposed for development or use. An applicant shall demonstrate in writing sufficient title, right or interest as follows:
  - A. When the applicant claims ownership of the property, copies of the deeds to the property shall be supplied.
  - B. When the applicant has an option to buy the property, a copy of the option agreement shall be supplied. Option agreements shall contain terms deemed sufficient by the Board to establish future title. Copies of the current deeds to the property shall also be supplied.
  - C. When the applicant has a lease on the property, a copy of the lease shall be supplied. The lease shall be of sufficient duration, as determined by the Board, to permit construction and reasonable use of the development. Copies of the current deeds to the property shall also be supplied.
  - D. When the applicant has eminent domain power over the property, evidence shall be supplied of the ability and intent to use the eminent domain power to acquire sufficient title, right, or interest as determined by the Board. Copies of the current deeds to the property shall also be supplied.
  - E. When the applicant has a bond for deed for a deed on the property, a copy of the bond for a deed shall be supplied. Copies of the current deeds to the property shall also be supplied.
  - F. When the applicant has a purchase and sale agreement to purchase the property, the applicant shall provide a copy of the purchase and sale agreement. Copies of the current deeds to the property shall also be supplied.
8. Information on whether the applicant is a business or corporation, and if so, a current Certificate of Good Standing from the State of Maine.
9. A history narrative and graphic of the property, prepared, signed and stamped by a licensed Maine Professional Land Surveyor, to include ownership of the past five years including any land which was acquired, land conveyed out, property line agreements, and leases. This history shall include names and deed references, and copies of the documents if unrecorded.
10. Information regarding the applicant's or record owner's interest in any property abutting the parcel to be subdivided and that the proposed subdivision plan covers his/her entire, contiguous holdings.
11. A current standard boundary survey of the property, giving complete descriptive data by bearings and distances, made and certified by a licensed Maine

Professional Land Surveyor bearing the surveyor's seal and signature and prepared in accordance with the Maine Board of Licensure for Professional Land Surveyors. The corners of the parcel shall be located on the ground and marked by permanent monuments indicated on the plan.

12. Information on all easements, rights-of-ways, leases, restrictions, or other encumbrances currently affecting the property. The locations of such encumbrances shall be accurately shown on plans and copies of deeds and documents included.
13. The current use of the property to be subdivided, location of existing buildings, existing vegetative cover type, and any other essential existing physical features. The location of any trees larger than 14 inches in diameter at breast height shall be shown on the plan.
14. A medium intensity soil survey map and a written report describing the soils present on the site, prepared by a Maine Certified Soil Scientist. The Board may require a high intensity soil survey for areas of intensive development such as roads and structures.
15. The location of all wetlands and vernal pools shall be identified on the survey, regardless of size, prepared by a State Certified Soil Scientist or Geologist registered in the State of Maine, or other qualified professional showing expertise in wetland delineation, and based on an on-site investigation. Said submission shall include a narrative describing method of delineation and location and a description of such wetland features including functions and values.
16. The location of all farmland shall be identified on the survey, regardless of size. Said submission shall include a narrative description of such farmland.
17. The location of all rivers, streams and brooks, as defined in Title 38, section 480-B, subsection 9, within or adjacent to the proposed subdivision
18. A narrative stating whether any portion of the proposed subdivision is located in the direct watershed of a great pond and if so, which great pond.
19. Contour lines at the interval specified by the Board showing elevations in relation to mean sea level.
20. The zoning district(s) in which the proposed subdivision is located and location of any zoning boundaries affecting the subdivision, including shoreland zoning.
21. The location of the project site drawn to scale on the current Federal Emergency Management Agency Flood Insurance Rate Map for the City of Brewer, Maine. If any portion of the subdivision is in a flood prone area, the boundaries of any flood

hazard areas and the 100-year flood elevation, as depicted on the municipalities Flood Insurance Rate Map shall be delineated on the plan.

22. The location of open drainage courses, wetlands, vernal pools, stone walls, graveyards, fences, stands of trees, and other important or unique natural areas and site features, including but not limited to, floodplains, deer wintering areas, significant wildlife habitats, fisheries, scenic areas, high or moderate value habitat, habitat for rare and/or endangered plants and animals, unique natural communities and natural areas, sand and gravel aquifers, and historic and/or archeological resources, together with a description of such features. Major subdivision applications shall include letters from State and Federal agencies, including the Maine Department of Inland Fisheries and Wildlife, Maine Natural Areas Program, and the Maine Historic Preservation Commission.
23. The location of snowmobile trails shown on the Interconnecting Trail System map published by the Maine Department of Conservation, or recognized, club-maintained trails.
24. The width and location of any existing or proposed streets, public improvements or open space shown upon the official map and the comprehensive plan, if any, within or adjacent to the proposed subdivision.

#### **707.2.2 INFORMATION ON PROPOSED DEVELOPMENT**

1. Name of proposed subdivision and number of proposed lots or units.
2. A subdivision plan, based on a standard boundary survey of the parcel, made and certified by a Maine Professional Land Surveyor bearing the surveyor's seal and signature and prepared in accordance with the Maine Board of Licensure for Professional Land Surveyors. Said subdivision plan shall include, but is not limited to:
  - a. Name of proposed subdivision.
  - b. Boundary and lot lines giving complete descriptive data by bearings and distances.
  - c. Type and location of permanent monuments at the corners of the corners of the proposed lots and set on the ground if not existing.
  - d. Lot numbers and areas. For lots containing wetlands and/or water bodies, the net area of the lot shall be included.
  - e. Names of adjacent property owners.
  - f. Signature block for Planning Board approval as supplied by the City.
3. The location and design of any proposed streets meeting the requirements of Article 9 of the Brewer Land Use Code.
4. A copy of any deed restrictions intended to cover all or part of the lots or dwelling units in the proposed subdivision.

5. The location of areas where clearing for lawns and structures shall be permitted and/or any restrictions to be placed on clearing existing vegetation.
6. The location, size and type of proposed plantings including street trees.
7. An indication of the type of sewage disposal to be used in the proposed subdivision:
  - A. When sewage disposal is to be accomplished by connection to the public sewer, a written statement from the Director of Environmental Services shall be submitted stating that the facility has the capacity to collect and treat the waste water and that the department approves the design plans for extensions where necessary.
  - B. When sewage disposal is to be accomplished by subsurface waste water disposal systems, test pit analyses, prepared by a Maine Licensed Site Evaluator shall be provided. A map showing the location of all test pits dug on the site shall be submitted.
8. An indication of the type of domestic water supply system(s) to be used in the proposed subdivision:
  - A. When domestic water is to be supplied by public water supply, a written statement from the City Water Department shall be submitted indicating that there is adequate supply and pressure for the subdivision and that the department approves the design plans for extensions where necessary.
  - B. When water is to be supplied by private wells, evidence of adequate ground water supply and quality shall be submitted by a well driller or a hydrogeologist familiar with the area.
9. An indication of the type of fire protection to be used in the proposed subdivision along with a written statement from the Fire Department approving the method.
  - A. When water for fire protection is to be supplied by public water supply, a written statement from the Fire Department shall be submitted indicating approval of the location of existing and/or proposed fire hydrants and type of hydrants.
  - B. When water for fire protection is to be supplied by ponds with dry hydrants, underground water storage reservoirs or other methods, a written statement from the Fire Department shall be submitted indicating approval of the type, location and design. An easement shall be granted to the municipality granting access to and maintenance of dry hydrants or reservoirs where necessary.
10. The location and size of existing and proposed sewers, water mains, culverts, and drainage ways on or adjacent to the property to be subdivided.

11. A hydrogeologic assessment prepared by a Certified Geologist or Registered Professional Engineer, experienced in hydrology, when the subdivision is not served by public sewer and
  - A. Any part of the subdivision is located over a sand and gravel aquifer, as shown on a map entitled "Sand and Gravel Aquifers, Map 28", by the Maine Geological Survey, Open File No. 81-60; or
  - B. The subdivision has an average density of more than one dwelling unit per 100,000 square feet.

The Board may require a hydrogeologic assessment in other cases where site considerations or development design indicate greater potential of adverse impacts on ground water quality. These cases include extensive areas of shallow to bedrock soils; or cluster developments in which the average density is less than one dwelling unit per 100,000 square feet but the density of the portion is in excess of one dwelling unit per 80,000 square feet; or proposed use of shared or common subsurface waste water disposal systems.

12. If the proposed subdivision is in the direct watershed of a great pond, a phosphorus control plan.
  - A. For subdivisions which qualify for the simplified review procedure as described in Section 710.16.2, the plan shall indicate the location and dimensions of vegetative buffer strips or infiltration systems.
  - B. For subdivisions which do not qualify for the simplified review procedure as described in Section 710.16.2, the following shall be submitted:
    1. A phosphorus impact analysis and control plan conducted using the procedures set forth in Phosphorus Control in Lake Watersheds: A Technical Guide for Evaluating New Development, published by the Maine Department of Environmental Protection, September 1992 revision.
    2. A long term maintenance plan for all phosphorus control measures.
    3. The contour lines shown on the plan shall be at an interval of no less than five feet.
    4. Areas with sustained slopes greater than 25% covering more than one acre shall be delineated.
13. An estimate of the amount and type of vehicular traffic to be generated on a daily basis and at peak hours. Trip generation rates used shall be taken from the latest version of the ITE Trip Generation Manual, the current version being the sixth edition 1997, published by the Institute of Transportation Engineers. Trip

generation rates from other sources may be used if the applicant demonstrates that these sources better reflect local conditions.

14. For subdivisions involving 40 or more parking spaces or projected to generate more than 400 vehicle trips per day, a traffic impact analysis, prepared by a Maine Registered Professional Engineer with experience in traffic engineering, shall be submitted. The analysis shall indicate the expected average daily vehicle trips, peak hour volumes, access conditions at the site, distribution of traffic, types of vehicles expected, effect upon the level of service of the street giving access to the site and neighboring streets which may be affected, and recommended improvements to maintain the desired level of service on the affected streets.
15. For subdivisions requiring driveways or entrances onto a state or state aid highway located outside the urban compact area as defined by Title 23, section 754, documentation by the Maine Department of Transportation indicating that the driveways or entrances conform to Title 23, section 704 and any rules adopted under that section shall be submitted.
16. A stormwater management plan, prepared by a Maine Licensed Professional Engineer, in accordance with the Stormwater Management for Maine: Best Management Practices, published by the Maine Department of Environmental Protection (1995), in accordance with the Maine Stormwater Management Law, Title 38 M.R.S.A. 420D, and in accordance with Brewer Codes and Ordinances. The Board may not waive submission of the stormwater management plan unless the subdivision is not in the watershed of a great pond, the proposed subdivision will not involve grading which changes drainage patterns, and the addition of impervious surfaces such as roofs and driveways is less than 5% of the area of the subdivision.
17. An erosion and sedimentation control plan prepared in accordance with the Maine Erosion and Sedimentation Control Handbook or Construction: Best Management Practices, published by the Cumberland County Soil and Water Conservation District and the Maine Department of Environmental Protection, March 1991. The Board may not waive submission of the erosion and sedimentation control plan unless the subdivision is not in the watershed of a great pond, the proposed subdivision will not involve grading which changes drainage patterns, and the addition of impervious surfaces such as roofs and driveways is less than 5% of the area of the subdivision.
18. For subdivisions located within the watershed of a great pond, a report on how the long-term cumulative effects of the subdivision will not unreasonably increase the great pond's phosphorus concentration during the construction phase and life of the proposed subdivision.
19. The location and method of disposal for land clearing and construction debris.

20. A narrative stating whether the property has been timber harvested in violation of rules adopted pursuant to Title 12, section 8869, subsection 14.
21. The location of any open space to be preserved and a description of proposed improvements and its management.
22. Visual, historic resources, unique natural resources, wetland and vernal pool protection, groundwater, and fisheries and wildlife habitat impact statement prepared by qualified professionals, detailing steps that have been taken or will be taken to minimize any adverse impact from the proposed subdivision on such significant resources.
23. The location and description of any proposed easements and rights-of-ways. Final plan submissions shall include copies of legal documents ready for signatures.
24. All parcels of land proposed to be dedicated to public use and the conditions of such dedication. Final plan submissions shall include written offers to convey title to the municipality of all open spaces shown on the plan, and copies of agreements or other documents showing the manner in which open spaces to be retained by the applicant or lot owners are to be maintained shall be submitted. If open space or other land is to be offered to the municipality, written evidence that the municipal officers are satisfied with the legal sufficiency of the written offer to convey title shall be included. Final plan submission shall also include copies of legal documents ready for signatures.
25. A list of construction items, with cost estimates, that will be completed by the applicant prior to the sale of lots, and evidence that the applicant has financial commitments or resources to cover these costs.
26. A proposed performance guarantee, meeting Section 714 of this Article, for an amount adequate to cover the total construction costs of all required improvements, taking into account the time-span of the construction schedule and the inflation rate for construction costs.
27. A compliance statement outlining the proposed subdivision's conformance with the City's adopted Comprehensive Plan, Land Use Code, and other applicable locally adopted ordinances and regulations along with a list of all required State and/or Federal reviews and permits and their status.

## 708 REVISIONS TO APPROVED PLANS

### **708.1 PROCEDURE**

An applicant for a revision to a previously approved plan shall, at least ten days prior to a scheduled meeting of the Board, request to be placed on the Board's agenda. If the revision involves the creation of additional lots or dwelling units, the procedures for preliminary plan approval shall be followed. If the revision involves only modifications of the approved plan, without the creation of additional lots or dwelling units, the procedures for final plan approval shall be followed.

## **708.2 SUBMISSIONS**

The applicant shall submit a copy of the approved plan as well as twelve copies of the proposed revisions. The application shall also include enough supporting information to allow the Board to make a determination that the proposed revisions meet the standards of these regulations and the criteria of the statute. The revised plan shall indicate that it is the revision of a previously approved and recorded plan and shall show the title of the subdivision and the book and page or cabinet and sheet on which the original plan is recorded at the Registry of Deeds.

## **708.3 SCOPE OF REVIEW**

The Board's scope of review shall be limited to those portions of the plan which are proposed to be changed.

## **709 INSPECTIONS AND ENFORCEMENT**

### **709.1 INSPECTION OF REQUIRED IMPROVEMENTS (#4)**

1. At least five working days prior to commencing construction of required improvements, the subdivider or builder shall notify the code enforcement officer and city engineer in writing of the time when (s)he proposes to commence construction of such improvements, so that the municipal officers can arrange for inspections to assure that all municipal specifications, requirements, and conditions of approval are met during the construction of required improvements, and to assure the satisfactory completion of improvements and utilities required by the Board. The subdivider shall also notify the City of the name of the qualified inspector whom will be responsible for the continuing inspection of the on-going work.

2. If the Code Enforcement Officer, City Engineer or City Planner finds upon inspection of the improvements that any of the required improvements have not been constructed in accordance with the plans and specifications filed by the subdivider, the Code Enforcement Officer shall take any steps necessary to assure compliance with the approved plans.
3. If at any time it appears necessary or desirable to modify the required improvements before or during the construction of the required improvements, the City Planner is authorized to approve minor modifications due to unforeseen circumstances such as encountering hidden outcrops of bedrock, natural springs, etc. The City Planner shall issue any approval under this section in writing and shall transmit a copy of the approval to the Board. Revised plans shall be filed with the Board. For major modifications, such as relocation of rights-of-way, property boundaries, changes of grade by more than 1%, etc., the subdivider shall obtain permission from the Board to modify the plans.
4. At the close of each summer construction season the City shall, at the expense of the subdivider, have the site inspected by a qualified individual. By October 31 of each year during which construction was done on the site, the inspector shall submit a report to the Board based on that inspection, addressing whether storm water and erosion control measures (both temporary and permanent) are in place, are properly installed, and appear adequate. The report shall also include a discussion and recommendations on any problems which were encountered.
5. Prior to the sale of any lot, the subdivider shall provide the Board with a letter from a Maine Registered Land Surveyor, stating that all permanent monumentation shown on the plan has been installed.
6. Acceptance of streets shall be in accordance with Section 712 of this Article.
7. The subdivider shall be required to maintain all improvements and provide for snow removal on streets and sidewalks until acceptance of the improvements by the municipality or control is placed with a lot owners' association.

#### **709.2 VIOLATIONS AND ENFORCEMENT (#2)**

1. No plan of a division of land within the municipality which would constitute a subdivision shall be recorded in the Registry of Deeds until a final plan has been approved by the Board and the contracts and/or bonds approved by the City Council, which is then filed with the City Clerk in accordance with this Article.
2. A person shall not convey, offer or agree to convey any land in a subdivision which has not been approved by the Board and the contracts and/or bonds approved by the City Council, which is then filed with the City Clerk and recorded in the Registry of Deeds as hereinbefore provided.

3. No changes, erasures, modifications, or revisions shall be made in any final plan after approval has been given by the Board and endorsed in writing on the plan, unless the revised final plan is first submitted and the Board and the City Council approves any contract and/or bond modifications that is filed with the City Clerk, except in accordance with Section 708 of this Article. The Board shall make findings that the revised plan meets the criteria of Title 30-A M.R.S.A., Section 4404, and the standards of these regulations. Review and approvals of the final plan revision shall follow Section 705 or Section 706 as provided in this Article. In the event that a Plan is recorded without complying with this requirement, it shall be considered null and void, and the Board shall institute proceedings to have the plan stricken from the records of the Registry of Deeds.
4. A person shall not sell, lease or otherwise convey any land in an approved subdivision which is not shown on the plan as a separate lot.
5. No public utility, utility district, water department, sanitary department or any utility company of any kind shall serve any lot in a subdivision for which a final plan has not been approved by the Board.
6. Development of a subdivision without Board approval shall be a violation of law. Development includes grading or construction of roads, grading of land or lots, or construction of buildings which require a plan approved as provided in these regulations and recorded in the Registry of Deeds.
7. No lot in a subdivision may be sold, leased, or otherwise conveyed prior to the completion of all improvements proposed for the subdivision unless specifically stated in the Planning Board approval. Notwithstanding the foregoing, the Code Enforcement Officer may authorize the sale, lease, or conveyance of one lot in an approved subdivision when the said lot is located within the Industrial (IND) and Industrial-2 (IND2) districts and all required improvements are being constructed by the City of Brewer with City Council approval. No unit in a multi-family development shall be occupied before the street upon which the unit is accessed is completed in accordance with the Brewer Land Use Code and all improvements are constructed. (#8)
8. No lot which has received subdivision approval shall be further divided without approval from the Planning Board, except the division of an approved lot by the transfer to the State of Maine or City of Brewer shall not require Planning Board approval.
9. Except in the case of a phased development plan, failure to begin construction within six months of the date of approval and signing of the plan and complete construction of the subdivision within two years of the date of approval and signing of the plan shall render the plan null and void. Phased developments shall be completed as stated in the Planning Board approval. Upon determining that a

subdivision's approval has expired under this paragraph, the Board shall have a notice placed in the Registry of Deeds to that effect.

10. No plan shall be approved by the Board as long as the applicant is in violation of the provisions of a previously approved Plan within the municipality.
11. Violations of the above provisions of this Section are a nuisance and shall be punished in accordance with the provisions of Title 30-A M.R.S.A., Section 4452.

## **710 PERFORMANCE STANDARDS**

### **710.1 GENERAL**

The performance standards in this Article are intended to clarify and expand upon the criteria for approval found within the subdivision statute (Title 30-A M.R.S.A., Section 4404). In reviewing a proposed subdivision, the Board shall review the application for conformance with the following performance standards and make findings that each has been met prior to the approval of a final plan. Compliance with the design guidelines of Section 711 shall be considered to be evidence of meeting the appropriate performance standards. Proposed subdivisions not in compliance with the design guidelines of Section 711 may be considered, but the applicant shall provide clear and convincing evidence that the proposed design will meet the performance standard(s) and the statutory criteria. In all instances the burden of proof shall be upon the applicant to present adequate information to indicate all performance standards and statutory criteria for approval have been or will be met.

### **710.2 POLLUTION**

1. The proposed subdivision shall not discharge waste water to a water body without a license from the Maine Department of Environmental Protection.
2. Discharges of storm water shall be treated to remove oil, grease, and sediment prior to discharge into surface waterbodies. When the subdivision is within the watershed of a great pond, the storm water shall be treated in order to remove excess nutrients.

### **710.3 SUFFICIENT WATER (#4)**

1. Water Supply
  - A. Any subdivision within the area designated in the comprehensive plan for future public water supply service shall make provisions for connection to the public system. When public water supply service will not be available at the time of construction of the subdivision, a "capped system" shall be installed within the subdivision to allow future connection when service becomes available without excavation within the right-of-way of any street within the subdivision.

B. When a subdivision is to be served by a public water system, the complete supply system within the subdivision including fire hydrants, shall be installed at the expense of the applicant. The size and location of mains, gate valves, hydrants, and service connections shall be reviewed and approved in writing by the City Water Department Superintendent and the Fire Chief. Fire hydrants shall be placed every eight hundred (800) feet along all public streets, roads and ways on the public water system with privately paid hydrants connected to the public system every eight hundred (800) feet along private roads and ways that lead to any structure(s). The last hydrant on a dead end street shall be within four hundred (400) feet of the end of the street or road. Hydrants shall also be placed such that one (or more if required by the AHJ) shall be located within five hundred (500) feet of all structures, as fire apparatus can travel in all seasons. The hydrants are to be standard hydrants as approved by the AHJ. Said hydrants to supply seven hundred fifty (750) gpm or more each with a residual pressure of 20 psi. Further, for selected developments, subject to the AHJ, more hydrants and larger fire flows may be required for greater than normal hazards or large structures.

C. When a proposed subdivision is not within the area designated for public water supply service in the comprehensive plan, water supply shall be from individual wells or a private community water system.

1) Individual wells shall be sited and constructed to prevent infiltration of surface water, and contamination from subsurface waste water disposal systems and other sources of potential contamination.

2) Lot design shall permit placement of wells, subsurface waste water disposal areas, and reserve sites for subsurface waste water disposal areas in compliance with the latest version of the Maine Subsurface Wastewater Disposal Rules and the Well Drillers and Pump Installers Rules.

3) If a central water supply system is provided by the applicant, the location and protection of the source, the design, construction and operation of the system shall conform to the latest version of the standards of the Maine Rules Relating to Drinking Water (10-144E C.M.R. 231).

4) In areas where the comprehensive plan has identified the need for additional water storage capacity for fire fighting purposes, the applicant shall provide adequate water storage facilities. Facilities may be ponds with dry hydrants, underground storage reservoirs or other methods acceptable to the fire chief. An easement shall be granted to the municipality granting access to and maintenance of dry hydrants or reservoirs where necessary. The Board may waive the requirement for water storage only upon submittal of evidence that the soil types in the

subdivision will not permit their construction or installation and that the fire chief has indicated in writing that alternate methods of fire protection are available.

## 2. Water Quality

A. Water supplies shall meet the primary drinking water standards contained in the latest version of the Maine Rules Relating to Drinking Water (10-144E C.M.R. 231). If existing water quality contains contaminants in excess of the secondary drinking water standards in the Maine Rules Relating to Drinking Water, that fact shall be disclosed in a note on the plan to be recorded in the Registry of Deeds.

### **710.4 IMPACT ON EXISTING WATER SUPPLIES (#4)**

1. In meeting the standards of Section 710.3.1., a proposed subdivision shall not generate a demand on the source, treatment facilities or distribution system of the City Water Department beyond the capacity of those system components, considering improvements that are planned to be in place prior to occupancy of the subdivision.
2. The applicant shall be responsible for paying the costs of system improvements to the City's water system as necessary to alleviate existing deficiencies.

### **710.5 SOIL EROSION**

1. The proposed subdivision shall prevent soil erosion from entering waterbodies, wetlands, and adjacent properties.
2. The procedures outlined in the erosion and sedimentation control plan shall be implemented during the site preparation, construction, and clean-up stages.

3. Topsoil shall be considered part of the subdivision and shall not be removed from the site except for surplus topsoil from roads, parking areas, and building excavations.

#### **710.6 TRAFFIC CONDITIONS**

1. In general, provision shall be made for vehicular access to the subdivision and circulation within the subdivision in such a manner as to:
  - A. Safeguard against hazards to traffic and pedestrians in existing streets and within the subdivision;
  - B. Avoid traffic congestion on any street; and
  - C. Provide safe and convenient circulation on public streets and within the subdivision.
2. More specifically, access and circulation shall also conform to the following standards.
  - A. The vehicular access to the subdivision shall be arranged to avoid through traffic use of existing streets which the comprehensive plan has classified as residential access streets.
  - B. The street giving access to the subdivision and neighboring streets and intersections which can be expected to carry traffic generated by the subdivision shall have the capacity or be suitably improved to accommodate that traffic and avoid unreasonable congestion. No subdivision shall reduce the Level of Service (LOS) (see Article 14) of the street giving access to the subdivision and neighboring streets and intersections to "E" or below, unless the comprehensive plan has indicated that Levels of Service "E" or "F" are acceptable for that street or intersection.
  - C. Where necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, provision shall be made for turning lanes, traffic directional islands, frontage roads,

sidewalks, bicycleways and traffic controls within existing public streets.

D. Accessways to non-residential subdivisions or to multifamily subdivisions shall be designed to avoid queuing of entering vehicles on any street. Left lane storage capacity shall be provided to meet anticipated demand. A study or analysis to determine the need for a left-turn storage lane shall be done.

E. Where topographic and other site conditions allow, provision shall be made for street connections to adjoining lots of similar existing or potential use within areas of the municipality designated as growth areas in the comprehensive plan; or in non-residential subdivisions when such access shall be provided if it will:

- 1) Facilitate fire protection services as approved by the fire chief; or
- 2) Enable the public to travel between two existing or potential uses, generally open to the public, without need to travel upon a public street.

F. Street Names, Signs and Lighting. Streets which join and are in alignment with streets of abutting or neighboring properties shall bear the same name. Names of new streets shall not duplicate, nor bear phonetic resemblance to the names of existing streets within the municipality, and shall be subject to the approval of the Board. No street name shall be the common given name of a person. The developer shall either install street name, traffic safety and control signs meeting municipal specifications or reimburse the municipality for the costs of their installation. Street lighting shall be installed as approved by the Board.

G. Clean-up. Following street construction, the developer or contractor shall conduct a thorough clean-up of stumps and other debris from the entire street right-of-way. If on-site disposal of the stumps and debris is proposed, the site shall be indicated on the

plan, and be suitably covered with fill and topsoil, limed, fertilized, and seeded.

## **710.7 SEWAGE DISPOSAL**

### **1. Public System**

A. Any subdivision within the area designated in the comprehensive plan for future public sewage disposal service shall be connected to the public system.

B. When a subdivision is proposed to be served by the public sewage system, the complete collection system within the subdivision, including manholes and pump stations, shall be installed at the expense of the applicant.

C. The Director of Environmental Services shall certify that providing service to the proposed subdivision is within the capacity of the system's existing collection and treatment system or improvements planned to be complete prior to the construction of the subdivision.

D. The Director of Environmental Services and/or the City Engineer shall review and approve the construction drawings for the sewerage system. The size and location of laterals, collectors, manholes, and pump stations shall be reviewed and approved in writing by the servicing sewer department.

### **2. Private Systems**

A. When a proposed subdivision is not within the area designated for public sewage disposal service in the comprehensive plan, connection to the public system shall not be permitted.

Sewage disposal shall be private subsurface waste water disposal systems or a private treatment facility with surface discharge.

B. The applicant shall submit evidence of site suitability for subsurface sewage disposal prepared by a Maine Licensed Site Evaluator in full compliance with the latest requirements of the State of Maine Subsurface Wastewater Disposal Rules.

1) The site evaluator shall certify in writing that all test pits which meet the requirements for a new system represent an area large enough to install a disposal area on soils which meet the Disposal Rules.

2) On lots in which the limiting factor has been identified as being within 24 inches of the surface, a second site with suitable soils shall be shown as a reserve area for future replacement of the disposal area. The reserve area shall be shown on the plan and restricted so as not to be built upon.

#### **710.8 IMPACT ON THE MUNICIPALITY'S ABILITY TO DISPOSE OF SOLID WASTE**

1. If the additional solid waste from the proposed subdivision exceeds the capacity of the municipal solid waste facility, causes the municipal facility to no longer be in compliance with its license from the Department of Environmental Protection, or causes the municipality to exceed its contract with a non-municipal facility, the applicant shall make alternate arrangements for the disposal of solid waste. The alternate arrangements shall be at a disposal facility which is in compliance with its license. The Board may not require the alternate arrangement to exceed a period of five years.

#### **710.9 IMPACT ON NATURAL BEAUTY, AESTHETICS, HISTORIC SITES, WILDLIFE HABITAT, RARE NATURAL AREAS OR PUBLIC ACCESS TO THE SHORELINE**

## 1. Preservation of Natural Beauty and Aesthetics

A. The plan shall, by notes on the final plan and deed restrictions, limit the clearing of trees to those areas designated on the plan.

B. Except in areas of the municipality designated by the comprehensive plan as growth areas, the subdivision shall be designed to minimize the visibility of buildings from existing public roads.

C. The Board may require the application to include a landscape plan that will show the preservation of any existing trees larger than 14 inches diameter breast height, the replacement of trees and vegetation, and graded contours.

D. When a proposed subdivision street traverses open fields the plans shall include the planting of street trees.

## 2. Retention of Open Spaces and Natural or Historic Features

A. If any portion of the subdivision is located within an area designated by the comprehensive plan as open space or greenbelt, that portion shall be reserved for open space preservation.

B. If any portion of the subdivision is located within an area designated as a unique natural area by the comprehensive plan or the Maine Natural Areas Program the plan shall indicate appropriate measures for the preservation of the values which qualify the site for such designation.

C. If any portion of the subdivision is designated a site of historic or prehistoric importance by the comprehensive plan or the Maine Historic Preservation Commission, appropriate measures for the protection of the historic or prehistoric resources shall be included in the plan.

D. The subdivision shall reserve sufficient undeveloped land to provide for the recreational needs of the occupants. The percentage of open space to be reserved shall depend on the identified needs for outdoor recreation in the portion of the municipality in which the subdivision is located according to the comprehensive plan, the proposed lot sizes within the subdivision, the expected demographic makeup of the occupants of the subdivision, and the site characteristics.

E. Land reserved for open space purposes shall be of a character, configuration and location suitable for the particular use intended.

F. Reserved open space land may be dedicated to the municipality.

G. Where land within the subdivision is not suitable or is insufficient in amount, where the applicant prefers, or when suggested by the comprehensive plan, a payment in lieu of dedication may be substituted for the reservation of some or part of the open space requirement. Payments in lieu of dedication shall be calculated based on the percentage of reserved open space that otherwise would be required and that percentage of the projected market value of the developed land at the time of the subdivision, as determined by the municipal tax assessor. The payment in lieu of dedication shall be deposited into a municipal land open space or outdoor recreation facility acquisition or improvement fund.

### 3. Protection of Significant Wildlife Habitat

A. If any portion of a proposed subdivision lies within 250 feet of the following areas identified and mapped by the Department of Inland Fisheries and Wildlife or the comprehensive plan as:

- 1) Habitat for species appearing on the official state or federal lists of endangered or threatened species;

- 2) High and moderate value waterfowl and wading bird habitats, including nesting and feeding areas;
- 3) Shorebird nesting, feeding and staging areas and seabird nesting islands;
- 4) Critical spawning and nursery areas for Atlantic sea run salmon as defined by the Atlantic Sea Run Salmon Commission; or

B. 1,320 feet of an area identified and mapped by the Department of Inland Fisheries and Wildlife as a high or moderate value deer wintering area or travel corridor;

C. Or other important habitat areas identified in the comprehensive plan including coastal wildlife concentration areas, the applicant shall demonstrate that there shall be no adverse impacts on the habitat and species it supports. A report prepared by a wildlife biologist certified by the Wildlife Society with demonstrated experience with the wildlife resource being impacted shall be submitted. This report shall assess the potential impact of the subdivision on the significant habitat and adjacent areas that are important to the maintenance of the affected species and shall describe appropriate mitigation measures to ensure that the subdivision will have no adverse impacts on the habitat and the species it supports.

D. Any existing public rights of access to the shoreline of a water body shall be maintained by means of easements or rights-of-way, or should be included in the open space with provisions made for continued public access.

#### **710.10 CONFORMANCE WITH REQUIREMENT OF ARTICLES 3 AND 4 OF THE LAND USE CODE**

1. All lots other than cluster subdivisions shall meet or exceed the minimum dimensional requirements set forth in Article 3 of this Land Use Code for the zoning district in which they are located.

The proposed subdivision shall meet all applicable performance standards or design criteria set forth in Article 4 of this Land Use Code.

#### **710.11 FINANCIAL AND TECHNICAL CAPACITY**

1. Financial Capacity. The applicant shall have adequate financial resources to construct the proposed improvements and meet the criteria of the statute and the standards of this Article. When the applicant proposes to construct the buildings as well as the subdivision improvements, the applicant shall have adequate financial resources to construct the total subdivision. In making the above determinations the Board shall consider the proposed time frame for construction and the effects of inflation.

2. Technical Ability

A. The applicant shall retain qualified contractors and consultants to supervise, construct and inspect the required improvements in the proposed subdivision.

B. In determining the applicant's technical ability the Board shall consider the applicant's previous experience, the experience and training of the applicant's consultants and contractors, and the existence of violations of previous approvals granted to the applicant.

#### **710.12 IMPACT ON GROUND WATER QUALITY OR QUANTITY**

1. Ground Water Quality

A. When a hydrogeologic assessment is submitted, the assessment shall contain at least the following information:

1) A map showing the basic soils types.

- 2) The depth to the water table at representative points throughout the subdivision.
- 3) Drainage conditions throughout the subdivision.
- 4) Data on the existing ground water quality, either from test wells in the subdivision or from existing wells on neighboring properties.
- 5) An analysis and evaluation of the effect of the subdivision on ground water resources. In the case of residential subdivisions, the evaluation shall, at a minimum, include a projection of post development nitrate-nitrogen concentrations at any wells within the subdivision, or at the subdivision boundaries; or at a distance of 1,000 feet from potential contamination sources, whichever is a shortest distance.
- 6) A map showing the location of any subsurface waste water disposal systems and drinking water wells within the subdivision and within 200 feet of the subdivision boundaries.

B. Projections of ground water quality shall be based on the assumption of drought conditions (assuming 60% of annual average precipitation).

C. No subdivision shall increase any contaminant concentration in the ground water to more than one half of the Primary Drinking Water Standards. No subdivision shall increase any contaminant concentration in the ground water to more than the Secondary Drinking Water Standards.

D. If ground water contains contaminants in excess of the primary standards, and the subdivision is to be served by on-site ground water supplies, the applicant shall demonstrate how water quality will be improved or treated.

E. If ground water contains contaminants in excess of the secondary standards, the subdivision shall not cause the concentration of the parameters in question to exceed 150% of the ambient concentration.

F. Subsurface waste water disposal systems and drinking water wells shall be constructed as shown on the map submitted with the assessment. If construction standards for drinking water wells or other measures to reduce ground water contamination and protect drinking water supplies are recommended in the assessment, those standards shall be included as a note on the final plan, and as restrictions in the deeds to the affected lots.

## 2. Ground Water Quantity

A. Ground water withdrawals by a proposed subdivision shall not lower the water table beyond the boundaries of the subdivision.

B. A proposed subdivision shall not result in a lowering of the water table at the subdivision boundary by increasing runoff with a corresponding decrease in infiltration of precipitation.

## **710.13 FLOODPLAIN MANAGEMENT**

When any part of a subdivision is located in a special flood hazard area as identified by the latest version of the Federal Emergency Management Agency, Flood Boundary and Floodway Map (Community Panel No. 230104 0005 B) the most current version being dated June 1, 1978:

1. All public utilities and facilities, such as sewer, gas, electrical and water systems shall be located and constructed to minimize or eliminate flood damages.

2. Adequate drainage shall be provided so as to reduce exposure to flood hazards.

3. The plan shall include a statement that structures in the subdivision shall be constructed with their lowest floor, including

the basement, at least one foot above the 100-year flood elevation. Such a restriction shall be included in any deed, lease, purchase and sale agreement, or document transferring or expressing an intent to transfer any interest in real estate or structure, including but not limited to a time-share interest. The statement shall clearly articulate that the municipality may enforce any violation of the construction requirement and that fact shall also be included in the deed or any other document previously described. The construction requirement shall also be clearly stated on the plan.

#### **710.14 IDENTIFICATION OF FRESHWATER WETLANDS**

All freshwater wetlands shall be identified in accordance with the most current version of the Corps of Engineers Wetland Delineation Manual, published by the United States Army Corps of Engineers, the most current version being dated 1989.

#### **710.15 STORM WATER MANAGEMENT (#4)**

1. Adequate provision shall be made for the management of the quantity and quality of all storm water generated within the subdivision, and any drained ground water through a management system of swales, culverts, underdrains, storm drains and best management practices equivalent to those described in the latest version of the Erosion and Sedimentation Control: Best Management Practices, published by the Maine Department of Environmental Protection, Bureau of Land and Water Quality, the current version being dated March 2003, in conformance with the policies of the comprehensive plan. The storm water management system shall be designed to meet the following standards:

- A. Quantity. Peak discharge rates shall be limited to the pre-development levels for the 2-year, 10-year, and 25-year frequency, 24-hour duration storm unless storm water from the

subdivision will drain directly into a major water body such as a great pond or the ocean.

B. Quality.

1) Major Subdivisions. Storm water run-off in major subdivisions must be treated by the use of best management practices equivalent to those described in the latest version of the Erosion and Sedimentation Control: Best Management Practices, published by the Maine Department of Environmental Protection, Bureau of Land and Water Quality, the current version being dated March 2003, to achieve, by design, 40% reduction in total suspended solids.

2) Minor Subdivisions. Storm water run-off in minor subdivisions must be treated by the use of best management practices equivalent to those described in the latest version of the Erosion and Sedimentation Control: Best Management Practices, published by the Maine Department of Environmental Protection, Bureau of Land and Water Quality, the most current version being dated March 2003, to achieve, by design, 15% reduction in total suspended solids.

2. Where necessary to achieve the above standards, there shall be provided easements or drainage rights-of-way with swales, culverts, catch basins or other means of channeling surface water within the subdivision and over other properties. Wherever the storm drainage system is not within the right-of-way of a public street, perpetual easements shall be provided as necessary.

**710.16 RESERVATION OR DEDICATION AND MAINTENANCE OF OPEN SPACE AND COMMON LAND, FACILITIES AND SERVICES**

1. All open space common land, facilities and property shall be owned by:
- A. The owners of the lots or dwelling units by means of a lot owners' association or in common;

B. An association which has as its principal purpose the conservation or preservation of land in essentially its natural condition; or

C. The municipality.

2. Further subdivision of the common land or open space and its use for other than non-commercial recreation, agriculture, or conservation purposes, except for easements for underground utilities, shall be prohibited. Structures and buildings accessory to non-commercial recreational or conservation uses may be erected on the common land. When open space is to be owned by an entity other than the municipality, there shall be a conservation easement deeded to the municipality prohibiting future subdivision.

3. The common land or open space shall be shown on the final plan with appropriate notations on the plan to indicate:

A. It shall not be used for future building lots; and

B. Which portions of the open space, if any, may be dedicated for acceptance by the municipality.

4. The final plan application shall include the following:

A. Covenants for mandatory membership in the lot owners' association setting forth the owners' rights, interests, and privileges in the association and the common property and facilities, to be included in the deed for each lot or dwelling.

B. Draft articles of incorporation of the proposed lot owners' association as a not-for-profit corporation; and

C. Draft by-laws of the proposed lot owners' association specifying the responsibilities and authority of the association, the operating procedures of the association and providing for proper capitalization of the association to cover

the costs of major repairs, maintenance and replacement of common facilities.

5. In combination, the documents referenced in subsection 710.16.4.C above shall provide for the following:

A. The homeowners' association shall have the responsibility of maintaining the common property or facilities.

B. The association shall levy annual charges against all owners of lots or dwelling units to defray the expenses connected with the maintenance, repair and replacement of common property and facilities and tax assessments.

C. The association shall have the power to place a lien on the property of members who fail to pay dues or assessments.

D. The developer or subdivider shall maintain control of the common property, and be responsible for its maintenance until development sufficient to support the association has taken place. Such determination shall be made by the Board upon request of the lot owners' association or the developer.

## **710.17 PHOSPHORUS IMPACTS ON GREAT PONDS**

### **1. Phosphorus Export**

A. Any subdivision within the watershed of a great pond shall limit its post development phosphorus export to the standards contained in Table 711.10.3, dependent on the great pond in whose watershed the subdivision is located.

B. The Board shall keep an accurate record of permits issued by watershed and shall notify the comprehensive planning committee of the actual development rates at five year intervals, as the comprehensive plan is revised. The above table shall be amended as required by amendments to

the comprehensive plan, reflecting changes in expected development rates.

2. Simplified Phosphorus Review. The simplified review may be used for any:

A. Proposed subdivision of three or four lots with less than 200 feet of new or upgraded street with a cumulative driveway length not to exceed 450 feet for a three lot subdivision or 600 feet for a four lot subdivision;

B. Proposed subdivision of three or four lots with no new or upgraded street with a cumulative driveway length not to exceed 950 feet for three lot subdivisions or 1,100 feet for four lot subdivisions; or

C. Proposed subdivision consisting of multi-family dwellings that have less than 20,000 square feet of disturbed area including building parking, driveway, lawn, subsurface waste water disposal systems, and infiltration areas, and new or upgraded streets not exceeding 200 linear feet.

D. A proposed subdivision which creates lots which could be further divided such that five or more lots may result shall be subject to the standard review procedures unless there are deed restrictions prohibiting future divisions of the lots.

3. Standard Review. This section shall apply to proposed subdivisions which do not qualify for the simplified review. Phosphorus export from a proposed subdivision shall be calculated according to the latest version of the procedures in Phosphorus Control in Lake Watersheds: A Technical Guide for Evaluating New Development, published by the Maine Department of Environmental Protection, the most current version being dated September, 1992. When a proposed subdivision creates lots which are more than twice the required minimum lot size and there are no deed restrictions proposed to prohibit future divisions, the applicant shall either calculate phosphorus loading based on the maximum feasible number

of lots, and shall design controls adequate to limit the resulting phosphorus loading, or shall reserve a portion of the permitted phosphorus export for future divisions.

4. Maintenance and Use Restrictions for Phosphorus Control Measures. Provisions for monitoring, inspections, and maintenance of phosphorus control measures shall be included in the application.

A. Vegetative Buffer Strips. Individual lot owners shall be required to maintain buffer areas on their individual lots in accordance with the following standards, to be specified in recorded deed restrictions and as notes on the plan. Where a vegetative buffer strip is to be owned in common by property owners in the subdivision, documentation establishing the lot owners' association shall include the following standards.

1) Wooded Buffers. Maintenance provisions for wooded buffers shall provide for either of the following two options.

a) No Disturbance. Maintenance and use provisions for wooded buffer strips which are located on hydrologic soil group D soils and within 250 feet of the great pond or a tributary, or which are located on slopes over 20% shall include the following.

i) Buffers shall be inspected annually for evidence of erosion or concentrated flows through or around the buffer. All eroded areas must be seeded and mulched. A shallow stone trench must be installed as a level spreader to distribute flows evenly in any area showing concentrated flows.

ii) All existing undergrowth (vegetation less than four feet high), forest floor duff layer, and leaf litter must remain

undisturbed and intact, except that one winding walking path, no wider than six feet, is allowed through the buffer. This path shall not be a straight line to the great pond or tributary and shall remain stabilized.

iii) Pruning of live tree branches that do not exceed twelve feet above the ground level is permitted provided that at least the top two-thirds of the tree canopy is maintained.

iv) No cutting is allowed of trees except for normal maintenance of dead, wind blown, or damaged trees.

v) Buffers shall not be used for all-terrain vehicle or vehicular traffic.

b) Limited Disturbance. Maintenance and use provisions for other buffer strips may include the following:

i) There shall be no cleared openings. An evenly distributed stand of trees and other vegetation shall be maintained.

ii) Activity within the buffer shall be conducted to minimize disturbance of existing forest floor, leaf litter and vegetation less than four feet in height. Where the existing ground cover is disturbed and results in exposed mineral soil, that area shall be immediately stabilized to avoid soil erosion.

iii) Removal of vegetation less than four feet in height is limited to that necessary to create a winding foot path no wider than six feet. This path shall not be a straight line to the great pond or a tributary. The path must remain stabilized.

iv) Pruning of live tree branches that do not exceed 12 feet in height above the ground level is permitted provided that at least the top two-thirds of the tree canopy is maintained.

v) Where the removal of storm-damaged, diseased, unsafe, or dead trees results in a cleared opening, those openings shall be replanted with native trees at least three feet in height unless existing new tree growth is present.

vi) Buffers shall not be used for all terrain vehicle or vehicular traffic.

2) Non-wooded Buffers.

a) Non-wooded buffers may be allowed to revert or to be planted to forest, in which case the standards above shall apply.

b) A buffer must maintain a dense, complete and vigorous cover of "non-lawn" vegetation which shall be mowed no more than once a year. Vegetation may include grass, other herbaceous species, shrubs and trees.

c) Activity within the buffer shall be conducted so as to prevent damage to vegetation and exposure of mineral soil. Burning of vegetation shall be prohibited.

d) Buffers shall not be used for all-terrain vehicles or other vehicular traffic.

3) Infiltration Systems. Individual lot owners shall be responsible for maintenance of individual infiltration systems according to the standards specified in the latest version of Phosphorus Control in Lake Watersheds: A Technical Guide for Evaluating New Development, published by the Maine Department of Environmental Protection, the current version being dated September, 1992. Requirements for maintenance shall be included in deed restrictions and as notes upon the plan. As an alternative to maintenance by individual lot owners, the applicant may designate some other entity to be contracted to take the responsibility, and shall include the above referenced maintenance provisions in any contractual agreement. Where infiltration systems serve more than one lot, a lot owners' association shall be established and the above referenced maintenance provisions shall be referenced in the documentation establishing the association.

4) Wet Ponds. A lot owners' association shall be established to maintain wet ponds, unless the municipality or some other public entity agrees to assume inspection and maintenance duties. Documentation establishing the association or establishing an agreement with a public entity shall include the maintenance standards specified in the latest version of the manual Phosphorus Control in Lake Watersheds: A Technical Guide for Evaluating New Development, published by the Maine Department

of Environmental Protection, the current version being dated September, 1992.

## **711 DESIGN GUIDELINES**

### **711.1 GENERAL**

1. This section is intended to provide an example of design guidelines, which if followed will result in meeting the appropriate performance standards of Section 710.
2. Compliance with these guidelines shall be considered evidence of meeting those Performance Standards.
3. Proposed subdivisions not in compliance with the design guidelines of this Article may be considered, but the applicant shall provide clear and convincing evidence that the proposed design will meet the performance standard(s), the standards of the Land Use Code of the City of Brewer, Maine and the statutory criteria applicable to subdivisions, as applicable.
4. In all instances, the burden of proof shall be upon the applicant to present adequate information to indicate all ordinance requirements, performance standards and statutory criteria for approval have been or will be met.

### **711.2 SUFFICIENT WATER**

1. Well Construction
  - A. Due to the increased chance of contamination from surface water, dug wells shall be prohibited on lots smaller than one acre.

On lots of one acre or smaller, the applicant shall prohibit dug wells by deed restrictions and a note on the plan.

B. Wells shall not be constructed within 100 feet of the traveled way of any street if located downhill from the street, or within 50 feet of the traveled way of any street if located uphill of the street.

C. This restriction shall be included as a note on the plan and deed restriction to the affected lots.

## 2. Fire Protection

A. Fire hydrants connected to a public water supply system shall be located no further than 500 feet from any building.

B. A minimum storage capacity of 10,000 gallons shall be provided for a project not served by a public water supply. Additional storage of 2,000 gallons per lot or commercial development unit shall be provided. If multiple principal buildings are present in the project, storage capacity shall be provided sufficient for initial flows to automatic fire suppression systems required by the Brewer Building Code, or any other applicable codes or ordinances.

C. Hydrants or other provisions for drafting water shall be provided to the specifications of the Fire Department. Minimum pipe size connecting dry hydrants to ponds or storage vaults shall be eight inches.

D. Where the dry hydrant or other water source is not within the right-of-way of a proposed or existing street, an easement to the municipality shall be provided to allow access. A suitable accessway to the hydrant or other water source shall be constructed.

E. The Board shall require an opinion of adequacy of fire protection water supply from the Fire Chief and the Brewer Water Department Superintendent. (#4)

### **711.3 STREET DESIGN CRITERIA (#4)**

All subdivision proposals shall comply with Article 9 of this Land Use Code.

### **711.4 IMPACT ON NATURAL BEAUTY, AESTHETICS, HISTORIC SITES, WILDLIFE HABITAT, RARE NATURAL AREAS OR PUBLIC ACCESS TO THE SHORELINE**

#### **1. Preservation of Natural Beauty and Aesthetics**

A. Unless located in areas designated as a growth area in the comprehensive plan, a subdivision in which the land cover type at the time of application is forested shall maintain a wooded buffer strip no less than fifty feet in width along all existing public roads. The buffer may be broken only for driveways and streets.

B. Unless located in areas designated as a growth area in the comprehensive plan, building location shall be restricted from open fields, and shall be located within forested portions of the subdivision. When the subdivision contains no forest or insufficient forested portions to include all buildings, the subdivision shall be designed to minimize the appearance of building when viewed from existing public streets.

C. When a proposed subdivision contains a ridge line identified in the comprehensive plan as a visual resource to be protected, the plan shall restrict tree removal and prohibit building placement within 50 feet vertical distance of the ridge top. These restrictions shall appear as notes on the plan and as covenants in the deed.

D. When a proposed subdivision street traverses open fields, the plan shall include the planting of street trees. Street trees shall include a mix of tall shade trees and medium height flowering species. Trees shall be planted no more than fifty feet apart.

#### **2. Protection of Significant Wildlife Habitat and Important Habitat Areas**

The following guidelines are designed to protect the significant wildlife resources identified in the municipality. The Board recognizes that wildlife management must take into account many site specific variables. Applicants proposing to subdivide land within identified wildlife resources must consult with the Maine Department of Inland Fisheries and Wildlife or a qualified wildlife biologist and provide their written comments to the Board. The guidelines of this section shall apply to only those subdivisions which include significant wildlife habitat or resources identified in Section 710.9.3.

A. Protection of Habitat of Endangered or Threatened Species

1) Habitat or species appearing on the official state or federal lists of endangered or threatened species shall be placed in open space.

2) Deed restrictions and notes on the plan shall reflect standards from the Department of Inland Fisheries and Wildlife for removal of vegetation within 250 feet of the habitat for species appearing on the list of endangered or threatened species unless the Department of Inland Fisheries and Wildlife has approved cutting of vegetation in writing.

B. Protection of Waterfowl, Shorebird, and Wading Bird Habitat, Atlantic Salmon Spawning and Nursery Areas.

1) There shall be no cutting of vegetation within the strip of land extending 75 feet inland from the normal high-water mark of the following habitat areas:

a) Shorebird nesting, feeding and staging areas and seabird nesting islands;

b) High and moderate value waterfowl and wading bird habitats, including nesting and feeding areas;

c) Critical spawning and nursery areas for Atlantic sea run salmon as defined by the Atlantic Sea Run Salmon Commission, or

d) Other important habitat areas identified in the comprehensive plan.

2) This restriction shall appear as a note on the plan and as a deed restriction to the affected lots.

C. Protection of Deer Wintering Areas. The report prepared by a wildlife biologist, selected or approved by the Board, shall include a management plan for deer wintering areas.

D. Protection of Important Shoreland Areas.

1) Except as provided elsewhere in this Land Use Code, within all areas subject to the 250 foot shoreland zone:

a) Tree removal shall be limited to no more than 40% of the volume of trees 4 inches or more in diameter measured at 4 1/2 feet above the ground level on any lot in any ten year period.

b) Harvesting operations shall not create single clear-cut openings greater than 10,000 square feet in the forest canopy. Where such openings exceed 5,000 square feet they shall be at least 100 feet apart. Such clear-cut openings shall be included in the calculation of total volume removal. For the purposes of the guidelines volume may be considered to be equivalent to basal area.

c) Cleared openings for subdivision, including but not limited to, principal and accessory structures, driveways and sewage disposal areas, shall not exceed in the aggregate, 25% of the lot area or 10,000 square feet, whichever is greater, including land previously developed.

2) These restrictions shall appear as notes on the plan and as deed restrictions to the affected lots.

E. If the proposed subdivision includes other important wildlife habitat as identified by the Department of Inland Fisheries and Wildlife or the comprehensive plan, the restrictions on activities in and around these areas shall be reviewed by the Department or a qualified wildlife biologist and their comments presented in writing to the Board.

#### **711.5 STORM WATER MANAGEMENT DESIGN GUIDELINES**

1. Design of best management practices shall be substantially equivalent to those described in the latest version of the Erosion and Sedimentation Control: Best Management Practices, published by the Maine Department of Environmental Protection, Bureau of Land and Water Quality, the most current version being dated March 2003.
2. Drainage easements for existing water courses or proposed drainage ways shall be provided at least 30 feet wide, conforming substantially with the lines of existing natural drainage.
3. The minimum pipe size for any storm drainage pipe shall be 15 inches for driveway entrances and eighteen inches for cross culverts. Maximum trench width at the pipe crown shall be the outside diameter of the pipe plus two feet. Pipe shall be bedded in a fine granular material, containing no stones larger than three inches, lumps of clay, or organic matter, reaching a minimum of six inches below the bottom of the pipe extending to a minimum of

twelve inches above the top of the driveway pipe and eighteen inches above the cross culvert.

4. Catch basins shall be installed where necessary and when located within a street shall be located at the curb line.

5. Storm Drainage Construction Standards

A. Materials.

1) Storm drainage pipes shall conform to the requirements of Maine Department of Transportation materials specifications Section 706 for non-metallic pipe and Section 707 for metallic pipe. Plastic (polyethylene) pipes shall not be installed except in closed systems such as street underdrains. Bituminous-coated steel pipes shall not be used.

2) Where the storm drainage pipe is to be covered by ten feet or more of fill material, pipe material with a fifty year life shall be used. These materials include concrete pipe, polyvinyl-chloride (PVC) pipe, polyethylene (PE) pipe, and corrugated aluminum alloy pipe.

3) Where storm drainage pipe may come into contact with salt water, corrugated aluminum alloy pipes shall be used.

B. Drain inlet alignment shall be straight in both horizontal and vertical alignment unless specific approval of a curvilinear drain is obtained in writing from the Board, after consultation with the municipal engineer.

C. Manholes shall be provided at all changes in vertical or horizontal alignment and at all junctions. On straight runs, manholes shall be placed at a maximum of 300 foot intervals.

D. Upon completion, each catch basin or manhole shall be cleaned of all accumulation of silt, debris or foreign matter and shall be kept clean until final acceptance.

#### **711.6 BLOCKS**

1. Where street lengths exceed 1,000 feet between intersections with other streets, the Board may require a utility/pedestrian easement, at least 20 feet in width, to provide for underground utility crossings and/or a pedestrian pathway of at least five feet in width.
2. Maintenance obligations of the easement shall be included in the written description of the easement.

#### **711.7 LOTS**

1. Wherever possible, side lot lines shall be perpendicular to the street.
2. The subdivision of tracts into parcels with more than twice the required minimum lot size shall be laid out in such a manner as either to provide for or preclude future division. Deed restrictions and notes on the plan shall either prohibit future divisions of the lots or specify that any future division shall constitute a revision to the plan and shall require approval from the Board, subject to the criteria of the subdivision statute, the standards of these regulations and conditions placed on the original approval.
3. If a lot on one side of a stream, tidal water, road or other similar barrier fails to meet the minimum requirements for lot size, it may not be combined with a lot on the other side of the stream, tidal water, or road to meet the minimum lot size.
4. The ratio of lot length to width shall not be more than three to one. Flag lots and other odd shaped lots in which narrow strips are joined to other parcels in order to meet minimum lot size requirements are prohibited.

## **711.8 MONUMENTS**

1. Granite, precast concrete monuments or iron pins shall be set at all street intersections and points of curvature, but no further than 750 feet apart along street lines without curves or intersections.
2. Granite, precast concrete monuments shall be set at all corners and angle points of the subdivision boundaries where the interior angle of the subdivision boundaries is 135 degrees or less.
3. Granite, precast concrete monuments or iron pins shall be a minimum of four inches square at the top and four feet in length, and set in the ground at final grade level. After they are set, a drill hole 1/2 inch deep shall locate the point or points described above.
4. All other subdivision boundary corners and angle points, as well as all lot boundary corners and angle points shall be marked by iron pins as required by the Maine Board of Registration of Land Surveyors.

## **711.9 CLUSTER SUBDIVISIONS**

### **1. Purpose**

A. The purpose of these provisions is to allow for flexibility in the design of housing subdivisions to allow for the creation of open space which provides recreational opportunities or protects important natural features from the adverse impacts of development, provided that the net residential density shall be no greater than is permitted in the district in which the subdivision is proposed.

B. Notwithstanding provisions elsewhere in this Land Use Code relating to dimensional requirements, the Board, in reviewing and approving proposed residential subdivisions, may modify the provisions related to dimensional requirements to permit flexibility in approaches to housing and environmental design in accordance

with the following guidelines. This shall not be construed as granting variances.

## 2. Application Procedure

A. The Board may allow lots within subdivisions to be reduced in area and width below the minimum normally required by this Land Use Code in return for open space where the Board determines that the benefits of the cluster approach will decrease subdivision costs, increase recreational opportunities or prevent the loss of natural features without increasing the net density of the subdivision. Two sketch plans shall be submitted with one layout as a standard subdivision and the second as a cluster subdivision indicating open space and significant natural features. Each lot in the standard subdivision shall meet the minimum lot size and lot width requirements of this ordinance, and if not serviced by public sewer have an area suitable for subsurface waste water disposal according to the Maine Subsurface Wastewater Disposal Rules. The number of buildable lots or dwelling units in the cluster subdivision shall in no case exceed the number of lots or dwelling units in the standard subdivision.

B. Estimated costs of infrastructure development (roads, utilities, etc.) shall accompany the plan. The written statement shall describe the natural features which will be preserved or enhanced by the cluster approach.

C. Natural features include, but are not limited to moderate-to-high value wildlife and waterfowl habitats, important agricultural soils, moderate-to-high yield aquifers and important natural or historic sites identified by the comprehensive plan as worthy of preservation. The statement shall also compare the impacts upon the municipality from each plan.

D. Examples of impacts are municipal cost for roads, school bussing, solid waste removal, utility efficiencies, recreational opportunities, protection of flood water storage areas, environmental impacts on sensitive lands caused by construction

activities, underground utilities, reclamation of land and provision of land for conservation use.

E. Within ten days of receiving the application, the Board shall invite comments on the application from the conservation commission, the recreation commission, other appropriate City agencies, and abutters.

F. Within thirty days of receiving the application, the Board shall determine whether to allow the subdivision to be developed in accordance with the cluster standards of this section.

### 3. Basic Requirements for Cluster Subdivisions

A. Cluster subdivisions shall meet all requirements of these regulations.

B. Each building shall be an element of an overall plan for site development. Only subdivisions having a total site plan for structures will be considered. The application shall illustrate the placement of buildings and the treatment of spaces, paths, roads, service and parking and in so doing shall take into consideration all requirements of this section and of other relevant sections of these regulations.

C. The net residential acreage shall be calculated by taking the total area of the lot and subtracting, in order, the following:

1) 15% of the area of the lot to account for roads and parking.

2) Portions of the lot which, because of existing land uses or lack of access, are isolated and unavailable for building purposes or for use in common with the remainder of the lot, as determined by the Board.

3) Portions of the lot shown to be in a floodway or a coastal high hazard zone as designated in the Flood Boundary

and Floodway Map prepared by the Federal Insurance Administration.

4) Portions of the lot which are unsuitable for development in their natural state due to topographical, drainage or subsoil conditions such as, but not limited to:

- a) slopes greater than 20%
- b) organic soils.
- c) wetland soils.
- d) 50% of the poorly drained soils.

5) Portions of the lot subject to rights of way.

6) Portions of the lot located in the resource protection zone.

7) Portions of the lot covered by surface waters.

8) Portions of the lot utilized for storm water management facilities.

D. In order to determine the maximum number of dwelling units permitted on a tract of land, the net residential acreage shall be divided by the minimum lot size required by the zoning ordinance. No building shall be sited on slopes steeper than 25%, within 100 feet of any water body or wetland, or on soil classified as being very poorly drained.

E. The total area of reserved open space within the subdivision shall equal or exceed the sum of the areas by which any building lots are reduced below the minimum lot area normally required by the zoning ordinance. No less than 30% of the reserved open space shall be usable open space.

F. Every building lot that is reduced in area below the amount normally required shall be within 1,000 feet of the common land.

- G. The distance between dwellings shall not be less than 25 feet.
- H. No individual lot or dwelling unit shall have direct vehicular access onto a public road existing at the time of subdivision.
- I. Shore frontage shall not be reduced below the minimum normally required by the zoning ordinance.
- J. Where a cluster subdivision abuts a body of water, a usable portion of the shoreline, as well as reasonable access to it, shall be a part of the common land.

**711.10 PHOSPHORUS EXPORT**

1. When a proposed subdivision is within the direct watershed of a great pond and qualifies for the simplified review procedure, buffer strips shall be provided in accordance with the following table.
  - A. Buffer strips shall be provided on the downhill side of all lots along all tributaries to great ponds and along the great pond.
  - B. The minimum required width of buffer strips are designated in Table 711.10.3 and depend on the watershed in which the proposed subdivision is located, the size of the lot, the hydrologic soil group, and whether deed restrictions are proposed to limit the area which may be cleared on each lot.
2. When the proposed subdivision is within the direct watershed of a great pond and does not qualify for simplified reviewed, the phosphorus control measures shall meet the design criteria in the latest version of the Phosphorus Control in Lake Watersheds: A Technical Guide for Evaluating New Development, published by the Maine Department of Environmental Protection, the most current version being dated September, 1992.

Table 711.10.3 Buffer Strip Widths in Watershed of Hypothetical Pond Phosphorus Standard: 0.07 - 0.08 lbs./acre Buffer Width in Feet Per Lot			
Lot	Hydrologic Soil Group	Clearing Restricted to 12,500 sq. ft.	No Clearing Restrictions
< 1 Acre	A	75	85
	B	130	150
	C	NA	NA
	D	NA	NA
1-1.99 Acres	A	25	25
	B	25	55
	C	55	190
	D	200	NA
2-2.99 Acres	A	25	25
	B	25	25
	C	25	50
	D	25	200
All lots 3 acres and larger shall provide a minimum 25 foot buffer.			

### 711.11 UTILIZATION OF THE SITE

Utilization of the Site - The plan for the development will reflect the natural capabilities of the site to support development. Buildings, lots, and support facilities will be clustered in those portions of the site that have the most suitable conditions for development. Environmentally sensitive areas, including but not limited to, wetlands, steep slopes, floodplains, significant wildlife habitats, fisheries, scenic areas, habitat for rare and endangered plants and animals, unique natural communities and natural areas, and sand and gravel aquifers will be maintained and preserved to the maximum extent. The development shall include appropriate measures for protecting these resources, including but not

limited to, modification of the proposed design of the site, timing of construction and limiting the extent of excavation.

#### **711.12 HISTORIC AND ARCHAEOLOGICAL RESOURCES**

Historic and Archaeological Resources - If any portion of the site has been identified as containing historic or archaeological resources, the development shall include appropriate measures for protecting these resources, including but not limited to, modification of the proposed design of the site, timing of construction, limiting extent of excavation.

#### **712 ACCEPTANCE OF STREETS IN A FULLY APPROVED SUBDIVISION**

Upon the application of the subdivider and the receipt of a written certification from a professional engineer licensed in the State of Maine that a street or streets and any improvements associated therewith in a fully approved subdivision in the City of Brewer has been constructed and/or reconstructed in accordance with this Subdivision Article, other City Ordinances, and the conditions of approval imposed by the Brewer Planning Board and/or City Council, the City Council shall refer the written certification to the City Engineer and the City Manager for their review. Within thirty (30) days after the City Engineer and the City Manager receive the written certification, they shall review the street and associated improvements for compliance with this Subdivision Article and the conditions of approval imposed by the Brewer Planning Board or City Council and they shall each submit to the City Council their written recommendation on the proposed acceptance of the street and reasons therefor. The City Council shall accept the street as a city street upon the written certification of a professional engineer as hereinbefore provided for and favorable recommendations from both the City Engineer and City Manager to accept the street. Conversely, if the City Council does not receive a favorable recommendation from either the City Engineer or City

Manger, the City Council need not accept the street and may take such action as it deems appropriate.

The subdivider shall file a deed conveying the street to the City satisfactory to the City Council and an affidavit stating the subdivider voluntarily offers to transfer the street to the City and waives any claim for damages in accordance with Title 23 M.R.S.A. Section 3025 before the City Council shall consider acceptance of the proposed street.

A subdivider may not request a street in a fully approved subdivision be accepted by the City Council more than twice in any calendar year.

All applications which shall include "as built" plans and certifications under this Article shall be filed with the City Clerk as agent for the City Council.

#### **712.1 ENGINEERING CERTIFICATION**

A professional engineer, licensed in the State of Maine and paid for by the developer, shall certifying in writing to the City that the following have been constructed in accordance with the provisions of this subdivision article, other ordinances of the City of Brewer, and any conditions of the subdivision's approval established by the Brewer Planning:

1. Utilities which are located below the surface of the street have been properly installed. Utilities shall include, but not be limited to water, sewer, storm drains, and underdrains.
2. The sub-grade has been properly prepared and installed.
3. The gravel base has been tested for material compliance, thickness and properly graded, compacted and installed.
4. All asphalt materials have been properly installed.
5. Curbs, ditches and any stormwater detention facilities and any stormwater structures have been properly installed.

6. Permanent monumentation of all property lines and street rights-of-ways have been set.

#### **712.1.1 DEVELOPER'S RESPONSIBILITIES FOR TESTING, INSPECTION AND REPORTING (#6)**

Testing of the various materials used for construction of the street and inspection of the in-place products is the responsibility of the developer. A qualified inspector shall be retained by the developer to provide these services. The following items shall be submitted to the City Engineer upon application for conditional or final acceptance of a street as minimum evidence that the street has been constructed in accordance with the provisions of this ordinance.

A. The project inspector will be required to certify that all underground utilities have been installed in accordance with the approved subdivision plans and generally accepted construction standards. Prior to acceptance, the City may also videotape sewers and stormdrains to check for sagging, squatting, misalignment or other evidence of improper installation.

B. Prior to placing filter fabric and sub-base gravel, the subgrade shall be visually inspected to ensure proper grubbing and sloping has been accomplished. The condition of the subgrade shall also be visually evaluated for suitability to support the sub-base material. Proper compaction of all utility trenches should be verified. Copies of all inspection reports shall be forwarded to the City Engineer.

C. The specifications for the gravel sub-base and base materials shall be shown on the project drawings. Samples of each should be obtained from the source and tested by an MDOT approved lab to ensure compliance with the MDOT gradation specifications and to determine the theoretical maximum density and optimum water content. The project inspector shall evaluate the lab results to ensure compliance with the project and City specifications and a copy of the results shall be sent to the City Engineer.

D. Compaction testing shall be performed on each layer of the road base gravel to ensure 95% compaction is achieved. The method, location and frequency of tests shall be determined by the inspector to ensure representative results are obtained for the project. The certified results of all compaction testing shall be forwarded to the City Engineer. Visual inspections shall be performed daily, or as necessary, to ensure that contaminated materials are removed from the sub-base and base gravels. Measurement of the depth of each layer of gravel shall be made by the project inspector to ensure compliance with the project specifications and results shall be sent to the City Engineer.

E. Final approval of the roadbase prior to paving shall be performed by the project inspector based on the visual inspection and the testing specified above. Final lines and grades shall meet MDOT tolerances. Prior to the start of paving a written certification from a Registered Professional Engineer shall be submitted to the City Engineer stating that the roadway base was constructed in accordance with the project specifications and is ready for paving.

F. As-built drawings certified by a Registered Professional Engineer shall be submitted to the City Engineer prior to the acceptance of any street. These shall document all changes to the approved plans and show final locations of all utilities including water, sewer and stormdrain stubs to individual lots.

## **712.2 WRITTEN ADVICE**

The City Council shall receive the written recommendations of the City Engineer, City Planner, and the City Manager on the advisability of the acceptance of the street prior to acceptance. Such advice may include conditions of street acceptance and recommendations as to the necessity of additional guarantees.

## **712.3 SUBDIVIDER RESPONSIBILITY**

The subdivider accepts complete responsibility for any damages or problems with the street and improvements until the street is accepted by the City Council. In the event that the City Council determines additional

security is necessary, a guarantee shall be provided at the City Council's discretion according to Section 714 of this Article. Said guarantee shall be filed with the City Clerk prior to street acceptance.

## **714 PERFORMANCE GUARANTEES**

### **714.1 TYPES OF GUARANTEES**

With submittal of the application for final plan approval, the applicant shall provide one of the following performance guarantees for an amount adequate to cover the total construction costs of all required improvements, taking into account the time-span of the construction schedule and the inflation rate for construction costs:

1. Either a certified check payable to the municipality or a savings account or certificate of deposit naming the municipality as owner, for the establishment of an escrow account;
2. A performance bond payable to the municipality issued by a surety company, approved by the City Council;
3. An irrevocable letter of credit from a financial institution establishing funding for the construction of the subdivision, from which the City may draw if construction is inadequate, approved by the City Council; or
4. An offer of conditional approval limiting the number of units built or lots sold until all required improvements have been constructed.

The conditions and amount of the performance guarantee shall be determined by the City Council based upon the recommendation of the Planning Board.

### **714.2 CONTENTS OF GUARANTEE**

The performance guarantee shall contain a construction schedule, cost estimates for each major phase of construction taking into account inflation, provisions for inspections of each phase of construction,

provisions for the release of part or all of the performance guarantee to the developer, and a date after which the applicant will be in default and the municipality shall have access to the funds to finish construction.

#### **714.3 ESCROW ACCOUNT.**

A cash contribution to the establishment of an escrow account shall be made by either a certified check made out to the municipality, the direct deposit into a savings account, or the purchase of a certificate of deposit. For any account opened by the applicant, the municipality shall be named as owner or co-owner, and the consent of the municipality shall be required for a withdrawal. Any interest earned on the escrow account shall be returned to the applicant unless the municipality has found it necessary to draw on the account, in which case the interest earned shall be proportionately divided between the amount returned to the applicant and the amount withdrawn to complete the required improvements.

#### **714.4 PERFORMANCE BOND**

A performance bond shall detail the conditions of the bond, the method for release of the bond or portions of the bond to the applicant, and the procedures for collection by the municipality. The bond documents shall specifically reference the subdivision for which approval is sought. Performance bond shall be approved as to form by the City Solicitor.

#### **714.5 LETTER OF CREDIT**

An irrevocable letter of credit from a bank or other lending institution shall indicate that funds have been set aside for the construction of the subdivision and may not be used for any other project or loan. Letter of Credit shall be approved as to form by the City Solicitor.

#### **714.6 CONDITIONAL AGREEMENT**

The Board at its discretion may provide for the applicant to enter into a binding agreement with the municipality in lieu of the other financial

performance guarantees. Such an agreement shall provide for approval of the final plan on the condition that no more than four lots may be sold or built upon until either:

1. It is certified by the Board, or its agent, that all of the required improvements have been installed in accordance with these regulations and the regulations of the appropriate utilities; or
2. A performance guarantee, acceptable to the municipality, is submitted in an amount necessary to cover the completion of the required improvements at an amount adjusted for inflation and prorated for the portions of the required improvements already installed.

Notice of the agreement and any conditions shall be on the final plan that is recorded at the Registry of Deeds. Release from the agreement shall follow the procedures for release of the performance guarantees contained in Section 714.

#### **714.7 PHASING OF DEVELOPMENT**

The Board may approve plans to develop a major subdivision in separate and distinct phases. This may be accomplished by limiting final approval to those lots abutting that section of the proposed subdivision street which is covered by a performance guarantee. When development is phased, road construction shall commence from an existing public way. Final approval of lots in subsequent phases shall be given only upon satisfactory completion of all requirements pertaining to previous phases.

#### **714.8 RELEASE OF GUARANTEE**

Prior to the release of any part of the performance guarantee, the Board shall determine to its satisfaction, in part upon the report of the City Planner or other qualified individual retained by the municipality and any other agencies and departments who may be involved, that the proposed improvements meet or exceed the design and construction requirements for that portion or phase of the subdivision for which the release is requested.

## **714.9 DEFAULT**

If upon inspection, the City Planner or other qualified individual retained by the municipality finds that any of the required improvements have not been constructed in accordance with the plans and specifications filed as part of the application, he or she shall so report in writing to the code enforcement officer, the City Council, the Board, and the applicant or builder. The City Council shall take any steps necessary to preserve the municipality's rights.

### **714.10 IMPROVEMENTS GUARANTEED**

Performance guarantees shall be tendered for all improvements required to meet the standards of these regulations and for the construction of the streets, storm water management facilities, public sewage collection or disposal facilities, public water systems, and erosion and sedimentation control measures.

## **715 WAIVERS**

### **715.1 WAIVERS AUTHORIZED**

Where the Board makes written findings of fact that there are special circumstances of a particular parcel proposed to be subdivided, it may waive portions of the submission requirements, unless otherwise indicated in the regulations, provided the applicant has demonstrated that the performance standards of these regulations and the criteria of the subdivision statute have been or will be met, the public health, safety, and welfare are protected, and provided the waivers do not have the effect of nullifying the intent and purpose of the comprehensive plan, the zoning ordinance, or these regulations.

### **715.2 FINDINGS OF FACT REQUIRED**

Where the Board makes written findings of fact that due to special circumstances of a particular lot proposed to be subdivided, the provision

of certain required improvements is not requisite to provide for the public health, safety or welfare, or are inappropriate because of inadequate or lacking connecting facilities adjacent to or in proximity of the proposed subdivision, it may waive the requirement for such improvements, subject to appropriate conditions, provided the waivers do not have the effect of nullifying the intent and purpose of the comprehensive plan, the Land Use Code, or these regulations, and further provided the performance standards of these regulations and the criteria of the subdivision statute have been or will be met by the proposed subdivision.

### **715.3 CONDITIONS**

Waivers may only be granted in accordance with Sections **715.1** and **715.2**. When granting waivers, the Board shall set conditions so that the purposes of these regulations are met.

### **715.4 WAIVERS TO BE SHOWN ON FINAL PLAN**

When the Board grants a waiver to any of the improvements required by these regulations, the final plan, to be recorded at the Registry of Deeds, shall indicate the waivers granted and the date on which they were granted.

## **716 BUILDING PERMITS**

The Code Enforcement Officer shall not issue any building permit required under this Land Use Code and/or Chapter 16 of the Brewer Charter, Codes and Ordinances for any structure upon a lot in a subdivision for which a plan has not been approved and the street that the lot is located upon has not been accepted or conditionally accepted under this Land Use Code. Notwithstanding the foregoing, the Code Enforcement Officer may issue building and other required permits on one lot in an approved subdivision, located in the Industrial (IND) and Industrial-2 (IND2) districts, where all required improvements are being constructed by the City of Brewer, with City Council approval, and where site plan approval has been obtained from the Planning Board if required.  
(#8)

## **717 APPEALS**

### **717.1 APPEALS TO THE BOARD OF APPEALS**

Pursuant to Article 13 of this Land Use Code and Chapter 34 of the City of Brewer Charter, Codes and Ordinances, an administrative appeal may be taken to the Brewer Zoning Board of Appeals by an aggrieved party from any decision of the Brewer Planning Board. Such appeal shall be taken within thirty (30) days of the date of the decision appealed from.

### **717.2 APPEALS TO SUPERIOR COURT**

An aggrieved party may appeal any decision of the Board of Appeals under these regulations to Penobscot County Superior Court, within thirty days of the date the Board issues a written order of its decision.

## **ARTICLE 8 – FLOODPLAIN MANAGEMENT**

### **801 FLOOD HAZARD DEVELOPMENT PERMIT**

#### **801.1 ESTABLISHMENT (#4)**

The City of Brewer, Maine elects to comply with the requirements of the National Flood Insurance Act of 1968 (P. L. 90-488, as amended). The National Flood Insurance Program, established in the aforesaid Act, provides that areas of the City having a special flood hazard be identified by the Federal Emergency Management Agency and that floodplain management measures be applied in such flood hazard areas. This Article establishes a Flood Hazard Development Permit system and review procedure for development, activities in the designated flood hazard area of the City of Brewer, Maine.

The areas of special flood hazard, Zones A, and A1-A30 identified by the Federal Emergency Management Agency in a report entitled “Flood Insurance Study – City of Brewer, Maine, Penobscot County,” dated December 1977 with accompanying “Flood Insurance Rate Map” and “Flood Boundary and Floodway Map” dated June 1978, is hereby adopted by reference and declared to be a part of this Article. [Any and all references made to sections 801-810 herein refer to this Article.]

## **801.2 PERMIT REQUIRED**

Before any construction or other development (as defined in 809), including the placement of manufactured homes, begins within any areas of special flood hazard established in 801.1, a Flood Hazard Development Permit shall be obtained from the Code Enforcement Officer. This permit shall be in addition to any other building permits which may be required pursuant to the codes and ordinances of the City of Brewer, Maine.

## **801.3 APPLICATION FOR PERMIT (#4)**

The application for a Flood Hazard Development Permit shall be submitted to the Code Enforcement Officer and shall include:

- A. The name, address and phone number of the applicant, owner and contractor;
- B. An address and a map indicating the location of the construction site;
- C. A site plan showing location of existing and/or proposed development, including but not limited to structures, sewage disposal facilities, water supply facilities, areas to be cut and/or filled, and the dimensions of the lot; )
- D. A statement of the intended use of the structure and/or development;
- E. A statement as to the type of sewage system proposed;
- F. Specification of dimensions of the proposed structure and/or development; (items G – K.5 apply only to new construction and substantial improvement).
- G. The elevation in relation to National Geodetic Vertical Datum (NGVD), or to a locally established datum in Zone A only, of the:
  1. base flood at the proposed site of all new or substantially improved structures, which is determined:

- a. in Zone A1-30, from data contained in the “Flood Insurance Study – City of Brewer, Maine,” as described in 801.1; or
- b. in Zone A
  - (1) from any base flood elevation data from federal, state, or other technical courses (such as FEMA Quick-2 model, FEMA 265/July 1995), including information contained pursuant to 802.K and 804.D.
  - (2) from the contour elevation extrapolated from a best fit analysis of the floodplain boundary when overlain onto a USGS Quadrangle Map or other topographic map prepared by a Professional Land Surveyor or registered professional engineer, if the floodplain boundary has a significant correlation to the elevation contour line(s), or in the absence of all other data.
  - (3) to be the elevation of the ground at the intersection of the floodplain boundary and a line perpendicular to the shoreline which passes along the ground through the site of the proposed building.
- 2. highest and lowest grades at the site adjacent to the walls of the proposed building;
- 3. lowest floor, including basement; and whether or not such structures contain a basement; and,
- 4. level, in the case of non-residential structures only, to which the structure will be floodproofed.
- H. A description of an elevation reference point established on the site of all developments for which elevation standards apply as required in 802;
- I. A written certification by a registered professional Maine engineer, professional landsurveyor or architect that the elevations shown on the application are accurate;
- J. The following certifications as required in 802 by a registered professional engineer or architect:
  - 1. A flood proofing certificate (FEMA Form 81-65, 08/99 as amended to verify that the flood proofing methods for any non-

residential structures will meet the flood proofing criteria of 801.3.G.4, 802.G and other applicable standards in 802L.

2. A hydraulic openings certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of 802.
  3. A certified statement that bridges will meet the standards of 802..M.
  4. A certificate that containment walls will meet the standards of 802.N.
- K. A description of the extent to which any water course will be altered or relocated as a result of the proposed development;
- L. A statement of construction plans describing in detail how each applicable development standard in 802 will be met.

#### **801.4 APPLICATION FEE AND EXPERT’S FEE (#4)**

A non-refundable application fee, as set forth by the City Council and amended from time to time, shall be paid to the City Clerk and a copy of a receipt for the same shall accompany the application.

An additional fee may be charged if the Code Enforcement Officer and/or Board of Appeals needs the assistance of a professional engineer or other expert. The expert’s fee shall be paid in full by the applicant within 10 days after the City submits a bill to the applicant. Failure to pay the bill shall constitute a violation of the ordinance and be grounds for the issuance of a stop work order. An expert shall not be hired by the municipality at the expense of an applicant until the applicant has either consented to such hiring in writing or been given an opportunity to be heard on the subject. An applicant who is dissatisfied with a decision of the Code Enforcement Officer may appeal that decision to the Board of Appeals.

#### **801.5 REVIEW STANDARDS FOR FLOOD HAZARD DEVELOPMENT PERMIT APPLICATIONS (#4)**

The Code Enforcement Officer shall:

- A. Review all applications for the Flood Hazard Development Permit to assure that proposed developments are reasonably safe from flooding and to determine that all pertinent requirements of 802 (Development Standards) have been or will be met;
- B. Utilize, in the review of all Flood Hazard Development Permit applications, the base flood data contained in the “Flood Insurance Study – City of Brewer, Maine,” as described in 801.1. In special flood hazard areas where base flood elevation data are not provided, the

Code Enforcement Officer shall obtain, review and reasonably utilize any base flood elevation and floodway data from federal, state or other sources, including information obtained pursuant to 801.3, paragraph G.1.b.; 802, paragraph K; and 804, paragraph D, in order to administer 802 of this Article; and (3) when the community establishes a base flood elevation in Zone A by methods outlined in 801.3.G.1.b., the community will submit the data to the Maine Floodplain Management Program c/o State Planning Office.

- C. Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in 801.1 of this Article;
- D. In the review of Flood Hazard Development Permit application, determine that all necessary permits have been obtained from those federal, state, and local government agencies from which prior approval is required by federal or state law, including but not limited to Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334;
- E. Notify adjacent municipalities, the Department of Environmental Protection, and the Maine State Planning Office prior to any alteration or relocation of a water course and submit copies of such notifications to the Federal Emergency Management Agency;
- F. If the application satisfies the requirements of this ordinance, approve the issuance of one of the following Flood Hazard Development Permits, based on the type of development:
  - (1) A two part Flood Hazard Development Permit for elevated structures. Part I shall authorize the applicant to build a structure to and including the first horizontal floor only above the base flood level. At that time the applicant shall provide the Code Enforcement Officer with an application for Part II of the Flood Hazard Development Permit and shall include an Elevation Certificate completed by a registered Maine surveyor for compliance with the elevation requirements of 802, paragraphs F, G, or H. Following review of the application, which review shall take place within 72 hours of receipt of the application, the Code Enforcement Officer shall issue Part II of the Flood Hazard Development Permit, if elevation requirements are met. Part II shall authorize the applicant to complete the construction project; or,
  - (2) A Flood Hazard Development Permit for Floodproofing of Non Residential Structures that are new construction or substantially improved non-residential structures that are not being elevated but that meet the Floodproofing standards of 802. G.1.a.b. and c. Their application for this permit shall include a floodproofing certificate signed by a registered engineer or architect; or,
  - (3) A Flood Hazard Development Permit for minor development for all development that is not new construction of substantial improvement, such as repairs maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. Minor development also includes, but is not limited to: accessory structures as provided for in 802.J., mining dredging, filling, grading

paving, excavation, drilling operations, storage of equipment or materials, disposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures, and any structural, non-habitational projects including but not limited to: bridges, dams, towers, fencing, pipelines, wharves and piers.

- G. Maintain, as a permanent record, copies of all Flood Hazard Development Permits issued and data relevant thereto, including reports of the Board of Appeals on variances granted under the provisions of 805 of this Article, and copies of Elevation Certificates, Certificates of Compliance, Floodproofing Certificates and certification of design standards required under the provisions of 801,802 and 803 of this Article.

## **802 DEVELOPMENT STANDARDS (#4)**

All developments in areas of special flood hazard shall meet the following applicable standards:

- A. All developments shall:
1. be designed or modified and adequately anchored to prevent flotation, (excluding docks and piers) collapse or lateral movement of the development resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
  2. use construction materials that are resistant to flood damage;
  3. use construction methods and practices that will minimize flood damage; and,
  4. use electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- B. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.
- C. All new and replacement sanitary sewage systems shall be designed and located to minimize or eliminate infiltration of flood waters into the system and discharges from the systems into flood waters.
- D. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- E. All development associated with altered or relocated portions of a watercourse shall be constructed and maintained in such a manner that no reduction occurs in the flood carrying capacity of the water course.
- F. New construction or substantial improvement of any residential structure located within:

1. Zones A1-30 shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation.
  2. Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to 801.3 paragraph G.1.b.; 801.5, paragraph B; or 804 paragraph D.
- G. New construction or substantial improvement of any non-residential structure located within:
1. Zones A1-30 shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation, or together with attendant utility and sanitary facilities shall:
    - a. be floodproofed to at least one foot above the base flood level so that below that elevation the structure is watertight with walls substantially impermeable to passage of water;
    - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
    - c. be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by 801.3 paragraph J. and shall include a record of the elevation above mean sea level to which the structure is floodproofed.
  2. Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to 801.3, paragraph G.1.b.; 801.5, paragraph B; or 804, paragraph D.
- H. New or substantially improved manufactured homes located within:
1. Zones A1-30 shall:
    - a. be elevated such that the lowest floor (including basement of the manufactured home) is at least one foot above the base flood elevation; and
    - b. be on a permanent foundation, which may be poured masonry slab or foundation walls with hydraulic openings, or may be reinforced piers or block supports, any of which support the manufactured home so that no weight is supported by its wheels and axles, and;
    - c. be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to:

- (1) over-the-top ties anchored to the ground at the four corners of the manufactured home, plus two additional ties per side at intermediate points (manufactured homes less than 50 feet long require one additional tie per side); or by,
  - (2) frame ties at each corner of the home, plus five additional ties along each side at intermediate points (manufactured homes less than 50 feet long require four additional ties per side).
  - (3) all components of the anchoring system described in 802, paragraph H.1.c. (1) (2) shall be capable of carrying a force of 4800 pounds.
2. Zone A shall have to be erected on a permanent foundation as described in 802.H.b such that the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to 801.3, paragraph G.1.b.; 801.5, paragraph B; or 804, paragraph D.
- I. Recreational Vehicles – Rec. Vehicles located within Zones A1-A30 shall either:
1. Be on the site less than 180 consecutive days in any calendar year;
  2. Be fully licensed and ready for highway use; or
  3. Be permitted in accordance with the elevation and anchoring requirements for manufactured homes in 802.H.1.
- J. Accessory structures as defined in 809, located within Zones A1-A30 and A shall be exempt from the elevation criteria required in 802 F and G above if all other requirements of 802 and the following requirements are met. Accessory structures shall:
1. Be 500 square feet or less and have a value of less than \$3000.
  2. Have unfinished interiors and not be used for human habitation.
  3. Have hydraulic openings, as specified in 802.L.2. in at least two walls of the structure.
  4. Be located outside the floodway.
  5. When possible, located on the site so as to offer the minimum resistance to the flow of floodwaters and be placed no further from the source of flooding than is the primary structure.

6. Have only ground fault interrupt outlets. The electric service disconnect shall be located above the base flood elevation and when possible outside the Special Flood Hazard Area.

K. Floodways:

1. In Zones A1-30, riverine areas encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted within a regulatory floodway which is designed on the community's "Flood Boundary" and "Floodway Map" unless a technical evaluation certified by a registered professional engineer is provided demonstrating that such encroachments will not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
2. In Zones A1- A30 and A for which no regulatory floodway is designated, encroachments including fill, new construction substantial improvement and other development shall not be permitted in the floodway as determined in 802.K.3 unless a technical evaluation by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development when combined with all other existing development and anticipated development:
  - a. will not increase the water surface elevation of the base flood more than one foot at any point within the community; and
  - b. is consistent with the technical criteria contained in Chapter 5 entitled "Hydraulic Analyses" (sic) Flood Insurance Study – Guidelines for Study Contractors (FEMA 37/Jan 1995, as amended).
3. In Zone A1-A30 and A riverine areas, for which no regulatory floodway is designated, the regulatory floodway is determined to be the channel of the river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain as measured from the normal high water mark to the upland limit of the floodplain.

L. New construction or substantial improvement of any structure in Zones A1-30 and A that meets the development standards of 802, including the elevation requirements of 802, paragraphs F, G or H and is elevated on posts, columns, piers, piles, "stilts," or crawl spaces may be enclosed below the base flood elevation provided all the following criteria are met or exceeded:

1. Enclosed areas are not "basements" as defined in 809; and,
2. Enclosed areas shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either:
  - a. be certified by a registered professional engineer or architect; or,

- b. meet or exceed the following minimum criteria:
    - (1) a minimum of two openings of approximately equal size having a total net area of not less than one square inch for every square foot of the enclosed area;
    - (2) the bottom of all openings shall be below the base flood elevation and no higher than one foot above the lowest grade; and,
    - (3) openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the entry and exit of flood waters automatically without any external influence or control such as human intervention, including the use of electrical and other non-automatic mechanical means; and,
  - 3. The enclosed area shall not be used for human habitation; and,
  - 4. The enclosed area may only be used for building access, parking vehicles, or storage.
- M. Bridges -- new construction or substantial alteration of any bridge in Zone A1-A30 and A shall be designed such that:
- 1. when possible, the lowest horizontal member (excluding pilings or columns) is elevated at least one foot above the base flood elevation, and
  - 2. a registered professional engineer shall certify that:
    - a. the structural design and methods of construction shall meet the elevation requirements of this section and the floodway standards of 802 K and
    - b. the foundation and superstructure attached thereto are designed to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all structure components. Water loading values shall be those associated with the base flood.
- N. Containment Walls – new construction or substantial improvement of any containment wall located within Zones A1-A30 and A shall:
- a. have containment wall elevated to at least one foot above the base flood elevation;
  - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
  - c. be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit as required by 801.3.J.

- O. Wharves, Piers, and Dock – new construction or substantial alteration of wharves, piers and docks are permitted in Zones A and A1-A30 in and over water and seaward of mean high tide if the following requirements are met:
  - 1. wharves, piers and docks shall comply with all applicable local, state and federal regulations; and
  - 2. for commercial wharves, piers and docks, a registered professional engineer shall develop or review the structural design, specifications and plans for the construction.

### **803 CERTIFICATION OF COMPLIANCE (#4)**

No land in a special flood hazard area shall be occupied or used and no structure which is constructed or substantially improved shall be occupied until a Certificate of Compliance is issued by the Code Enforcement Officer subject to the following provisions:

- A. For new construction or substantial improvement of any elevated structure the applicant shall submit to the Code Enforcement Officer:
  - an Elevation Certificate completed by a Professional Land Surveyor, registered engineer or architect for compliance with 802 F., G, or H.
- B. The applicant shall submit written notification to the Code Enforcement Officer that the development is complete and complies with the provisions of this ordinance.
- C. The Code Enforcement Officer shall review the application within 10 working days of receipt of the application and shall issue a Certificate of Compliance, provided the building conforms with the provisions of this Article and other pertinent provisions of the City of Brewer Ordinances.

### **804 REVIEW OF SUBDIVISION AND DEVELOPMENT PROPOSALS**

The Planning Board shall, when reviewing subdivisions and other proposed developments that require review under other federal law, state law or local ordinances or regulations and all projects on 5 or more acres, or in the case of manufactured home parks divided into two or more lots, assure that:

- A. All such proposals are consistent with the need to minimize flood damage.
- B. All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damages.
- C. Adequate drainage is provided so as to reduce exposure to flood hazards.

- D. All proposals include base flood elevation, flood boundaries, and in a riverine floodplain, floodway data. These determinations shall be based on engineering practices recognized by the Federal Emergency Management Agency.
- E. Any proposed development plan must include a condition that structures on any lots in the development having any portion of its land within a Special Flood Hazard Area are to be constructed in accordance with 802 of this Article. Such requirement will be included in any deed, lease, purchase and sale agreement, or document transferring or expressing an intent to transfer any interest in real estate or structure, including but not limited to a time share interest. The statement shall clearly articulate that the municipality may enforce any violation of the construction requirement and that fact shall also be included in the deed on any other document previously described. The construction requirement shall also be clearly stated on any map, plat, or plan to be signed by the Planning Board or local reviewing authority as part of the approval process.

#### **805 APPEALS AND VARIANCES (#4)**

The Board of Appeals of the City of Brewer may, upon written application of an aggrieved party, hear and decide appeals from determinations of the Code Enforcement Officer or the Planning Board in the administration of the provision of this Article. The Board of Appeals may grant a variance from the requirements of this Article consistent with state law and the following criteria:

- A. Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- B. Variances shall be granted only upon:
  - 1. a showing of good and sufficient cause; and,
  - 2. a determination that should be a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public or conflict with existing local laws and ordinances; and,
  - 3. a showing that the existence of the variance will not cause a conflict with other state, federal or local laws or ordinances; and,
  - 4. a determination that failure to grant the variance would result in “undue hardship,” which in this subsection means:
    - a. that the land in question cannot yield a reasonable return unless a variance is granted; and,

- b. that the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and,
  - c. that the granting of a variance will not alter the essential character or the locality; and
  - d. that the hardship is not the result of action taken by the applicant or a prior owner.
- C. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and the Board of Appeals may impose such conditions to a variance as it deems necessary.
- D. Variances may be issued for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that:
  1. other criteria of 805 and 802. K are met; and,
  2. the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- E. Variances may be issued for the repair, reconstruction, rehabilitation, or restoration of Historic Structures upon the determination that:
  1. the development meets the criteria of 805, paragraphs A. thru D. above; and,
  2. the proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as a Historic Structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- F. Any applicant who meets the criteria of 805 paragraphs A through E shall be notified by the Board of Appeals in writing over the signature of the Chairman of the Board of Appeals that:
  1. The issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage;
  2. Such construction below the base flood level increase risks to life and property; and,
  3. The applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.

- G. The Board of Appeals shall submit to the Code Enforcement Officer a report of all variance actions, including justification for the granting of the variance and an authorization for the Code Enforcement Officer to issue a Flood Hazard Development Permit, which includes any conditions to be attached to said permit.

#### **806 ENFORCEMENT AND PENALTIES**

- A. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Article pursuant to 30-A MRSA sec. 4452. (#4)
- B. The penalties contained in 30-A MRSA sec. 4452 shall apply to any violation of this Article.
- C. In addition to any other actions, the Code Enforcement Officer, upon determination that a violation exists, shall submit a declaration to the Administrator of the Federal Insurance Administration requesting a denial of flood insurance. the valid declaration shall consist of:
1. the name of the property owner and address or legal description of the property sufficient to confirm its identity or location;
  2. a clear and unequivocal declaration that the property is in violation of a cited state or local law, regulation, or ordinance;
  3. a clear statement that the public body making the declaration has authority to do so and a citation to that authority;
  4. evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and,
  5. a clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

#### **807 VALIDITY AND SEVERABILITY**

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

#### **808 CONFLICT WITH OTHER ORDINANCES**

This Article shall not in any way impair or remove the necessity of compliance with any other applicable rule, ordinance, regulation, bylaw, permit, or provision of law. Where this Article imposes a greater restriction upon the use of land, buildings, or structures, the provisions of this Article shall control.

#### **809 DEFINITIONS (#4)**

Unless specifically defined below, words and phrases used in this Article shall have the same meaning as they have at common law and to give this Article its most reasonable application. Words used in the present tense include the future, the singular number includes the plural, and the plural number includes the singular. The word "may" is permissive; "shall" is mandatory and not discretionary.

1. "Accessory Structure" – means a small detached structure that is incidental and subordinate to the principal structure.
2. "Adjacent Grade" - means the natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
3. "Area of Special Flood Hazard" - means the land in the floodplain having a one percent or greater chance of flooding in any given year, as specifically identified in the Flood Insurance Study cited in 801 of this Article.
4. "Base Flood" - means the flood having a one percent chance of being equaled or exceeded in any given year, commonly called the 100-year flood.
5. "Basement" - means any area of the building having its floor subgrade (below ground level) on all sides.
6. "Building" - see "structure."
7. "Certificate of Compliance" - A document signed by the Code Enforcement Officer stating that a structure is in compliance with all of the provisions of this Article.
8. "Code Enforcement Officer" - is the person who is appointed as an Executive Officer of the Department of Inspections pursuant to the Brewer, ME, Building Code, Article 16, Section 109.
9. "Development" - means any change caused by individuals or entities to improved or unimproved real estate, including but not limited to the construction of buildings or other structures; the construction of additions or substantial improvements to buildings or other structures; mining, dredging, filling, grading, paving, excavation, or drilling operations or the storage of equipment or materials; and the storage, deposition, or extraction of materials, public or private sewage disposal systems or water supply facilities.
10. "Elevated Building" - means a non-basement building (i) built, in the case of a building in Zones A1-A30, and A, to have the top of the elevated floor, elevated above the ground level by means of pilings, columns, posts, piers, or "stilts;" and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood of up to one foot above the magnitude of the base flood. In the case of Zones A1-A30, or A, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters as required in 802.L.

11. "Elevation Certificate" - An official form (FEMA Form 81-31, 08/99, as amended) that (i) is used to verify compliance with the floodplain management regulations of the National Flood Insurance Program; and, (ii) is required for purchasing flood insurance.
12. "Flood" or "Flooding" - means:
  - (a) A general and temporary condition of partial or complete inundation of normally dry land areas from:
    - (1) The overflow of inland or tidal waters.
    - (2) The unusual and rapid accumulation or runoff of surface waters from any source.
  - (b) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (a)(1) of this definition.
13. "Flood Elevation Study" - means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.
14. "Flood Insurance Rate Map" (FIRM) - means an official map of a community, on which the Administrator of the Federal Insurance Administration has delineated both the special hazard areas and the risk premium zones applicable to the community.
15. "Flood Insurance Study" see "Flood Elevation Study."
16. "Floodplain" or "Flood-prone Area" - means any land area susceptible to being inundated by water from any source (see definition of "flooding").
17. "Floodplain Management" - means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.
18. "Floodplain Management Regulations" - means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance, and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

19. "Flood Proofing" - means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.
20. "Floodway" - "see Regulatory Floodway."
21. "Floodway Encroachment Lines" - mean the lines marking the limits of floodways on federal, state, and local floodplain maps.
22. "Freeboard" - means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed, that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions.
23. "Functionally Dependent Use" - means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.
24. "Historic Structure – means any structure that is:
  - a. Listed individually in the National Register of Historic Places ( a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
  - b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
  - c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior;  
or
  - d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either;
    1. By an approved state program as determined by the Secretary of the Interior; or

2. Directly by the Secretary of the Interior in states without approved programs.
25. "Locally Established Datum" - means, for purposes of this ordinance, an elevation established for a specific site to which all other elevations at the site are referenced. This elevation is generally not referenced to the National Geodetic Vertical Datum (NGVD) or any other established datum and is used in areas where Mean Sea Level data is too far from a specific site to be practically used.
26. "Lowest Floor" - means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements 802 of this ordinance.
27. "Manufactured Home" - means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.
28. "Manufactured Home Park or Subdivision" - means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
29. "Mean Sea Level" - means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, other datum, to which base flood elevations shown on a community's Flood Insurance Rate map are referenced.
30. Minor Development – means all development that is not new construction or substantial improvements such as repairs, maintenance renovations or additions, whose value is less than 50% of the market value of the structure. It also includes, but is not limited to: accessory structures as provided for in 802.J., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves and piers.
31. "New Construction" - means structures for which the "start of construction" commenced on or after the effective date of floodplain management regulations adopted by a community. (1978)
32. "100-year flood" see "Base Flood."
33. Recreational Vehicle – means a vehicle which is:
  - a. built on a single chassis

- b. 400 square feet or less when measured at the largest horizontal projection not including slideouts
  - c. designed to be self-propelled or permanently towable by a vehicle
  - d. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.
34. "Regulatory Floodway" - (i) means the channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot, and (ii) in Zone A is considered to be the channel of a river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain as measured from the normal high water mark to the upland limit of the floodplain.
35. "Riverine" - means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.
36. "Start of Construction" - means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, substantial improvement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, or modification of any construction element, whether or not that alteration affects the external dimensions of the building.
37. "Structure" - means, for floodplain management purposes, a walled and roofed building. A gas or liquid storage tank that is principally above ground is also a structure.
38. Substantial Damage – means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed 50% of the market value of the structure before the damage occurred.
39. "Substantial Improvement" - means any repair, reconstruction, or improvement of a structure, the value of which equals, or exceeds 50% of the market value of the structure either before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred. For purposes of this definition "substantial improvement" is considered to occur at the time of the first alteration of any wall, ceiling, floor, or structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either (1) any project for improvement of a structure to correct existing violations

of state or local health, sanitary, or safety code specifications which have been identified by the local Code Enforcement Official and which are the minimum necessary to assure safe living conditions or (2) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places provided that such alteration would not preclude the structure's continued designation as a historic structure and a variance is obtained by the community's Board of Appeals.

40. "Variance" - means a grant of relief by a community from the terms of a floodplain management regulation.
41. "Violation" - means the failure of a structure or other development to fully comply with a community's floodplain management regulations or ordinance.

## **810 ABROGATION**

This article repeals and replaces any municipal Article previously enacted to comply with the National Flood Insurance Act of 1968 (P.L. 90-488, as amended).

# ARTICLE 9 ROADS AND STREETS

## 901 OBJECTIVE

The purpose of these provisions is to establish appropriate standards for the design of streets and access points to streets and ways that will (1) promote the safety and convenience of vehicular traffic; (2) minimize the long term costs for maintenance and repair of streets; and (3) provide for cost-effective water, sewer and stormwater management standards within such ways.

## 902 JURISDICTION

These provisions shall be applicable to the design and construction of all public streets, streets in subdivisions and streets constructed in conjunction with site plan and access points thereto.

## 903 AUTHORITY IN ADOPTION

This Article is adopted pursuant to the Constitution of the State of Maine and Title 30-A, M.R.S.A. Subsection 3001, et seq.

## 904 PRELIMINARY MAP & DATA

The preliminary map and data required shall contain the following information:

- 904.1 The purposed name of the development;
- 904.2 Its location as forming a part of some larger tract or parcel of land referred to on the most recent tax maps for the City of Brewer, sufficient information to accurately locate the plan (reference to existing streets, plans, etc., may be used). If such do not exist within reasonable distance of the proposed subdivision, a vicinity plan on a small scale should accompany the preliminary plan;
- 904.3 The boundary lines of the tract to be involved, accurate in scale and bearing;
- 904.4 Contours at two-foot intervals; Contours at five feet intervals will be accepted if the City Engineer determines that five feet contour information is sufficient;
- 904.5 North-arrow and scale of the plan;
- 904.6 The map shall be drawn to a horizontal scale of not more than one hundred (100) feet to the inch; (the final plan must be at a scale of not more than sixty (60) feet to the inch);
- 904.7 Verification of right, title or interest in the property;

- 904.8** An actual field survey of the boundary lines of the tract, giving complete descriptive data by bearings, distances, made and certified by a licensed land surveyor. The corners of the tract shall be located on the ground and marked by the monuments;
- 904.9** A copy of the deed from which the survey is based. A copy of all covenants or deed restriction, easements, rights-of-way, or other encumbrances currently affecting the property;
- 904.10** A copy of that portion of the county Soil Survey covering the development. When the medium intensity soil survey shows soils which are generally unsuitable for the uses proposed, the Board may require the submittal of a high intensity soil survey or a report by a Registered Soil Scientist or Registered Professional Engineer experienced in geotechnics, indicating the suitability of soil conditions for those uses;
- 904.11** If an portion of the development is in a flood-prone area, the boundaries of any flood hazard areas and the 100-year flood elevation shall be delineated on the plan.

**904.12 MONUMENTATION (#4)**

1. Rights of Way: Granite, precast concrete monuments or iron pins shall be set at all street intersections and points of curvature, but no farther apart than 750 feet on streets without intersections or curves.
2. Subdivision Boundaries: Granite, precast concrete monuments or iron pins shall be set at all corners and all angle points where the interior angle of the subdivision boundary is 135 degrees or less.
3. Lots: All lots shall have a permanent marker at each corner. A permanent marker shall include, but not limited to, the following: a granite, precast concrete monument, or an iron pin.

**904.13 STREETS**

The location, widths, and other dimensions of all existing or planned streets and other important features such as railroad lines, water courses, exceptional topography, etc., within and contiguous to the tract to be subdivided; Other dimensions shall include:

1. Profile of streets.
2. Cross sections at all culverts, PC's, PT's, PVC's, and any access point such that at least one cross section is provided for any 50 feet of road.

3. Complete curve data for all horizontal and vertical curves.
4. Turning radii at all intersections.
5. Centerline gradients.
6. Locations of all existing and proposed overhead and underground utilities, to include but not be limited to water, sewer, electricity and street lighting.

**904.14** Existing sanitary sewers, storm drains and culverts within the tract and immediately adjacent thereto;

**904.15** A written statement indicating the proposed use of the lots, scope of development;

**904.16** Description of the improvements to be made; This will include a written construction specification, prepared by the Project Engineer, describing methods and materials proposed for the construction of improvements. The City Engineer shall evaluate same and report to the Planning Board;

**904.17** An estimate of the amount and type of vehicular traffic to be generated on a daily basis and at peak hours. This estimate shall be consistent with Institute of Transportation Engineers - "Trip Generation Manual, sixth edition, 1997;"

**904.18** Developments involving 40 or more parking spaces or projected to generate more than 400 vehicle trips per day, a traffic impact analysis, prepared by a Registered Professional Engineer with experience in traffic engineering, shall be submitted. The analysis shall indicate the expected average daily vehicular trips, peak-hour volumes, access conditions at the site, distribution of traffic, types of vehicles expected, effect upon the level of service of the street giving access to the site and neighboring street which may be affected, and recommended improvements to maintain the desired level of service on the affected services. Trip generation rates used shall be the mean value of most recent data contained in the Institute of Transportation Engineers (ITE) Trip Generation Report.

**904.19 EROSION & SEDIMENT CONTROL.**

1. GENERAL STANDARDS.

- A. Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result;

- B. All earth changes will be designed, constructed, and completed in such a manner so that the exposed area of any disturbed land will be limited to the shortest period of time possible.
- C. Sediment caused by accelerated soil erosion will be removed from runoff water before it leaves the development site.
- D. Any temporary or permanent facility designed and constructed for the conveyance of water around, through, or from the site will be designed to limit the water flow to a non-erosive velocity.
- E. Documentation to be presented to evaluate the potential impact due to soil erosion and sedimentation will consist of a narrative and plan map.

2. NARRATIVE

The narrative will consist of the following eight items:

- A. Existing site conditions - A description of the existing topography, vegetation and drainage.
- B. Adjacent Areas - A description of neighboring areas, such as streams, lakes, residential areas, roads, etc., which might be affected by the land disturbance.
- C. Soils - A brief of the soils of the site giving such information as soil, map, unit, name, erodibility, permeability, depth, texture and structure.
- D. Critical Areas - A description of areas on the site which have potentially serious erosion problems and wetlands, regardless of the size of those wetlands.
- E. Erosion and sediment control practices - A description of the methods which will be used to control erosion and sedimentation on the site.
- F. Permanent stabilization - A brief description, including specifications, of how the site will be stabilized after construction is completed.
- G. Schedule - A timing schedule indicating the anticipated starting and completion dates of the development and sequence and time of exposure of each area prior to the completion of runoff, erosion, and sediment control measures.

- H. Maintenance - A schedule of regular inspections and repair of erosion and sediment control structures should be set forth.

Narrative items A. thru E. are required submissions with the preliminary plan. Items F. thru H. are necessary elements for final plan approval.

### 3. PLAN MAP

The plan map shall consist of the following:

- A. Vicinity Map - A small map locating the site in relation to the surrounding area.
- B. Existing Contours - The existing contours of the site should be shown on a map. Two foot contour intervals are the standard to be used.
- C. Existing vegetation- The existing tree lines, grassy areas, or unique vegetation should be shown.
- D. Soils - The boundaries of the different soil map units should be shown where feasible.
- E. Indicate North - The direction of north in relation to the site should be shown.
- F. Critical erosion areas - Areas with potentially serious erosion problems should be shown.
- G. Existing drainage problems - The dividing lines and the direction of flow for the different drainage areas should be shown.
- H. Final contours - Changes to the existing contours should be shown.
- I. Limits of clearing and grading - Areas which are to be cleared and graded should be outlined.
- J. Locations of erosion and sediment control practices used on site should be shown.

Items A. thru J. are required submissions with the preliminary. Items H, I, and J, as proposed, are subject to approval.

The standards and practices established in the Environmental quality Handbook, March 1991 edition, prepared by the Maine Soil and Water conservation Commission are used as a part of this section, as are the erosion and sedimentation control guidelines adopted April, 1989, for use under the Site Location of Development Law.

## **905 PLAN INFORMATION**

Data required shall be as follows:

- 905.1** Name of the development and the name, if applicable of the larger development or tract of which it forms a part;
- 905.2** Names of the applicant and the engineer or surveyor;
- 905.3** The boundaries of the tract with accurate distances and bearings (which shall be determined by an accurate survey in the field which must be closed and balanced);
- 905.4** The accurate location and description of all monuments;
- 905.5** The accurate outline of all property which is offered for dedication for public use, with the purpose indicated thereon and of all property that may be reserved by covenant for the common use of the property owners in the development;
- 905.6** Private restrictions, if any;
- 905.7** North-arrow, date and scale of sixty (60) feet to the inch or less. One Hundred (100) feet to the inch is allowed when suitable detail can be shown at that scale as approved by the City Engineer;
- 905.8** A certificate of a licensed engineer or surveyor to the effect that the plan represents a survey made by him and that all of the monuments shown thereon actually exist and their positions are as shown;
- 905.9** Any other data that may be required by the Planning Board as part of its preliminary approval.

## **906 STANDARDS FOR STREETS**

### **906.1 ACCESS CONTROL TO DEVELOPMENT FROM EXISTING STREETS**

Provision shall be made for vehicular access to the development in such a manner as to safeguard against hazards to both vehicular and pedestrian traffic on existing streets, to avoid traffic congestion on any street, and to provide safe and convenient circulation on existing public streets.

#### **1. TRAFFIC CARRYING CAPACITY**

The street(s) giving access to the development and which can be expected to carry traffic to and from the development shall have the traffic carrying capacity, or be suitably improved, to accommodate the

amount and types of traffic generated by the proposed subdivision. No development shall increase the volume to capacity ratio of any street above 0.8 nor reduce the street's Level of Service to "D" or below.

2. TURNING LANES, ETC.

Where necessary to safeguard against hazards to vehicular and pedestrian traffic and to avoid traffic congestion, provisions shall be made for turning lanes, traffic directional islands, frontage roads, and traffic controls both on proposed streets and within existing public streets.

3. QUEUING CAPACITY

The street(s) giving access to the development shall be of a design and have sufficient capacity to avoid queuing of entering vehicles on any street.

4. DESIGN STANDARD

Design of the access to the development shall meet the following minimum design standards:

A. Sight Distances: Access shall be designed in line and grade to provide the required sight distance in each direction, as outlined in the table below:

Vehicle type expected to enter or cross highway	Sight distance (given in feet per each 10 mph of posted speed)	
	2 lane	4 lane
Passenger car	100	120
Single unit truck	130	150
Multi-unit truck	170	200

Sight distance shall be measured at a distance of 15' back from the edge of the travel way and at a height of 3.5 feet above the proposed access road grade to an object 4.25 feet above the pavement. Each direction of traffic shall be considered separately.

B. Skew Angle: Streets shall intersect existing roads at an angle as near to 90 degrees as site conditions permit, but not less than 75 degrees.

## **906.2 LAYOUT OF STREETS (#4)**

All streets in the development shall be designed so as to provide safe vehicular travel, and in the case of minor streets, shall be designed so as to discourage movement of through traffic.

### **1. TWO STREET CONNECTIONS**

Whenever possible, developments containing fifteen lots or more shall have at least two street connections with existing public streets.

### **2. RIGHT ANGLE INTERSECTIONS**

Streets shall intersect existing roads at an angle as near to 90 degrees as site conditions permit, but not less than 75 degrees.

### **3. SIGHT DISTANCES**

Intersections shall be designed in line and grade to provide a safe sight distance in each direction, as outlined in section 906.1.4.A. Intersections shall be designed to operate without any control device other than a yield or stop sign.

### **4. ACCESS TO ADJOINING PARCELS**

Where topography and other conditions allow, provision shall be made for circulation access connections to adjoining parcels of land of similar existing or potential use when such access connection will facilitate fire protection and public safety services as approved by the fire and police chiefs; or when such access will enable the public to travel between two existing or potential uses, generally open to the public without need to travel on a more heavily traveled public street.

### **5. DEAD-END STREETS**

Dead-end streets, where approved by the Planning Board, shall serve no more than 20 (twenty) residential dwelling units. Residential loop roads shall serve no more than 50 (fifty) residential dwelling units.

### **6. CIRCULAR TURN-AROUND**

Provision shall be made for a circular turn-around at the end of all dead-end streets. Such turn-arounds shall meet the provisions of 906.3.

7. TEMPORARY DEAD-ENDS

In phased subdivisions where temporary dead-end streets are created, such dead-end streets shall meet the requirements of sections 906.2.5, 906.2.6, and 906.3.

8. SIGNAGE AND SIGNALIZATION

The developer shall provide all necessary roadway signs and traffic signalization as may be required by the municipality, based upon municipal standards, state standards and a traffic impact study (if required).

9. FOUR-CORNERED INTERSECTIONS

Cross (4-cornered) street intersections shall be avoided insofar as possible, except at important traffic intersections. A minimum distance of one hundred fifty (150) feet shall be maintained between centerline of minor street and two hundred (200) feet between collector or a collector and minor street.

**906.3 STREET DESIGN STANDARDS (#4)**

For the purposes of this Article, streets are divided into the two following classifications: Residential and Commercial/Industrial. Residential streets shall further be divided into two sub-categories: Minor streets and Collector streets. Commercial/Industrial Streets shall further be divided into three sub-categories: Minor Streets, Local Service Streets and Collector Streets.

1. LOCAL SERVICE STREETS

Local service streets are defined as streets which are streets with no through traffic and have no potential for future extension; serve a predominance of repeat traffic; and serve mainly warehousing and distribution facilities. Local Service streets shall have a projected average daily traffic (ADT) volume of less than 500 trips per day.

2. MINOR STREETS

Minor streets are defined as streets which, by virtue of their layout, do not encourage through traffic. Short loop roads and dead-end streets would meet this definition. Minor streets shall have a projected ADT of between 200 and 1000 trips per day.

3. COLLECTOR STREETS

Collector streets are defined as streets which encourage through traffic, or which are intersected by one or more minor streets. Collector streets shall have a projected ADT of between 800 and 2000 trips per day.

4. AVERAGE DAILY TRAFFIC

Project average daily traffic shall be calculated based on proposed land use and data from the most recent edition of "Trip Generation" published by the Institute of Transportation Engineers (ITE).

5. RESIDENTIAL STANDARDS (#4)

The following minimum standards shall be met by all streets within Residential developments, and shall control the roadway, shoulders, curbs, sidewalks, drainage systems, culverts and other appurtenances:

MINIMUM DESIGN AND CONSTRUCTION  
STANDARDS FOR STREETS  
RESIDENTIAL DEVELOPMENTS

ITEM	COLLECTOR	MINOR
1. Minimum right of way width	60'	50'
2. Minimum pavement width	32'	24'
3.. Minimum paved shoulder width (each side)	4'	3'
4. Minimum travel way (each side)	12'	11'
5. Minimum grade	0.5%	0.5%
6. Maximum grade	8%	10%
7. Maximum grade at intersections for minimum distance	3% 75'	3% 50'
8. Number of sidewalks	1	1
9.** Number of curbed sides	2	2
10. Minimum centerline radii	250'	150'
11. Minimum tangent length between reverse curves	200'	100'
12. Gravel base (6" minus aggregate)	18"	18"
13. Crushed aggregate (2" minus aggregate)	6"	6"
14. Pavement thickness-base course	2"	2"
15. Pavement thickness-surface course	1.25"	1.25"
16. Minimum cross slope (travel way)	2%	2%
17. Minimum cross slope (shoulders)	4%	4%
18. Sidewalks		
1. Minimum width	5'	5'
2. Gravel base course	12"	12"
3. Pavement thickness	2"	2"
19. Dead-end or cul-de-sac streets		
1. Maximum length (see section 906.2.5.)		
2. Minimum right of way radius		65'
3. Minimum pavement radius at CL (center line) of road		45'
20. Minimum pavement/curb radii at intersection	30'	25'
-If minor intersects with minor		25'
-if minor intersects with collector		25'
21. Max sub-elevation (Collector)	0.08	
22. Grades of streets should conform as closely as possible to the original relief of the land.		
23. All changes in grade shall be connected by vertical curves such as to provide clear visibility for a distance of 200'.		

24. All residential streets shall have a drainage system consisting of underdrains and storm drains.
25. All materials shall meet the standards set forth in "Department of Transportation (State of Maine) Standard Specification for Highways and Bridges", 1988 and as subsequently revised.
26. Design speed, 35 mph for collector streets and 25 mph for minor streets.

## 6. COMMERCIAL, INDUSTRIAL STREETS

The following minimum standards shall be met by all streets within a Commercial or Industrial development, and shall control the roadway, shoulders, curbs, sidewalks, drainage systems, culverts, and other appurtenances. These are meant to be minimum standards. In all cases, where the design requirements of vehicles expected to use the streets, exceed the minimums set forth in this Article, AASHTO standards shall take precedence.

MINIMUM DESIGN AND CONSTRUCTION  
STANDARDS FOR STREETS  
COMMERCIAL AND INDUSTRIAL DEVELOPMENTS

ITEM	MINORLOCAL			
	COLLECTOR	SERVICE		
1.	Minimum right of way width	70'	60'	50'
2.	Minimum pavement width	40'	24'	24'
3.	Minimum width (travel lane)	14'	12'	12'
4.	Minimum width (shoulders)	6'	4'	3'
5.	Minimum grade	0.5%	0.5%	0.5%
6.	Maximum grade	6%	5%	5%
7.	Maximum grade at intersections (within 100')	3%	3%	3%
8.	Number of sidewalks	1	1	1
8a.	Number of curbs	2	2	2
9.	Minimum centerline radii	350'	250'	125'
10.	Minimum tangent length between reverse curves	200'	200'	100'
11.	Gravel base (6" minus aggregate)	21"	18"	18"
12.	Crushed aggregate (2" minus aggregate)	6"	6"	6"
13.	Pavement thickness base course	2.75"	2.75"	2.75"
14.	Pavement thickness surface course	1.25"	1.25"	1.25"
15.	Minimum cross slope			
	Travel way	2%	2%	2%
	Shoulders	4%	4%	4%
16.	Sidewalks			
	1. Minimum width	5'	5'	5'
	2. Gravel base course (8" base with 6" minus) (4" base with 2" gravel)	12"	12"	12"
	3. Pavement thickness	2"	2"	2"
17.	Dead-end or cul-de-sac streets			
	1. Minimum right of way radius		80'	80'
	2. Minimum pavement radius at CL (center line of road)		60'	60'
18.	Design speed (in miles per hour)	30	25	20

19. The largest vehicle expected to travel the streets on a daily basis shall govern the curb radii at street intersections with the minimum at 30 feet.
20. Grades of streets should conform as closely as possible to the original relief of the land.
21. All changes in grade shall be connected by vertical curves such as to provide clear visibility for a distance of 200'.
22. All commercial streets shall have a subsurface drainage system consisting of underdrains, curbs and storm drains. Streets serving an industrial district shall have either subsurface or open drainage systems within the right-of-way limits. Curbs are not required for streets approved with an open drainage system in the Industrial Zone.
23. All materials shall meet the standards set forth in "Department of Transportation (State of Maine) Standard Specification for Highways and Bridges", 1988 and as subsequently revised.

#### 7. SANITARY SEWERS

The size and slope of public sanitary sewers shall be subject to the approval of the City Engineer but in no event shall the diameter be less than eight (8) inches. The velocity standard for sanitary sewers shall be a minimum of 2-1/2 feet per second and a maximum of 10 feet per second (flowing full). Manholes shall be installed: at the end of each line; at all changes in grade, size or alignment; at all intersections; and at distances not greater than 300 feet for all sewers.

#### 8. STORMWATER SEWERS

The size of public stormwater sewers shall be subject to approval of the City Engineer but in no event shall the diameter be less than 10 inches. The minimum slope for a 10 inch storm drain shall than be 1/2 percent. The design of the storm system shall be based on a minimum 24 hour 25 year storm. In industrial areas where on-site temporary storage can be used without negative impact on property values, a ten year design storm may be used. The City Engineer may specify a larger diameter storm drain where, in his judgment, the slope of the terrain, the soil type, natural drainage or other factors dictate this.

Calculations shall utilize the methodology described in Soil Conservation Service publication "TR55: Urban Hydrology for Small Watersheds", 1986 or as subsequently revised, or TR-20, and shall include the watershed sub-basin, including offsite areas.

9. UNDERDRAINS

Underdrains shall conform to Section 605 of the "Department of Transportation (State of Maine) Standard Specification for Highways and Bridges", 1995 edition. Underdrains shall be utilized under all streets and roads except where it can be demonstrated by the applicant thru evidence presented to the City Engineer and the Planning Board that:

- A. Soils data, showing soil types and test areas and certified by a Registered Soil Scientist or a Registered Professional Engineer indicates that underdrains are not warranted.
- B. An acceptable engineering alternative has been developed, presented in the form of a set of plans stamped by a Registered Professional Engineer.

The City Engineer shall submit a written evaluation of the submittal to the Planning Board with his recommendation thereon.

10. GEOTEXTILES

All roads and streets shall be provided with stabilization geotextiles meeting the specifications found in Sections 620.01 to 620.05 of the "Department of Transportation (State of Maine) Standard Specification for Highways and Bridges", 1995 edition and the standard detail shown as Figure D.

The use of geotextiles may be waived where it can be demonstrated by the applicant, thru evidence presented to the City Engineer and the Planning Board in the form of a report presented by a Registered Engineer which documents that geotextiles are not warranted based on soil, groundwater, and loading factors.

11. TIMING OF INSTALLATION

Any drain, sewer line, water line, utility main, piping conduits, or other underground facility in said street or way, shall be constructed or installed before the gravel or other road material is placed thereon.

The City Engineer shall submit a written evaluation of the submittal to the Planning Board with his recommendation thereon.

**906.4. ACCESS CONTROL TO LOTS FROM STREETS. (#4)**

Provision shall be made for vehicular access to the individual lots in such a manner as to safeguard against hazards to both vehicular and pedestrian traffic on proposed streets, to avoid traffic congestion on any street, and to provide safe and convenient circulation on streets.

1. INTERSECTION ANGLE

Driveways shall intersect streets at an angle as near to 90 degrees as site conditions permit, but in no case less than 75 degrees.

2. SIGHT DISTANCE

Driveways shall be located and designed in line and grade to provide a safe sight distance in each direction as outlined in section 906.1.4.A.

3. PAVEMENT

All driveways within the street right of way shall be paved with bituminous concrete pavement. All commercial and industrial in access points, regardless of access volume, shall provide a paved apron extending 30 feet beyond the right of way.

4. NUMBER OF ENTRANCES

Unless approved by the Planning Board, no parcel shall have more than two entrances on any one street nor shall commercial or industrial entrances be spaced any closer than 120' away from other entrances as measured from the closest adjacent edge of each driveway excluding radii, whether these be located on the subject lot, or adjacent lots.

5. LINING UP ACCESS DRIVES

Access drives shall be either lined up with access drives located across streets or offset by a minimum distance of 100'. The Planning Board shall have the option of waiving this provision on individual lots after a review of the volume of traffic to be generated by a specific proposed use.

6. DISTANCE FROM INTERSECTIONS

A. Single-Family Lots. Residential driveways shall be located not less than 40 (forty) feet from the tangent point of the curb radius of any intersection. Driveways to corner lots shall gain access from the street of lower classification when a corner lot is

bounded by streets of two different classifications. The standards set forth on diagram 9.1 shall apply to driveways for all single-family lots.

- B. Commercial and Industrial access drives shall be located so as to allow the maximum clearance distance from street intersections as practical, based on site constraints. No access drive shall be located closer than 150 feet from any intersection measured from the closest adjacent edge of pavement excluding radii. Driveways to corner lots shall gain access from the street of lower classification when a corner lot is bounded by streets of two different classifications.

## 7. MULTI-FAMILY DWELLINGS

All access drives serving more than four (4) residential dwelling units shall meet the standards for minor residential streets.

## 8. COMMERCIAL INDUSTRIAL ACCESS ON STATE ROUTES

Commercial and industrial access points on State routes shall conform to the standard entrance design criteria of the Maine Department of Transportation, as revised.

### **907 WAIVERS**

The Planning Board may authorize a waiver of some of the design requirements of this Article only upon a written Finding of Fact of the following:

- 907.1** That a waiver of the design standards is required due to particular physical site conditions, or conditions in the existing street or utility systems;
- 907.2** That the granting of a waiver will not result in circumvention of the health and safety provisions of this Article and;
- 907.3** That the strict application of the standards of this Article would make the subdivision of an applicant's property not feasible, where feasibility is determined by physical, practical, and economic considerations.

### **908 ACCEPTANCE**

No street shall be accepted by the City of Brewer unless it is in compliance with this Article

DIAGRAM 9-1  
RESIDENTIAL DRIVEWAY

# **ARTICLE 10. MOBILE HOME PARKS**

## **1001 APPROVALS AND LICENSE**

**1001.1** All new mobile home parks or expanded mobile home parks shall require subdivision and site plan approval as required in this Land Use Code.

### **1001.2 REQUIREMENT OF LICENSE**

It shall be unlawful for any person to maintain or operate within the limits of the City of Brewer any mobile home park as defined by this Article, unless such person shall first obtain from the licensing authority a license therefore as hereinafter provided.

### **1001.3 LICENSE REVOCATION**

The City Council may revoke a license for any violation of this Article, the charter, codes and ordinances of the City of Brewer, and State statutes.

## **1002 APPLICATION PROCEDURE**

### **1002.1 APPLICATION PROCEDURE FOR THE CONSTRUCTION, DEVELOP-MENT AND EXPANSION OF PARKS**

An applicant for construction and/or development of a mobile home park shall file one velum or mylar and four (4) copies of a site plan with the City Planner. The site plan shall contain the following information:

1. Name and Address of Applicant. An application will be considered only when an applicant has demonstrated sufficient title, right or interest in all of the property which is proposed for development or use. an applicant shall demonstrate in writing sufficient title, right or interest as follows:

- A. When an applicant claims ownership of the property, copies of the deeds to the property shall be supplied.
  - B. When the applicant has an option to buy the property, a copy of the option agreement shall be supplied. Option agreements shall contain terms deemed sufficient by the Board to establish future title.
  - C. When the applicant has a lease on the property, a copy of the lease shall be supplied. The lease shall be of sufficient duration, as determined by the Board, to permit construction and reasonable use of the development.
  - D. When the applicant has eminent domain power over the property, evidence shall be supplied of the ability and intent to use the eminent domain power to acquire sufficient title, right or interest as determined by the Board.
  - E. When the applicant has a bond for a deed on the property, a copy of the bond for a deed shall be supplied.
  - F. When the applicant has a purchase and sales agreement to purchase the property, the applicant shall provide a copy of the purchase and sales agreement.
2. Exterior boundaries of the tract of land, as well as boundaries of each lot therein.

3. Location, ground floor area and elevation of existing and proposed buildings and other structures, including use and proposed use thereof.
4. Location, ground floor area and elevation of buildings on abutting properties.
5. Location of existing public streets.
6. Location of proposed access drives to the park from public streets.
7. Location and arrangement of proposed off-street parking and loading areas and their appurtenant drives and maneuvering areas.
8. Location of existing and proposed pedestrian walkways.
9. Location and dimensions of existing and proposed utilities and easements therefore, including sanitary sewerage, water and electricity. If the park is not to be served by a public sewer line then an on-site soils investigation report by a Department of Human Services licensed site-evaluator shall be provided. The report shall contain the types of soil, location of test pits, and proposed location and design of the best practical subsurface disposal system for the site.
10. Location of existing natural drainageways and proposed storm drainage facilities, including dimensions of culverts, pipes, etc.
11. Location, intensity, type, size and direction of all outdoor lighting.
12. Location and proposed use of areas proposed for outdoor recreation.

13. Location and type of existing and proposed fences, edges, and trees of 12 inch caliper and over, measured at a point 4.5 feet above ground level.
14. Contour lines at intervals of two (2) feet or less of existing and proposed grades for areas proposed to be excavated or filled.
15. Location and size of signs and all permanent outdoor fixtures.
16. In cases where construction may adversely affect such things as light, noise, safety and electro-magnetic effects, the applicant may be required to provide expert outside testimony.
17. The site plan shall have a scale of not more than one hundred (100) feet to the inch.

#### **1002.2 APPLICATION FEE**

At the time the site plan is filed, the applicant shall pay to the City Clerk fees as established by the City Council.

#### **1003 STANDARDS**

New mobile home parks and expansion of existing mobile home parks shall conform to the following minimum requirements:

**1003.1** Mobile home parks may be authorized for development only in such locations as provided for in Article 3 of the Land Use Code.

**1003.2** Mobile home parks shall be located on a well-drained site properly graded to insure rapid drainage and freedom from stagnant pools of water. The site shall not be exposed to objectionable smoke, noise, odors or any other adverse influences, and no portion subject to unpredictable sudden

flooding, subsidence or erosion shall be used for any purpose that would expose persons or property to hazards.

- 1003.3** A mobile home park shall be located on a single parcel of land having sufficient overall area to accommodate, in addition to the individual mobile home lots, all roads rights-of-way and all buffer strips, open space, and other areas required under this Land Use Code or under any other applicable law, rule or regulation.
- 1003.4** All mobile homes shall be located at least fifty (50) feet from all mobile home park boundary lines and shall be screened from adjacent properties and public streets using the buffer strip criteria in site plan review (Article 6 of this Land Use Code). Provided that the fifty foot requirement shall be waived for all mobile home parks in which the projected density of mobile homes per acre is less than twice the density of existing residential units on adjacent residential properties, or if any adjacent parcel remains undeveloped, less than twice the maximum density of residential units permitted under the existing zoning classifications. Where the fifty (50) foot requirement is waived under this provision, all units in the mobile home park shall be set back from existing or proposed public streets the same distance as required for adjacent residential developments.
- 1003.5** No structures, streets or utilities may be placed in any buffer strip required under this Land Use Code, except that utilities may be permitted to cross a buffer strip to provide services to the mobile home park.
- 1003.6** A minimum of twenty-five (25) mobile home lots shall be completed and provided with all utilities, streets and sidewalks by this Land Use Code before occupancy of the mobile home park shall be permitted.
- 1003.7** Lot size and setback requirements:

1. Each individual mobile home lot shall not be less than 6,500 square feet in area, and shall not be less than fifty-five (55) feet wide.
2. No mobile home or accessory structure shall be located less than five (5) feet from the side and twenty (20) feet from the rear lines of an individual mobile home lot, and there shall be a minimum distance of twenty (20) feet between adjacent mobile homes.
3. No mobile homes shall be located less than thirty (30) feet from the right-of-way line of any street, or less than forty (40) feet from a service building, within the park.

#### **1003.8 Streets, Walks and Parking**

1. All mobile home parks shall be provided with safe and convenient vehicular access from abutting public streets or roads to each mobile home lot. All park streets shall be well drained, paved, maintained in good condition, and adequately lighted at night. All streets within the park shall have a minimum right-of-way of fifty (50) feet. Pavement width shall be no less than thirty-six (36) feet where parking is permitted on both sides of the street. Where parking is permitted on only one side of a street, the minimum pavement width shall be twenty (20) feet. Provided, that any roads within a mobile home park to remain in private ownership shall be not less than twenty-three (23) feet in width, of which twenty (20) feet must be suitably paved.
2. All streets within a mobile home park shall be constructed in accordance with sound engineering standards and practices, and designed by a registered professional engineer.

3. All streets with a mobile home park shall be furnished with lighting units to provide the following average maintained levels of illumination:
  - A. All parts of street system 0.6 foot candle with a minimum of 0.3 foot candle.
  - B. Street intersections, steps or ramps - individually illuminated with a minimum of 0.3 foot candle.
4. Dead-end streets shall be limited in length to 1,000 feet and at the closed end shall be provided with a turnaround having a minimum radius of forty (40) feet.
5. Paved walkways not less than three (3) feet in width shall connect each mobile home stand to a paved street or to a paved driveway connecting to a paved street.
6. Two (2) off-street parking spaces shall be provided on each mobile home lot.

**1003.9** Mobile home lots shall provide an adequate support system, approved by the Code Enforcement Officer, for the placement of the mobile home as required in Article 3, Section 309.3.10, 309.3.13 and 309.3.14.

**1003.10** All individual mobile homes shall be equipped with skirting.

**1003.11 Landscaping**

1. Where possible, existing trees shall be preserved, and mobile home support systems shall be oriented with respect to scenic vistas, natural landscape features, topography, and natural drainage areas.
2. Lawn and other ground cover shall be installed on all areas except those covered by structures, paved or surfaced areas and planting beds, and undisturbed areas such as woods

and ravines which are to be preserved in their natural state. In no case, will the impervious surface ratio of a mobile home park exceed 0.25.

3. Screen planting, providing a dense visual barrier at all times, shall be provided around the boundaries of the park and around laundry drying yards, garbage and trash collection stations, non-residential uses, and along rear lot lines of all mobile home lots. Screens shall consist of shrubs or trees at least five (5) feet wide, and at the time of planting, at least four (4) feet in height, and eventually reaching for a mature height of at least ten (10) feet. The screen planting zone extending along boundary lines shall have a minimum width of twenty-five (25) feet.
4. Other planting shall be provided and shall be adequate in size, quantity and character to provide an attractive setting for the mobile homes and other improvements, to provide adequate privacy and pleasant outlooks for living units, to minimize reflected glare and to afford summer shade.

**1003.12** Recreation areas shall be provided for the use of mobile home park residents. The size of such areas shall be based upon a minimum of 10% of the area of the mobile home lots in the development with no single recreation area being less than 12,000 square feet of usable open space. Such areas shall be easily accessible to all park residents, located so as to be free of traffic hazards and, where topography permits, centrally located. Any buildings provided for recreation areas shall contain adequate toilet facilities. The number and location of such facilities shall be determined by the Planning Board.

**1003.13** All transformer boxes, substations, pumping stations and meters shall be located and designed as not to be unsightly and hazardous to the public.

**1003.14** Any construction of, or in, a mobile home park shall be done according to an approved plan and shall be completed no later

than the expiration date of the site plan approval. Construction shall be deemed to be completed although the final site and grading work has not been completed as to any individual mobile home lot; provided, however, that said final site and grading work will be completed as to any individual mobile home lot prior to any occupancy and within a period of sixty (60) days from the date that any mobile home is placed on said lot. Final paving of streets and driveways shall be completed no later than June 30 of the year following construction of said streets.

### **1003.15 STORAGE STRUCTURES**

Separate storage structures not exceeding 96 square feet in floor area or seven feet in height may be erected on an individual leased lot. Setback requirements for an accessory structure per this Land Use Code must be met. Only one such separate storage structure shall be permitted per mobile home.

### **1003.16 MOBILE HOME CERTIFICATION**

No mobile home shall be moved onto a lot unless it bears certification of conformity to the Federal Construction and Safety Standards Act of 1974. Such certification shall be in the form of a label or tag permanently affixed to each mobile home.

Mobile homes manufactured prior to the effective implementation date of this Federal act shall meet the certification requirement if they meet the standards of the National Fire Protection Association No. 501B-1968 Standard for Mobile Homes or the "State of Maine Seal of Approval" as issued under the Maine "Industrialized Housing Law" (30 MRSA 4771-4733). Evidence of the meeting either of these certification tests is in the form of a label or tag bearing the referenced approval which was permanently affixed to the mobile home at the time of manufacture.

### **1003.17 WATER SUPPLY**

A water supply system shall be installed at the expense of the applicant. Fire hydrants shall be provided on the same or separate system, which are located within five hundred (500) feet of each other and within four hundred (400) feet of any mobile home at the applicant's expense, along the system.

The applicant shall demonstrate by actual test or by signed affidavit from an authorized representative of the servicing water company that water meeting The Federal Safe Drinking Water Act of 1975 can be supplied to the mobile home park at the rate of 350 gallons per day per dwelling unit. Systems with fire hydrants on them must provide seven hundred and fifty (750) gallons of water per minute, at sixty (60) pounds of pressure for a minimum of two (2) hours, at each hydrant, which the applicant must prove by affidavit or test. Storage shall be provided as necessary to meet peak domestic demands or fire protection needs.

It shall be demonstrated by the applicant that the proposed project will not result in an undue burden on the water source, treatment facilities or distribution system involved; or in the instance that the preceding is not feasible, assurance that such source, treatment facility or distribution system will be modified to meet the expanded needs.

Signed affidavits from the servicing water company or engineering reports prepared by a civil engineer registered in the State of Maine shall be used to demonstrate such conditions.

The minimum water main permitted shall be six inch and shall be installed at the expense of the applicant.

The water supply system shall be designed and installed in accordance with the requirements of the Maine Department of Human Services. Any central water system provided for the project shall conform to the recommendations included in the

Manual for Evaluating Public Drinking Water Supplies, Public Health Service No. 1180, (1969) as to the following factors: locations and protection of the source, design, construction and operation of the distribution system, appurtenances and treatment facilities.

### **1003.18 SEWAGE DISPOSAL**

A sanitary sewer system shall be installed at the expense of the project principal.

An applicant shall submit plans for sewage disposal designed by a licensed civil engineer in full compliance with the requirements of the State of Maine Plumbing Code and/or Department of Environmental Protection.

### **1003.19 REGISTRATION OF TENANTS**

In mobile home parks, the licensee shall keep a current register which shall contain the following information:

- (a) The name of the owner of each mobile home in said park.
- (b) The lot location by number of said mobile home.
- (c) The manufacturer's name, model number and serial number of said mobile home.
- (d) Names of the usual occupants of said mobile home.
- (e) The licensee shall notify the Code Enforcement office when a mobile home is moved on or off a lot.

### **1003.20 AVAILABILITY OF TENANT INFORMATION TO PUBLIC OFFICERS**

The foregoing information shall be made available to the City Manager of the City of Brewer or to the Chiefs of Police or the Fire Department of said City upon request. Refusal to keep or render up said records shall be grounds for revocation or refusal to renew any license granted hereunder. Licensees shall keep such records for a period of at least three (3) years.

### **1003.21 INSPECTION**

The City Council, its departments or their respective agents shall have the right to inspect the park or any part thereof at any time.

### **1003.22 USE OF A MOBILE HOME AS A PERMANENT RESIDENCE**

No mobile home or trailer shall be occupied as a residence either permanently or temporarily in the City of Brewer, whether altered for placement upon a permanent foundation or not, except in a licensed park or as permitted under the provisions of this Land Use Code.

### **1003.23 OCCUPANCY OF A MOBILE HOME IN A PARK**

No mobile home placed on any space in a mobile home park shall be occupied for any use, beyond a 48-hour period, until a certificate of occupancy shall have been issued by the Code Enforcement Officer certifying that such mobile home conforms to the provisions of applicable city codes and ordinances.

### **1003.24 NOTICE TO CODE ENFORCEMENT OFFICER OF THE ADMISSION OF A MOBILE HOME INTO A PARK AND CERTIFICATE OF OCCUPANCY**

The license of a mobile home park shall notify the Code Enforcement Officer on each occasion that a mobile home is moved onto a lot in the Mobile Home Park.

The Code Enforcement Officer shall upon receipt of such notice and upon receipt of an application for a certificate of occupancy by the mobile home owner, make an inspection of the mobile home to determine if it meets the provisions of applicable city codes and ordinances.



# **ARTICLE 11 TELECOMMUNICATION FACILITIES**

**The following standards shall apply to all Telecommunication Facilities:**

## **1101 HEIGHT**

Height limit shall be 195 feet.

The height of a telecommunication tower shall be measured from the natural undisturbed ground surface below the center of the base of said tower to the top of the tower itself or, if higher, to the tip of the highest antenna or piece of equipment attached thereto. In the case of building-mounted towers the height of the tower includes the height of the portion of the building on which it is mounted. In the case of crank-up or other similar towers whose height can be adjusted, the height of the tower shall be the maximum height to which it is capable of being raised.

## **1102 ACCESS**

**1102.1** All telecommunications facilities shall be located and equipped with step bolts and ladders to be readily accessible for inspection purposes. Guy wires and other accessories shall not cross or encroach upon any street or other public space, be located over electric power lines or encroach upon any other privately owned property without written consent of the owner.

**1102.2** Sufficient anti-climbing measures shall be incorporated into the facility, as needed, to reduce potential for trespass and injury.

## **1103 CONSTRUCTION**

All telecommunication facilities shall be constructed of corrosion-resistant, non-combustible material.

## **1104 DESIGN STRENGTH**

All telecommunication facilities shall be designed for the dead load plus ice load and wind load. Said design shall be certified by a structural engineer licensed by the State of Maine.

#### **1105 ANCHORING**

Adequate foundation and anchorage shall be provided to resist two times the calculated wind uplift, as certified by a Maine registered professional engineer.

#### **1106 GROUNDING**

All telecommunication antenna/towers shall be permanently and effectively grounded, as certified by a Maine registered professional engineer.

#### **1107 SETBACKS**

**1107.1** All setbacks shall be measured from the base of the tower or structure closest to the applicable property line or structure.

**1107.2** The facility base shall be set back one hundred ten (110) percent of the total height, including any attached transmitting or receiving devices. Guy wire anchors shall meet the minimum setback of the zoning districts.

#### **1108 EXEMPT FACILITIES - BASIC REQUIREMENTS**

Exempt Facilities may be installed, erected, maintained and/or operated in any zoning district, without benefit of a building permit or other entitlement process, so long as all the following conditions are met:

**1108.1** The antenna use involved is accessory to the primary use of the property which is not a telecommunications facility;

**1108.2** In a residential zone, no more than one (1) support structure for licensed amateur radio operator, satellite dish three feet (3') or less in diameter, is allowed on the parcel; and

**1108.3** Sufficient anti-climbing measures have been incorporated into the facility, as needed, to reduce potential for trespass and injury.

#### **1109 MINI FACILITIES - BASIC REQUIREMENTS**

Mini facilities defined in this Section may be installed, erected, maintained and/or operate in any zoning district where such facilities are permitted under this title, upon the issuance of a necessary permit and receipt of a Certificate of Occupancy by the Code Enforcement Officer, if the following conditions are met:

**1109.1** In a commercial zone, no more than three (3) antenna, satellite dish eight feet (8') or less in diameter; where adequate screening, at the discretion of the Code Enforcement Officer, is provided; and the telecommunication facilities are solely for the use of the project site tenants - location subject to the discretionary review and approval of the Code Enforcement Officer.

**1109.2** Replacement of pre-existing telecommunication facilities, installed under a prior approval under this Section which is being proposed for replacement by equipment of identical or a smaller size, at the discretion of the Code Enforcement Officer.

**1109.3** Sufficient anti-climbing measures have been incorporated into the facility, as needed, to reduce potential for trespass and injury.

#### **1110 MINOR FACILITIES - BASIC REQUIREMENTS**

Minor facilities as defined in this Section may be installed, erected, maintained and/or operated in any commercial zoning district where such facilities are permitted under this title, upon the issuance of all necessary permits and receipt of a Certificate of Occupancy by the Code Enforcement Officer.

**1110.1** The minor antenna use involved is an accessory to the primary use of the property that is not a telecommunications facility.

- 1110.2** The combined effective radiated power radiated by all the antenna present on the parcel is less than 1500 watts.
- 1110.3** The antenna is not situated between the primary building on the parcel and any public or private street adjoining the parcel, so as to create a negative visual impact.
- 1110.4** The antenna is located outside all yard and street setbacks specified in the zoning district in which the antenna is to be located.
- 1110.5** None of the guy wires employed are anchored within the area in front of the primary structure on the parcel.
- 1110.6** No portion of the antenna array extends beyond the property lines or into the area in front of the primary building on the parcel, so as to create a negative visual impact.
- 1110.7** At least ten feet (10') of horizontal clearance exists between the antenna and any power lines, unless more clearance is required to meet Bangor Hydro Electric Company standards.
- 1110.8** No more than two (2) satellite dishes are allowed on the parcel, one of which may be over three feet (3') in diameter, but no larger than eight feet (8') in diameter, with adequate screening, at the discretion of the Code Enforcement Officer.
- 1110.9** Any ground mounted satellite dish with a diameter greater than four feet (4') that is situated less than five (5) times its actual diameter from adjoining property lines has screening treatments located along the antenna's non-reception window axes and low-level landscape treatments along its reception window axes.
- 1110.10** Any roof mounted panel antenna with a face area greater than three and one-half (3 ½) square feet shall be located so as to be effectively unnoticeable.

**1110.11** The facility is located more than seventy-five feet (75') from any residential dwelling unit, unless recognized as an exempt facility as set forth in this Article.

**1110.12** No trees larger than twenty inches (20") in diameter measured at four and one-half feet (4½') high on the tree would have to be removed.

**1110.13** Any new building(s), structure(s), control panel(s), etc. shall be effectively screened from view from off-site.

**1110.14** The site has an average cross slope of 10% or less; and

**1110.15** All utility lines to the facility from public or private streets shall be placed under ground.

**1110.16** The general criteria set forth in this Section are met.

## **1111 LIFE OF PERMITS**

**1111.1** A use permit issued pursuant to this chapter or a site plan approval issued pursuant to this chapter authorizing establishment of a telecommunication facility, except exempt facilities as defined in this Article shall be reviewed every ten (10) years. Costs associated with the review process shall be borne by the telecommunication facility owner/ provider.

Grounds for revocation of the use permit shall be limited to a finding that (1) the use involved is no longer allowed in the applicable zoning district, (2) the facility fails to comply with the relevant requirements of this Article as they exist at the time of renewal and the permittee has failed to supply assurances acceptable to the Code Enforcement Officer that the facility will be brought into compliance within one hundred twenty (120) days, (3) the permittee has failed to comply with the conditions-of-approval imposed, (4) the facility has not been properly maintained, or (5) the facility has not been upgraded to minimize its impact, including community aesthetics, to the greatest extent

permitted by the technology that exists at the time of renewal and is consistent with the provisions of universal service at affordable rates. The grounds for appeal of issuance of a renewal shall be limited to a showing that one or more of the situations listed above do in fact exist or that the notice by the Code Enforcement Officer was not provided.

**1111.2** If a use permit or other entitlement for use is not renewed, it shall automatically become null and void without notice or hearing ten (10) years after it is issued or upon cessation of use for more than a year and a day, whichever comes first. Unless a new use permit or entitlement of use is issued, within one hundred twenty (120) days thereafter all improvements installed including their foundations down to three feet (3' below ground surface) shall be removed from the property and the site restored to its natural pre-construction state within one hundred eighty (180) days of non-renewal or abandonment. Any access road installed shall also be removed and the ground returned to its natural condition unless the property owner establishes to the satisfaction of the Code Enforcement Officer that these sections of road are necessary to serve some other allowed use of the property that is permitted or is currently present or to provide access to adjoining parcels.

## **1112 BASIC DESIGN**

All telecommunication facilities, except exempt facilities as defined in Article 14 of this Land Use Code, shall be designed to blend into the surrounding environment to the greatest extent feasible. To this end all the following measures shall be implemented:

**1112.1** Telecommunication towers shall be designed and constructed as set forth by the this Land Use Code and other ordinances and codes of the City of Brewer.

- 1112.2** Telecommunication towers taller than thirty-five (35') shall be monopoles or guyed/lattice towers except where satisfactory evidence is submitted to the Code Enforcement Officer or Planning Board, as appropriate, that a self-supporting tower is required to provide the height and/or capacity necessary for the proposed telecommunication use to minimize the need for screening from adjacent properties, or to reduce the potential for bird strikes.
- 1112.3** Satellite dishes other than microwave dishes shall be of mesh construction, except where technical evidence is acceptable to the Code Enforcement Officer or Planning Board, as appropriate, is submitted showing that this is infeasible.
- 1112.4** Telecommunication support facilities (i.e. vaults, equipment rooms, utilities, and equipment enclosures) shall be constructed out of non-reflective materials (visible exterior surfaces only) and shall be placed in underground vaults to all extent possible.
- 1112.5** Telecommunication support facilities shall be no taller than one story (fifteen feet) in height and shall be treated to look like a building or facility typically found in the area.
- 1112.6** Telecommunication support facilities in areas of high visibility shall, where possible, be sited below the Ridge line or designed (i.e. placed underground, depressed, or located behind earth berms) to minimize their profile.
- 1112.7** All buildings, poles, towers, antenna supports, antennas, and other components of each telecommunications site shall be initially painted and thereafter repainted as necessary with a flat paint. The color selected shall be one that in the opinion of the Code Enforcement Officer or Planning Board, as appropriate, will minimize their visibility to the greatest extent feasible. To this end, improvements which will be primarily viewed against soils, trees or grasslands shall be painted colors matching these landscapes while elements which rise above the horizon shall be painted a blue gray that matches the typical sky color at that location.

**1112.8** The project description and permit shall include a specific maximum allowable gross cross-sectional area, or silhouette, of the facility. The silhouette shall be measured from the worse case elevation perspective.

**1112.9** The City shall have the authority to require special design of the telecommunication facilities where findings of particular sensitivity are made (e.g. proximity to historic or aesthetically significant structures, views and/or community features).

### **1113 LOCATION**

All telecommunication facilities shall be located so as to minimize their visibility and the number of distinct facilities present. To this end all of the following measures shall be implemented for all telecommunication facilities, except exempt facilities as defined in this Land Use Code.

**1113.1** No telecommunication facility shall be installed within the safety zone of the Bangor International Airport and/or the Brewer Airport unless the airport owner/operator indicates that it will not adversely affect the operation of the airport.

**1113.2** No telecommunication facility shall be installed at a location where special painting or lighting will be required by the FAA regulations unless technical evidence acceptable to the Code Enforcement Officer or Planning Board, as appropriate, is submitted showing that this is the only technically feasible location for this facility.

**1113.3** No telecommunication facility shall be installed on an exposed ridge line, in or at a location readily visible from highways or roadways, a public trail, public park or other outdoor recreation area, or in property designated as a park or open space on any Site or Subdivision Plan as approved by the Planning Board, unless it blends with the surrounding existing natural and man-made environment in such a manner as to be effectively

unnoticeable and a finding is made that no other location is technically feasible.

**1113.4** No telecommunication facility that is readily visible from off-site shall be installed closer than one-half mile from another readily visible uncamouflaged or unscreened telecommunication facility unless it is a co-located facility, situated on a multiple-user site, or blends with the surrounding existing natural and man-made environment in such a manner as to be effectively unnoticeable; or technical evidence acceptable to the Code Enforcement Officer or Planning Board, as appropriate, is submitted showing a clear need for this facility and the infeasibility of co-locating it on one of these former sites.

**1113.5** No telecommunication facility that is readily visible from off-site shall be installed on a site that is not already developed with telecommunication facilities or other public or quasi-public uses unless it blends with the surrounding existing natural and man-made environment in such a manner so as to be effectively unnoticeable or technical evidence acceptable to the Code Enforcement Officer or Planning Board, as appropriate, is submitted showing a clear need for this facility and the unfeasibility of co-locating it on one of these former sites.

#### **1114 CO-LOCATED AND MULTIPLE-USER FACILITIES**

**1114.1** An analysis shall be prepared by or on behalf of the applicant, subject to the approval of the decision making body, which identifies all reasonable, technically feasible, alternative locations and/or facilities which would provide the proposed telecommunication service. The intention of the alternatives analysis is to present alternative strategies which would minimize the number, size, and adverse environmental impacts of facilities necessary to provide the needed services to the City and surrounding rural and urban areas. The analysis shall address the potential for co-location at an existing or a new site and the potential to locate facilities as close as possible to the intended service area. It shall also explain the rationale for selection of

the proposed site in view of the relative merits of any of the feasible alternatives. Approval of the project is subject to the decision making body making a finding that the proposed site results in fewer or less severe environmental impacts than any feasible alternative site. The City may require independent verification of this analysis at the applicant's expense. Facilities which are not proposed to be co-located with another telecommunication facility shall provide a written explanation why the subject facility is not a candidate for co-location.

- 1114.2** All co-located and multiple-user telecommunication facilities shall be designed to promote facility and site sharing. To this end telecommunication towers and necessary appurtenances, including but not limited to, parking areas, access roads, utilities and equipment buildings shall be shared by site users when in the determination of the Code Enforcement Officer or Planning Board, as appropriate, this will minimize overall visual impact to the community.
- 1114.3** The facility shall make available unutilized space for co-location of other telecommunication facilities, including space for these entities providing similar, competing services. A good faith effort in achieving co-location shall be required of the host entity. Requests for utilization of facility space and responses to such requests shall be made in a timely manner and in writing and copies shall be provided to the City's permit files. Unresolved disputes may be mediated by the Code Enforcement Officer or Planning Board. Co-location is not required in cases where the addition of the new service or facilities would cause quality of service impairment to the existing facility or if it became necessary for the host to go off-line for a significant period of time.
- 1114.4** Approval for the establishment of facilities improved with an existing microwave band or other public service use or facility, which creates interference or interference is anticipated as a result of said establishment of additional facilities, shall include provisions for the relocation of said existing public use facilities.

All costs associated with said relocation shall be borne by the applicant for the additional facilities.

#### **1115 LIGHTING**

All telecommunication facilities shall be unlit except for the following:

- 1115.1** A manually-operated or motion-detector controlled light above the equipment shed door which shall be kept off except when personnel are actually present at night; and
- 1115.2** The minimum tower lighting required under FAA regulation; and
- 1115.3** Where tower lighting is required, it shall be shielded or directed to the greatest extent possible in such a manner as to minimize the amount of light that falls onto nearby properties, particularly residences.

#### **1116 ROADS AND PARKING**

All telecommunication facilities, except exempt facilities as defined in this Article, shall be served by the minimum roads and parking areas necessary. To this end all the following measures shall be implemented:

- 1116.1** Existing roads shall be used for access, whenever possible, and be upgraded the minimum amount necessary to meet City of Brewer standards. Any new roads or parking areas built shall, whenever feasible, be shared with subsequent telecommunication facilities and/or other permitted uses. In addition, they shall meet the width and structural requirements of the City of Brewer.
- 1116.2** Existing parking areas shall, whenever possible, be used; and
- 1116.3** Any new parking areas constructed shall be no larger than three hundred fifty (350) square feet.

#### **1117 VEGETATION PROTECTION AND FACILITY SCREENING**

All telecommunication facilities shall be installed in such a manner so as to maintain and enhance existing native vegetation and to install suitable landscaping to screen the facility, where necessary. To this end all of the following measures shall be implemented for all telecommunication facilities, except exempt facilities as defined in this Land Use Code:

**1117.1** A landscape plan shall be submitted with project application submittal indicating all existing vegetation, identifying landscaping that is to be retained on the site and any additional vegetation that is needed to satisfactorily screen the facility from adjacent land uses and public view areas. The landscape plan shall be subject to review and approval of the Site Plan Review process. All trees, larger than four inches (4") in diameter shall be identified in the landscape plan with indication of species type, diameter at four and one-half feet (4½') high, and whether it is to be retained or removed with project development.

**1117.2** Existing trees and other screening vegetation in the vicinity of the facility and along the access roads and power/telecommunication line routes involved shall be protected from damage, both during the construction period and thereafter. To this end, the following measures shall be implemented:

1. A Tree Protection Plan shall be submitted with building permit or improvement plan. This Plan shall be prepared by a certified arborist and give specific measures to protect trees during project construction.
2. Grading, cutting/filling, and the storage/parking of equipment/vehicles shall be prohibited in landscaped areas to be protected and the drip line of any trees required to be preserved. Such areas shall be fenced to the satisfaction of the Code Enforcement Officer or Planning Board, as appropriate. Trash, debris, or spoils shall not be placed within these fences nor shall the fences henceforth be opened or moved until the project is complete and written approval to take the fences down has been received from the Code Enforcement Officer.

3. All underground lines shall be routed such that a minimum amount of damage is done to tree root systems.

**1117.3** All areas disturbed during project construction other than the access road and parking areas shall be replanted with vegetation compatible with the vegetation in the surrounding area (e.g., ornamental shrubs or natural brush, depending upon the circumstances) to the satisfaction of the City Planner.

**1117.4** Any existing trees or significant vegetation, on the facilities site or along the affected access area that die shall be replaced with native trees and vegetation of a size and species acceptable to the City Planner.

**1117.5** No actions shall be taken subsequent to project completion with respect to the vegetation present that would increase the visibility of the facility itself or the access road and power/telecommunication lines serving it.

## **1118 FIRE PREVENTION**

All telecommunication facilities shall be designed and operated in such a manner so as to minimize the risk of igniting a fire or intensifying one that otherwise occurs.

## **1119 ENVIRONMENTAL RESOURCE PROTECTION**

All telecommunication facilities shall be sited so as to minimize the effect on environmental resources. To that end the following measures shall be implemented for all telecommunication facilities, except exempt facilities:

**1119.1** No telecommunications facility or related improvements including but not limited to access roads and power lines shall be sited so as to create a significant threat to the health or survival of rare, threatened or endangered plant or animal species.

- 1119.2** No telecommunications facility or related improvements shall be sited such that their construction will damage an archaeological site or have an adverse effect on the historic character of a historic feature or site;
- 1119.3** No telecommunications facility shall be sited such that its presence threatens the health or safety of migratory birds;
- 1119.4** The facility shall comply with all applicable Floodplain, Floodway and Storm Drainage and Erosion Control regulations; and
- 1119.5** Potential adverse visual impacts which might result from project related grading or road construction shall be minimized; and
- 1119.6** Potential adverse impacts upon nearby public use areas such as parks or trails shall be minimized; and
- 1119.7** Drainage, erosion, and sediment controls shall be required as necessary to avoid soil erosion and sedimentation of waterways. Structures and roads on slopes of 10% or greater shall be avoided. Erosion control measures shall be incorporated for any proposed facility that involves grading or construction near a waterway or on lands with slopes over 10%. Natural vegetation and topography shall be retained to the extent feasible.

## **1120 VISUAL COMPATIBILITY**

- 1120.1** Facility structures and equipment shall be located, designed and screened to blend with the existing natural or built surroundings so as to reduce visual impacts to the extent feasible considering the technological requirements of the proposed telecommunication service and the need to be compatible with neighboring residences and the character of the community.
- 1120.2** The facility is designed to blend with any existing supporting structure and does not substantially alter the character of the structure or local area.

**1120.3** Following assembly and installation of the facility, all waste and debris shall be removed and disposed of in a lawful manner; and

**1120.4** A visual analysis, which may include photo montage, field mock up, or other techniques shall be prepared by or on behalf of the applicant which identifies the potential visual impacts, at design capacity, of the proposed facility to the satisfaction of the Code Enforcement Officer. Consideration shall be given to views from public areas as well as from private residences. The analysis shall assess the cumulative impacts of the proposed facility and other existing and foreseeable telecommunication facilities in the area, and shall identify and include all feasible mitigation measures consistent with the technological requirements of the proposed telecommunication service. All costs for the visual analysis, and applicable administrative costs, shall be borne by the applicant.

## **1121 EXCEPTIONS**

**1121.1** Exceptions to the requirements specified within this Article may be granted through issuance of a Waiver by the Planning Board. Such a permit may only be approved if the Planning Board finds, after receipt of sufficient evidence, that failure to adhere to the standard under consideration in the specific instance will not increase the visibility of the facility or decrease public safety.

**1121.2** An exception to the requirements for Fire Safety may only be granted upon written concurrence by the Fire Chief.

**1121.3** Tower setback requirements may be waived under any of the following circumstances:

1. The facility is proposed to be co-located onto an existing, legally-established telecommunication tower; and

2. Overall, the reduced setback enables further mitigation of adverse visual and other environmental impacts than would otherwise be possible.

## **1122 PUBLIC NOTICE**

In addition to the public notice required within this Article, the following special noticing shall be provided:

- 1122.1** Notice of consideration or a public hearing, as appropriate, on a minor or major use permit authorizing the establishment or modification of a telecommunication facility shall be provided to all property owners within five hundred feet (500').

## ARTICLE 12    IMPACT FEES

The Planning Board shall require as a condition of the approval of any land development permit the payment of impact fees for the purpose of financing infrastructure improvements in the area. Such fees shall be applied to projects (and any associated expenses) within an Area Capital Investment District in proportion to the development project's share of infrastructure costs necessitated by the development and as provided by 30-A M.R.S.A. § 4354.

- A.     Assessment of such fees may include infrastructure facilities, such as:
  - 1)     Wastewater and stormwater collection, pumping, and treatment facilities;
  - 2)     Municipal water facilities;
  - 3)     Solid waste facilities;
  - 4)     Police and fire protection facilities and equipment;
  - 5)     Roads and traffic control devices;
  - 6)     Public transportation;
  - 7)     Public Parks and other open space or recreation areas;
  - 8)     Public Schools
  
- B.     Such fees shall be collected for projects indicated in the city's Capital Improvement Program for the Area Capital Investment District in which the proposed development is located and shall be maintained in separate accounts for such projects. This Capital Improvement Program shall be prepared and submitted by the City Manager to the City Council for approval, and may be amended from time to time by the Council upon recommendation by the City Manager.
  
- C.     Impact fees will be determined on the basis of infrastructure needs in the service area, the proportionate share generated by the development project and the timing of proposed infrastructure improvements. The formula for assessing said fees for each Area Capital Investment District will be prepared and submitted by the City Manager to the City Council for approval, and may be amended periodically by the Council with or without a recommendation by the City Manager. (#28)
  
- D.     Project impact on infrastructure facilities shall be determined on a case-by-case basis by the Planning Board. However, impacts in all cases will be computed on the same basis as nearly as possible to result in an equitable assignment of cost sharing between projects. There shall be no prohibition against the pre-funding of a capital project by any single applicant if provisions are made to reimburse such applicant costs attributable to other projects in a manner acceptable to such an applicant.

- E. The assignment of costs of capital facilities to individual development projects will use generally accepted standards, such as Institute of traffic Engineers traffic generation data for highway impacts and per capita or floor area comparisons for other facilities. The exact standards to be used in each instance will be based on the requirements and merits of specific projects, as determined by the City Manager, in consultation with the City Planner.
- F. The Planning Board shall apply the impact fee formulas established by the City Council to every project within an Area Capital Investment District brought before the Board, and fees will be charged accordingly. The Planning Board and/or the City Planner may require the applicant to provide information necessary to apply the formulas, including but not limited to the preparation of an analysis of the impact of any project on the area's infrastructure, or any specific facility impacted by the development to provide the basis of any fee to be assessed. A minimum of fifty percent of the assessed impact fee shall be paid prior to receiving a building permit. The entire assessed impact fee shall be paid prior to receiving an occupancy permit. (#2)
- G. Impact fees may be used to pay the principal, interest, and other costs of bonds, notes, and other obligations issued or undertaken by or on behalf of the City to finance such improvements, as well as costs associated with the use of expert or contract assistance in the determination of an appropriate funding formula for specific fees, as required.
- H. Upon recommendation by the City Manager and at the discretion of the City Council, a property owner who dedicates land or otherwise contributes funds for a capital improvement identified in the Capital Improvement Plan for the Area Capital Investment District may be eligible for a credit for such contribution against the impact fee otherwise due from that property owner. Said credit may only be allowed (but will not necessarily be allowed) by the City Council if the contribution: (1) meets capital improvement needs for which the particular impact fee has been imposed, and (2) will substitute for or otherwise reduce the need for capital improvements anticipated to be provided with impact fee funds. Any application for credit must be submitted at least ten days before the time of the development project approval is expected, must be provided in a form acceptable to the City, and must declare (and provide necessary and relevant documentary evidence) that which may qualify the property owner for the credit. The decision of the City Council shall be final and may not be appealed. (#12)
- I. A person or business may appeal the imposition of a fee upon them pursuant to this article filing, with the City Clerk within ten days following a decision on the amount of the fee by the Planning Board by providing a written notice of appeal with a full statement of the grounds, and an appeal fee of two hundred dollars (\$200.00), or such other amount as may be fixed from time to time by resolution

of the City Council. The City may continue processing the development application if the notice of appeal is accompanied with a bond or other security in an amount equal to the impact fee. The appellant bears the burden of proof to demonstrate that the amount of the fee was not calculated according to the procedures established in this article and/or using the formula for said fees established by the City Council. The City Council, through the City Manager, shall fix a time and place for hearing the appeal and the City Clerk shall mail notice of hearing to the appellant at the address given in the notice of appeal. The hearing shall be conducted by the Council at the time and place stated in the notice and the determination of the Council shall be announced at the conclusion of the hearing or at the next regular meeting of the Council. The determination of the City Council shall be final and may not be appealed.

- J. Upon a finding of significant public purpose or benefit, the City Council may reduce or waive payment of an impact fee associated with a specific project. Such a finding of significant public purpose or benefit by the Council shall be based on the needs of the City at that time, along with a determination as to the positive effects that a specific development project will have on the community, including but not limited to job creation, environmental remediation, slum or blight removal, historic preservation, or tax base growth, and a finding that said effects justify such a reduction or waiver. A developer wishing to obtain such an impact fee waiver for their project must submit an application to the City Manager no later than ten days after the Planning Board establishes the impact fee for said project, identifying and quantifying the public purpose or benefit from the project as proposed. The City Council will review the waiver application, and will make a determination on said application at the next City Council meeting. The City Council's determination shall be final and may not be appealed.
- K. Any funds collected which are not used and for which a contract has not been let after a ten-year period shall be returned to the applicant upon receipt of a written request within one year of their lapsing.
- L. The boundary(ies) of the Area Capital Investment District(s) in the City of Brewer are as follows: (#2)
  - 1. Beginning at the intersection of Wilson Street and Parkway South, head south along Parkway South to I-395. Follow I-395 east until it reaches Route 1-A (Outer Wilson Street). The line will proceed across 1-A following the I-395 infrastructure and continuing until the line reaches a point 800 feet to the north of 1-A. Then take the boundary west paralleling Wilson Street (800 feet off of Wilson) to the easterly boundary of Brewer Tax Map 3, Lot 27. Then following said lot line in a northeasterly direction until you reach Felts Brook. Then following Felts Brook in a northwesterly direction until it reaches the northwesterly sideline of said lot. Then following said lot line in a southwesterly direction to a point being the intersection with a line 400 feet

southwesterly of southwesterly sideline of Bennett Road extended easterly. Then northwesterly, parallel to and 400 feet southwesterly of said Bennett Road until it reaches the northwesterly sideline of Brewer Tax Map 8, Lot 71. Then following said lot line in a southwesterly direction to a point being 1,600 feet from Wilson Street. Then northwesterly parallel to and 1,600 feet from Wilson Street to a point being 100 feet easterly of the northwesterly sideline of Brewer Tax Map 8, Lot 69. Then southwesterly, parallel to and 100 feet from said lot line to a point being 800 feet from Wilson Street. Then northwesterly, parallel to and 800 feet from Wilson Street until you reach Chamberlain Street. Follow Chamberlain Street south back to Wilson Street. Then, proceed east on Wilson Street to the intersection of Wilson and Parkway South (to the point of origin). The Brewer Tax Map and Lots described in this description are as shown on the 2001 Brewer Tax Maps.

- M. In the event of a conflict between the provisions of this article and the provisions of any other ordinance or resolution, the provisions of this article shall govern.

# **ARTICLE 13 APPEALS**

## **1301 BOARD OF APPEALS**

The Board or Zoning Board of Appeals, referred heretofore, shall be the Board of Appeals of the City of Brewer, as constituted under Chapter 34 of the City of Brewer Charter, Codes and Ordinances, and shall have all the powers set forth in this Article and in Chapter 34.

## **1302 JURISDICTION AND AUTHORITY**

For the purpose of this Land Use Code, the Board of Appeals shall have the jurisdiction and authority:

### **1302.1 ADMINISTRATIVE APPEALS**

To hear and decide appeals in accordance with Chapter 34 of the City of Brewer Charter, Codes and Ordinances.

### **1302.2 VARIANCE APPEALS**

To authorize variances upon appeal within the limitations set forth in this Land Use Code.

## **1303 APPEAL PROCEDURE**

### **1303.1 MAKING AN APPEAL**

1. An administrative or variance appeal may be taken to the Brewer Zoning Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer or the Brewer Planning Board. Such appeal

shall be taken within thirty (30) days of the date of the decision appealed from.

2. Such appeal shall be made by filing with the Board of Appeals a written notice of appeal on forms available from the Code Enforcement Officer which includes:
  - A. A concise written statement indicating what relief is requested and why it should be granted.
  - B. A sketch drawn to scale showing lot lines, location of existing and proposed buildings and structures, contours at realistic intervals, and other physical features of the lot pertinent to the relief sought.
  - C. the names and addresses of abutting property owners.

Additional information deemed necessary by the Board of Appeals to make a fair and equitable decision, shall be supplied by the applicant upon request. The application must be signed by the applicant. All variances and Administrative Appeals by an aggrieved party shall be accompanied by a fee set forth in the City Council adopted fee schedule, payable to the City of Brewer.

3. Upon being notified of an appeal, the Code Enforcement Officer or Brewer Planning Board, as appropriate, shall transmit to the Brewer Zoning Board of Appeals all of the papers constituting the record of the decision appealed from.

## **1304 VARIANCES**

- 1304.1** A variance may be granted by the Board only where strict application of the Ordinance, or provision thereof, to the petitioner and the petitioner's property would cause undue

hardship. To prove undue hardship, the petitioner shall demonstrate to the satisfaction of the Board that all of the following conditions exist: (#14)

1. The land in question cannot yield a reasonable return unless a variance is granted; and
2. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and
3. The granting of a variance will not alter the essential character of the locality; and
4. The hardship is not the result of action taken by the applicant or a prior owner.

**1304.2** Establishment or expansion of a use otherwise prohibited in the district shall not be granted by a variance.

**1304.3** The Board of Appeals may permit a variance from a setback requirement strictly limited to a single-family dwelling that is the primary year-round residence of the petitioner not to exceed 20% of a setback requirement and shall not be granted if the variance would cause the area of the dwelling to exceed the maximum permissible lot coverage. The Board of Appeals may allow for a variance under this subsection to exceed 20% of a setback requirement, except for minimum setbacks from a wetland or water body required within shoreland zones by rules adopted pursuant to Title 38, Maine Revised Statutes Chapter 3, Subchapter 1, Article 2-B, if the petitioner has obtained the written consent of an affected abutting landowner. The Board of Appeals may permit a variance from a setback requirement under this subsection only when strict application of the zoning ordinances to the petitioner and the petitioner's property would cause undue hardship. The term "undue hardship" as used in this subsection shall mean: (#14)

1. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
2. The granting of a variance will not alter the essential character of the locality;
3. The hardship is not the result of action taken by the applicant or a prior owner;
4. The granting of the variance will not substantially reduce or impair the use of abutting property; and
5. That the granting of a variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.

#### **1304.4 DISABILITY VARIANCE**

The board may grant a variance to an owner of a dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses that dwelling. The board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. For the purposes of this subsection, a disability has the same meaning as a physical or mental handicap under Title 5, Maine Revised Statutes, Section 4553, and the term "structures necessary for access to or egress from the dwelling" is defined to include railing, wall or roof systems necessary for the safety or effectiveness of the structure.

#### **1304.5 SHORELAND ZONE (#15)**

Expansions of structures within the shoreland zone which do not meet setback requirements from rivers, streams, wetlands or other water bodies regulated under the mandatory Shoreland Zoning Act, 38 MRSA, Section 438-A(2) are limited by State statute expansion of any portion of a structure which does not meet said

setback requirement to less than 30% of the existing floor area or volume. The limitation applies for the lifetime of the structure. This subsection is strictly limited to permitting a variance from a set-back requirement for a single-family dwelling that is the primary year-round residence of the petitioner. A variance under this subsection may not exceed 20% of a set-back requirement and may not be granted if the variance would cause the area of the dwelling to exceed the maximum permissible lot coverage. The Maine Department of Environmental Protection shall be notified of all variances granted in the Shoreland Zoning Protection District pursuant to this Section.

**1304.6** “Pursuant to Title 30-A § 4353 4-C. Variance from dimensional standards, the Board of Appeals of the City of Brewer is hereby authorized to grant a variance when strict application of the ordinance to the petitioner and the petitioner’s property would cause a practical difficulty and when the following conditions exist:

- a. The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood;
- b. The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties;
- c. The practical difficulty is not the result of action taken by the petitioner or a prior owner;
- d. No other feasible alternative to a variance is available to the petitioner;
- e. The granting of a variance will not unreasonably adversely affect the natural environment; and
- f. The property is not located in whole or in part within shoreland areas as described in Title 38, section 435.

As used in this subsection, “dimensional standards” means and is limited to ordinance provisions relating to lot area, lot coverage, frontage and setback requirements.

As used in this subsection, “practical difficulty” means that the strict application of the ordinance to the property precludes the ability of the petitioner to pursue a use permitted in the zoning district in which the property is located and results in significant economic injury to the petitioner.” (#15)

#### **1304.7 FLOODPLAIN VARIANCES (#14)**

The following provisions shall govern variances in the areas of special flood hazard, as set forth in Article 8, Section 805 of this Land Use Code. The Board of Appeals of the City of Brewer may, upon written application of an aggrieved party, hear and decide appeals from determinations of the Code Enforcement Officer in the administration of the provision of this Article. The Board of Appeals may grant a variance from the requirements of this Article consistent with state law and the following criteria:

1. Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
  
2. Variances shall be granted only upon:
  - A. a showing of good and sufficient cause; and,
  - B. a determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public or conflict with existing local laws and ordinances; and,
  - C. a showing that the existence of the variance will not cause a conflict with other state, federal or local laws or ordinances; and,
  - D. a determination that failure to grant the variance would result in "undue hardship," which in this subsection means:
    - 1) that the land in question cannot yield a reasonable return unless a variance is granted; and,

- 2) that the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and,
  - 3) that the granting of a variance will not alter the essential character or the locality; and,
  - 4) that the hardship is not the result of action taken by the applicant or a prior owner.
3. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and the Board of Appeals may impose such conditions to a variance as it deems necessary.
4. Variances may be issued by a community for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that:
  - A. other criteria of Section 1304.7 and Article 8, Section 805 and 802.K of this Land Use Code are met; and,
  - B. the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- 4-A Variances may be issued for the repair, reconstruction, rehabilitation, or Restoration of Historic Structures upon the determination that:
  - A. the development meets the criteria of 1304.7; and
  - B. the proposed repair, reconstruction, rehabilitation, or restoration

Will not preclude the structure's continued designation as a Historic Structure and the variance is the minimum necessary to preserve the historic character and the design of the structure.

5. Any applicant who meets the criteria of 1304.7 paragraphs 1 through 4-A shall be notified by the Board of Appeals in writing over the signature of the Chairman of the Board of Appeals that:

- A. The issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage;
  - B. Such construction below the base flood level increases risks to life and property; and,
  - C. the applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.
6. The Board of Appeals shall submit to the Code Enforcement Officer a report of all variance actions, including justification for the granting of the variance and an authorization for the Code Enforcement Officer to issue a Flood Hazard Development Permit, which includes any conditions to be attached to said permit.

#### **1304.8 EXPIRATION DATE**

If the Board of Appeals grants a variance with or without restriction, the variance shall expire if the variance is not used within one (1) year after it is granted and/ or a building permit obtained from the Code Enforcement Officer and the construction substantially completed within said one (1) year period.

#### **1304.9 RECORDING OF VARIANCES**

The applicant shall record a Certificate in the Penobscot County Registry of Deeds in accordance with Title 30-A M.R.S.A. § 4353, as the same may be amended from time to time.

#### **1305 ADMINISTRATIVE APPEALS**

An Administrative Appeal may be taken to the Board of Appeals in accordance with Chapter 34 of the City of Brewer Charter, Codes and Ordinances.

## ARTICLE 14 DEFINITIONS

For the purpose of this Ordinance, the following terms, phrases, words and their definitions shall have the meaning given herein. When non-inconsistent with the context, words used in the present tense include the future, words in the plural include the singular and words in the singular include the plural. The word "shall" is always mandatory and not discretionary in sense.

Further, any terms, phrases, words and their derivation not defined herein shall be given that definition which is promulgated in Webster's New World College Dictionary, Third Edition, Copyright 1997, on file in the City Clerk's Office.

**Accessory Living Quarters.** An accessory building used solely as the temporary dwelling of guests of the occupants of the premises; such dwelling having no kitchen facilities and not rented or otherwise used as a separate dwelling unit.

**Accessory Structure:** A structure customarily and clearly incidental and subordinate to the principal structure and located on the same lot with the principal structure.

In determining whether a structure is an accessory, the factors to be considered shall include size of land area involved, nature of primary use, use made of adjacent lots by neighbors, economic structure of area, and whether similar uses or structures exist in neighborhood on an accessory basis.

**Accessory Use:** A use customarily incidental and subordinate to the principal use of a building, structure, or lot, and located on the same lot with the principal use.

In determining whether a use is an accessory, the factors to be considered shall include size of land area involved, nature of primary use, use made of adjacent lots by neighbors, economic structure of area, and whether similar uses or structures exist in neighborhoods on an accessory basis.

**Adult Amusement Store:** An establishment having as a substantial or significant portion of its sales or stock in trade "sexual devices or books" or films for sale that are distinguished or characterized by their emphasis on matter

depicting, describing, or relating to “Specified sexual activities” or “Specified anatomical areas”, or an establishment with a segment or section devoted to the sale or display of such material, or an establishment that holds itself out to the public as a purveyor of such materials based upon its signage, advertising, displays, actual sales, the exclusion of minors from the establishment’s premises, or any other factors showing that the establishment’s primary purpose is to purvey such material. (#4)

**Adult Entertainment Nightclub, Bar or Cabaret:** An enclosed building used regularly and routinely for presenting or viewing on site of motion picture and video preview or coin operated booths having material as a dominant theme material distinguished or characterized by an emphasis on matter depicting, describing, or relating to “Specified sexual activities” or “Specified anatomical areas” for observation by patrons therein.

**Adult Motion Picture Theater and on Site Adult Video Screening:** A public or private establishment which (i) features topless dances, strippers, male or female impersonators, or erotic dancers; (ii) not infrequently features entertainers who display “Specified anatomical areas”; (iii) features entertainers who by reason of their appearance or conduct perform in a manner which is designed primarily to appeal to the prurient interest of the patron or entertainers who engage in, or engage in explicit simulation of, “Specified sexual activities; or (iv) offers Sadoomasochistic acts or Bondage and discipline to patrons.

**Adult Relaxation Spa or Adult Spa:** An establishment or place primarily in the business of providing (1) a steam bath or sauna, (2) other bathing or hot tub services, or (3) “rub-down” or other pseudo-massage services by a person or persons not licensed or exempt from licensing under this Article or any other Brewer Code or Ordinance.

**Agriculture:** The cultivation of the soil for either food crops or forage and/or the raising and/or breeding of livestock for either personal use or profit. The term does not include garden as defined.

**Alteration:** As applied to a building or structure, a change or rearrangement in the structural parts or in the exit facilities, or an enlargement, whether by extending on a side or by increasing in height, or the moving from one location or position to another.

**Animal Emergency Clinic:** A veterinary service conducted only after hours with the primary function of the receiving, treatment, and monitoring of emergency patients. This would include nights, weekends and holidays only. All patients are transferred out of the facility during regular business hours. (#1)

**Animal Hospital:** A building or structure which is used for the health and care of sick, hurt or incapacitated animals. It shall also include the immunization of animals so as to prevent sickness or disease.

**Annual License:** Any license to be issued in accordance with the standards of this Land Use Code.

**Apartment House:** A multi-family dwelling for three (3) or more families, living independently of each other, each in a separate dwelling unit within the one structure.

**Aquifer:** A geological formation composed of rock or sand and gravel that stores and transmits significant quantities of recoverable water, as mapped by the Maine Geological Survey.

**Art Gallery:** A building or structure which is designed to show to the public, works of art, whether they be paintings, sculptures or other works of art.

**Arterial Street:** A highway of regional significance or which serves long distance or through traffic. Specifically, the following streets are to be considered arterial streets in Brewer: North Main Street, South Main Street, State Street and Wilson Street.

**Auditorium:** A building used for public gatherings.

**Automobile Graveyard:** A yard, field or other area used to store three (3) or more unserviceable, discarded, worn-out or junked motor vehicles as defined in 29-A MRSA § 101, subsection 42, or parts of such vehicles. "Automobile graveyard" does not include any area for temporary storage by an establishment or place of business that is primarily engaged in doing auto body repair work to make repairs to render a motor vehicle serviceable. "Automobile graveyard"

does include an area used for automobile dismantling, salvage and recycling operations.

**Automobile Recycling Business:** The business premises of a person who purchases or acquires salvage vehicles for the purpose of reselling the vehicles or component parts of the vehicles or rebuilding or repairing salvage vehicles for the purpose of resale or for selling the basic materials in the salvage vehicles, provided that eighty (80) percent of the business premises specified is used for automobile recycling operations.

**Automotive Repair, Major:** An establishment primarily engaged in the repair or maintenance of motor vehicles, trailers and similar large mechanical equipment, including paint, body and fender and major engine and engine part overhaul, which must be conducted within a completely enclosed building.

**Automotive Repair, Minor:** An establishment primarily engaged in the repair or maintenance of motor vehicles and similar mechanical equipment including brake, muffler, upholstery work, tire repair and change, lubrication, tune ups and transmission work, which must be conducted within a completely enclosed building.

**Automotive Self-Service Station:** That portion of property where flammable or combustible liquids or gases used as fuel are stored and dispersed from fixed equipment into fuel tanks of motor vehicles. Such an establishment shall be permitted to offer for sale at retail other convenience items as a clearly secondary activity and shall be permitted also to include a free-standing automatic car wash (with site plan approval).

**Automotive Service Station:** That portion of property where flammable or combustible liquids or gases used as fuel are stored and dispersed from fixed equipment into fuel tanks of motor vehicles. Accessory activities shall be permitted to include repair and maintenance, car wash service (with site plan approval) and food sales.

**Auto, Truck, Equipment Sales:** The sales and display of new and used cars, trucks, equipment, boats, trailers, campers, RV's, snowmobiles and manufactured housing.

**Average Daily Traffic (ADT):** The average number of vehicles per day that enter and exit the premises or travel over a specific section of road.

**Aviation:** An airport, seaplaneport and accessory uses.

**Barnyard Animals:** Domestic animals kept for either consumption, sales or as work animals such as cattle, horses, pigs, sheep, chickens, ducks, geese, turkeys, goats, mules, hogs and other like animals.

**Bed and Breakfast Facility:** A limited commercial activity, conducted within a structure, of which one or more of the owners reside on site and which includes dining and bathroom facilities with sleeping rooms for overnight guest lodging. Said facility shall not have more than three sleeping rooms for rent.

**Beautician:** A person or persons who are concerned with the ornamentation of human hair. A beautician is concerned with the shampooing, drying, dyeing, setting, shaping and styling of human hair.

**Boarding Home:** A dwelling in which more than two (2) persons, either individually or as families, are housed or lodged, with or without meals, for a fee. A rooming house and/or lodging house shall be deemed a "boarding home."

**Buffer Area:** A part of a property or an entire property, which is not built upon and is specifically intended to separate and thus minimize the effects of a land use activity (e.g. noise, dust, visibility, glare, etc.) on adjacent properties or on sensitive natural resources.

**Building:** A structure with exterior walls or fire walls built or occupied as a shelter or roofed enclosure for persons, animals, or property of any kind used for residential, business, mercantile, storage, commercial, industrial, institutional, assembly, educational, or recreational purposes.

**Building Supply Business:** A business with outside storage which offers new and/or recycled building materials for retail sale to the general public.

**Building Height:** The vertical distance measured from the mean elevation of the finished grade at the front of the building to the highest point of the roof for flat roofs, to the deck line of mansard roofs, and to the mean height between eaves and ridge for gable, hip and gambrel roofs.

**Business Office:** A general office used but not to include any manufacturing or sale of goods or merchandise. Any office setting in which professional or business services are carried on including, but not limited to finance, real estate, accounting, data processing, legal, insurance, counseling, design, engineering, medical and architecture, but expressly excluding any repair services or retail sales.

**Camper:** A unit normally used for temporary recreational or travel occupancy.

**Camping Park:** A facility for the temporary parking for two or more campers or tents for temporary human habitation. Temporary human habitations shall mean use of tent or camper on the campground for no more than ninety (90) days in one calendar year. Use of any tent or camper for more than ninety (90) days in any one calendar year or any five weeks during the period from November, December, January, February and March, shall be presumed to be permanent occupancy.

**Camp Trailer:** A trailer used primarily or exclusively for vacation and recreation purposes and shall include tent-trailers, self-propelled camping units and camping units mounted on or otherwise affixed to a motor vehicle. .

**Capital Improvements Program (CIP):** The municipality's proposed schedule of future projects listed in order of construction priority together with cost estimates and the anticipated means of financing each project.

**Capital Investment Plan:** The portion of the comprehensive plan that identifies the projects for consideration for inclusion within the capital improvements program, together with an estimate of the order of magnitude for the cost of each project.

**Catering Facility:** A business principally engaged in serving prepared foods and drinks to the public on a contracted basis on or off premises.

**Child Care Center:** A building or buildings in which a person or persons maintain or otherwise carries out a program, for any part of the day, providing care and protection for more than twelve children. Child Care Centers, with or without consideration for the services rendered, may be operated as a service business or within a church or community building.

**Church:** A building or structure which is used for worship of a divine being. It is designed so as to provide a place for people to meet and to conduct the business associated with a church. (A synagogue and/or mosque shall be synonymous with this definition).

**Club:** An association of persons for social, fraternal, educational, political, athletic, literary or for other like purposes so long as any such purpose is not for profit.

**Clubhouse:** A building or structure which is used by a club for meetings, carrying on functions and other necessary uses which are associated with a club and its workings.

**Cluster Subdivision:** A subdivision in which the lot sizes are reduced below those normally required in the zoning district in which the development is located in return for the provision of permanent open space.

**Code Enforcement Officer:** As used in this Land Use Code the term "Code Enforcement Officer" or "Code Officer" shall mean the Code Enforcement Officer, as defined under Chapter 29 - Code Enforcement Department of the City of Brewer Charter Codes and Ordinances, and his/her duly appointed assistant.

**Collector Streets:** A street or public way which is used to connect one (1) or more residential streets with a secondary thoroughfare.

**Common Open Space:** Land within or related to a subdivision, not individually owned or within an individual lot, which is designed and intended for the common use or enjoyment of the residents of the development or the general public. It may include complementary structures and improvements, typically used for maintenance and operation of the open space, such as for outdoor recreation.

**Common Property:** A parcel or parcels of land, together with the improvements thereon, the use and enjoyment of which are shared by the owners or occupants in a Planned Unit Development.

**Community Service Organization:** A non-profit charitable institution qualified under Section 501 of the "Internal Revenue Code," not to include social clubs, the primary functions of which is serving the public health or social welfare of the community.

**Comprehensive Plan:** A document or interrelated documents adopted by the Legislative Body, containing an inventory and analysis of existing conditions, a compilation of goals for the development of the community, an expression of policies for achieving these goals, and a strategy for implementation of the policies.

**Conservation Easement:** A nonpossessory interest in real property imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural, scenic or open space values of real property; assuring its availability for agricultural, forest, recreational or open space use; protecting natural resources; or maintaining air or water quality.

**Construction Equipment:** Self-propelled vehicles and other equipment designed or used primarily in the construction trades or manufacturing. The definition shall include, but not be limited to, cement mixers, air compressors, cranes, graders, forms and molds and well drillers. This list shall be deemed partial and shall not operate to exclude other like equipment which are with general terms of this definition. This term does not include those items covered by the definition of automobile graveyard and junkyard in MRSA 30A, § 3752.

**Critical Area:** Area which has potentially serious erosion problems.

**Day Care Facility, Children:** A dwelling in which a person or persons residing on the premises provides or maintains a regular program for consideration, for any part of the day, providing care and protection for three to twelve children.

**Day Care Facility, Adult:** A dwelling in which a person or persons residing on the premises provides or maintains a regular program for consideration, for any part of the day, providing care and protection for three to twelve adults over the age of 16.

**Density:** The number of dwelling units per acre of land.

**Developed Area:** Any area on which a site improvement or change is made, including buildings, landscaping, parking areas, and streets.

**Direct Watershed of a Great Pond:** That portion of the watershed which drains directly to the great pond without first passing through an upstream great pond. For the purposes of these regulations, the watershed boundaries shall be as delineated in the comprehensive plan. Due to the scale of the map in the comprehensive plan there may be small inaccuracies in the delineation of the watershed boundary. Where there is a dispute as to exact location of a watershed boundary, the Board or its designee and the applicant shall conduct an on-site investigation to determine where the drainage divide lies. If the Board and the applicant can not agree on the location of the drainage divide based on the on-site investigation, the burden of proof shall lie with the applicant to provide the Board with information from a registered land surveyor showing where the drainage divide lies.

**Dry Cleaners:** A Dry Cleaners is an establishment which launders or dry cleans articles which are dropped of and picked up at the premises directly by the customer and where the laundering or dry cleaning are done on or off the premises. (#8)

**Dwelling Unit:** A room or suite of rooms used as a habitation which is separate from other such rooms or suites of rooms, and which contains independent living, cooking, and sleeping facilities; includes single family houses, and the units in a duplex, apartment house, multifamily dwellings, and residential condominiums.

**Efficiency Unit:** A dwelling unit in which sleeping living facilities are provided for in one principal room.

**Essential Service:** The erection, construction, alteration or maintenance by public utilities or municipal departments or commissions or quasi-public use, of underground systems, collections, communications, telecommunication towers, supply or disposal systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment and accessories in connection therewith, but not including buildings reasonably necessary for the furnishing of adequate service

by such public utilities or municipal departments or commissions or for the public health or safety or general welfare. (#2)

**Family:** A single individual, doing his own cooking and living upon the premises as a separate housekeeping unit, or a collective body of persons doing their own cooking and living together upon the premises as a separate housekeeping unit in a domestic relationship based upon birth, marriage or other domestic bond as distinguished from a group occupying a boarding house, lodging house, club, fraternity or hotel.

**Farm Stand:** Sale of agricultural products raised or grown on said premises with a sales area of not more than 400 square feet.

**Farming:** The ordinary agricultural use of land.

**Final Plan:** The final drawings on which the applicant's plan of subdivision is presented to the Board and the City Council for approval and which, if approved, shall be recorded at the Registry of Deeds.

**Financial Institution:** Banks, savings and loan institutions, and credit unions.

**Fisheries, significant fisheries:** Areas identified by a governmental agency such as the Maine Department of Inland Fisheries and Wildlife, Atlantic Salmon Authority, or Maine Department of Marine Resources as having significant value as fisheries and any areas identified in the municipality's Comprehensive Plan.

**Floor Area:** The sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls, plus the horizontal area of any unenclosed portions of a structure such as porches and decks.

### **Floodplain Definitions**

**Adjacent Grade:** The natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**Area of Shallow Flooding:** A designated AO and AH zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet

where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**Area of Special Flood Hazard:** The land in the floodplain having a one percent or greater chance of flooding in any given year, as specifically identified in the Flood Insurance Study cited in Article 8 of this Land Use Code.

**Base Flood:** The flood having a one percent chance of being equaled or exceeded in any given year, commonly called the 100-year flood.

**Basement:** Any area of the building having its floor subgrade (below ground level) on all sides.

**Breakaway Wall:** A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

**Building:** See "Structure."

**Certificate of Compliance:** A document signed by the Code Enforcement Officer stating that a structure is in compliance with all of the provisions of this Article.

**Development:** Any change caused by individuals or entities to improved or unimproved real estate, including but not limited to the construction of buildings or other structures; the construction of additions or substantial improvements to buildings or other structures; mining, dredging, filling, grading, paving, excavation, or drilling operations; and the storage, deposition, or extraction of materials, public or private sewage disposal systems or water supply facilities.

**Elevated Building:** A non-basement building (i) built, in the case of a building in Zones A2, A5 and/or A8, to have the top of the elevated floor, elevated above the ground level by means of pilings, columns, posts, piers, or "stilts;" and (ii) adequately anchored so as not to impair the

structural integrity of the building during a flood of up to one foot above the magnitude of the base flood. In the case of Zones A2, A5 and/or A8, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls less than three feet in height with openings sufficient to facilitate the unimpeded movement of flood waters.

**Elevation Certificate:** An official form (FEMA Form 81-31, May, 1993, as amended) that (i) is used to verify compliance with the floodplain management regulations of the National Flood Insurance Program; and, (ii) is required as a condition for purchasing flood insurance.

**Flood or Flooding:**

- (a) A general and temporary condition of partial or complete inundation of normally dry land areas from:
  - (1) The overflow of inland or tidal waters.
  - (2) The unusual and rapid accumulation or runoff of surface waters from any source.
- b) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (a)(1) of this definition.

**Flood Elevation Study:** An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

**Flood Insurance Rate Map FIRM):** An official map of a community, on which the Administrator of the Federal Insurance Administration has delineated both the special hazard areas and the risk premium zones applicable to the community.

**Flood Insurance Study:** see "Flood Elevation Study."

**Floodplain or Flood-prone Area:** Any land area susceptible to being inundated by water from any source (see definition of "flooding").

**Floodplain Management:** The operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

**Floodplain Management Regulations:** Zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance, and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

**Flood Proofing:** Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

**Floodway:** See "Regulatory Floodway."

**Floodway Encroachment Lines:** The lines marking the limits of floodways on federal, state, and local floodplain maps.

**Freeboard:** A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed, that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions.

**Functionally Dependent Use:** A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and

ship repair facilities, but does not include long-term storage or related manufacturing facilities.

**Industrial Laundry Facility:** A facility that is intended to service commercial customers, including but not limited to, Hospitals, Motels, Hotels, Commercial Uniform Companies, etc. Not intended for use by the general public as defined as a Dry Cleaners and Luandromat. (#8)

**Laundromat:** A facility where the general public may wash, dry, or dry clean clothing or other fabrics in machines operated by the patrons or by facility staff for a fee. (#8)

**Locally Established Datum:** For purposes of this ordinance, an elevation established for a specific site to which all other elevations at the site are referenced. This elevation is generally not referenced to the National Geodetic Vertical Datum (NGVD) or any other established datum and is used in areas where Mean Sea Level data is too far from a specific site to be practically used.

**Lowest Floor:** The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements 20A VI of this ordinance.

**Manufactured Home:** A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater then 180 consecutive days.

**Manufactured Home Park or Subdivision:** A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**Mean Sea Level:** For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, other datum, to which base flood elevations shown on a community's Flood Insurance Rate map are referenced.

**Medical Marijuana Registered Dispensary:** Medical Marijuana Registered Dispensary means a not-for-profit entity as defined under Title 22 M.R.S.A., Section 2422 and registered pursuant to Title 22 M.R.S.A., Section 2428 and to Section 6 of the State of Maine Rule Governing the Maine Medical Use of Marijuana Program (10-144 CMR Chapter 22) that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana, paraphernalia or related supplies and educational materials to registered patients who have designated the Dispensary to cultivate marijuana for their medical use and the registered primary caregivers of those patients. All Medical Marijuana Registered Dispensary shall be further defined in, and shall adhere to, the laws of the State of Maine and to the State of Maine Rules Governing the Maine Medical Use of Marijuana Program (10-144 CMR Chapter 122), as the same may be amended from time to time. (#16)

**Medical Marijuana Cultivation Facility:** Medical Marijuana Cultivation Facility means a not-for-profit entity registered pursuant to the laws of the State of Maine and to Section 6 of the State of Maine Rules Governing the Maine Medical Use of Marijuana Program (10-144 CMR Chapter 122) that is a Medical Marijuana Registered Dispensary's permitted additional location for the cultivation of marijuana. All Marijuana Cultivation Facilities shall be further defined in, and shall adhere to, the State of Maine Rules Governing the Maine Medical Use of Marijuana Program (10-144 CMR Chapter 122), as the same may be amended from time to time. (#16)

**New Construction:** Structures for which the "start of construction" commenced on or after the effective date of floodplain management regulations adopted by a community. (1978)

**100-year flood:** See "Base Flood."

**Regulatory Floodway:** (i) The channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot, and (ii) in Zone A is considered to be the channel of a river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain as measured from the normal high water mark to the upland limit of the floodplain.

**Riverine:** Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

**Start of Construction:** The date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, substantial improvement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

**Structure:** For floodplain management purposes, a walled and roofed building. A gas or liquid storage tank that is principally above ground is also a structure.

**Substantial Improvement:** Any repair, reconstruction, or improvement of a structure, the value of which equals, or exceeds 50% of the market value of the structure either before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred. For purposes of this definition "substantial

improvement" is considered to occur at the time of the first alteration of any wall, ceiling, floor, or structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either (1) any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or (2) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places provided that such alteration would not preclude the structure's continued designation as a historic structure.

**Variance:** A grant of relief by a community from the terms of a floodplain management regulation.

**Violation:** The failure of a structure or other development to fully comply with a community's floodplain management regulations or ordinance.

**Forest Management Activities:** Timber cruising and other forest resource evaluation activities, pesticide or fertilizer application, management planning activities, timber stand improvement, pruning, regeneration of forest stands, and other similar or associated activities, exclusive of timber harvesting and the construction, creation or maintenance of roads.

**Forestry:** The planting, cultivating or the harvesting of trees or shrubs for either personal use or for profit. Forestry shall not include the planting or cultivating of trees or shrubs for decorative use around buildings or structures.

**Freshwater Wetland:** Areas which are inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and are not part of a great pond, coastal wetland, river, stream or brook. Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the above criteria.

**Functionally Water-Dependent Uses:** Uses which require for their primary purpose location in submerged lands or that require direct access to, or location in, coastal and inland waters and which cannot be located away from these

water. The uses include, but are not limited to commercial or recreational fishing and boating facilities, finfish and shellfish processing, fish storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aides, basins and channels, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water and which cannot reasonably be located or operated at an inland site, and uses which primarily provide general access to marine or tidal waters.

**Funeral Home:** A building with facilities for the preparation of dead persons for burial or cremation, and for the viewing of the body and for observance.

**Garden:** A plot of cultivated ground adjacent to a dwelling and devoted in whole or in part to the growing of herbs, fruits, flowers or vegetables for household use.

**Governmental Use:** An activity carried on directly by the City of Brewer, Brewer School Department, City of Brewer, their departments or agencies, but not any activity by the Housing Authority of the City of Brewer.

**Great Pond:** Any inland body of water which in a natural state has a surface area in excess of ten acres, and any inland body of water artificially formed or increased which has surface area in excess of thirty acres, except for the purposes of these regulations, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner.

**Gross Floor Area:** The total area of a structure with no exclusions for usable space such as closets, hallways, staircases, etc. but excluding below grade unfinished basement floor area not used as part of the primary or accessory use activity.

**High Intensity Soil Survey:** A map prepared by a Certified Soil Scientist, identifying the soil types down to 1/8 acre or less at a scale equivalent to the subdivision plan submitted. The soils shall be identified in accordance with the National Cooperative Soil Survey. The map shall show the location of all test pits used to identify the soils, and shall be accompanied by a log of each sample point identifying the textural classification and the depth to seasonal high water

table or bedrock at that location. Single soil test pits and their evaluation for suitability for subsurface waste water disposal systems shall not be considered to constitute high intensity soil surveys.

**High Water Mark, Inland Waters:** That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. In the case of wetlands adjacent to rivers, streams, brooks, or ponds, the normal high-water mark is the upland edge of the wetland, and not the edge of the open water.

**Historic or Archaeological Resources:** Areas identified by the Maine Historic Preservation Commission as having significant value as a historic or archaeological resource and any areas identified in the municipality's Comprehensive Plan.

**Home Occupation:** An accessory use of a dwelling unit or a building accessory thereto for gainful employment, involving the manufacture, provision or sale of goods which are incidental to the service being provided and/or services, provided that such use conforms to all the requirements of Section Article 4, Section 415 of this Land Use Code.

**Hospice:** A facility or program designed to provide a caring environment for supplying the physical and emotional needs of the terminally ill.

**Hospital:** A building or structure which is used for the housing and care of sick, hurt or incapacitated human beings. It shall also include accessory uses which are directly associated with the housing and care of sick, hurt or incapacitated human beings such as kitchen facilities, solariums, dormitories, physicians' offices, etc.

**Immediate Area:** Shall include all properties within the same block and within 500 feet of the site of the proposed use.

**Industrial Equipment:** Self-propelled vehicles and other equipment designed or used primarily in the construction trades or manufacturing. The definition shall include, but not be limited to, cement mixers, air compressors, cranes, graders, forms and molds and well drillers. This list shall be deemed partial and shall not operate to exclude other like equipment which are within the general

terms of this definition. This term does not include those items covered by the definition of automobile graveyard and junkyard in MRSA 30, Sec. 2451-B, items "1" and "2".

**Industrial Park:** An area of land devoted exclusively to industrial purposes and associated uses.

**In-law Apartment:** An apartment in a single-family dwelling which is occupied by up to two people who are within the second degree of kinship by blood or by marriage, with one or more of the owners of the single-family dwelling.

**Installer:** Any licensed dealer or an employee of a licensed dealer, or a person licensed as a mechanic who engages in the process of affixing or assembling or setting up of manufactured housing on foundations at a building site (in conformity with the Maine Manufactured Housing Board Installation Standards as adopted by the Maine Manufactured Housing Board in March, 1993, and as the same may be amended from time to time).

**Junkyard:** A yard, field or other area used as a place of storage for:

- (a) Discarded, worn-out or junked plumbing, heating supplies, household appliances and furniture;
- (b) Discarded, scrapped and junked lumber;
- (c) Old or scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, water and all scrap iron, steel and other scrap ferrous or nonferrous materials; and
- (d) Garbage dumps, waste dumps and sanitary fills.

**Kennel:** An establishment for the keeping, breeding and/or boarding of four (4) or more dogs which are more than six months old.

**Level of Service:** A description of the operating conditions a driver will experience while traveling on a particular street or highway calculated in accordance with the provisions of the *Highway Capacity Manual*, 1997 edition, published by the National Academy of Sciences, Transportation Research Board.

**Licensing Authority:** The City Council of the City of Brewer.

**Light Manufacturing:** Activities involving the manufacturing, packaging, assembly, or distribution of finished products from previously prepared material, including, by way of example only the following: bakeries, bottling, printing and publishing, pharmaceuticals, machine shops, precision instruments, watchmakers, musical instruments, toys and sporting goods, pottery and ceramics using only previously pulverized clay, jewelry, assembly of electrical components, tool and die shops and the packaging of foods. Light manufacturing uses do not include the processing of raw materials or salvaging operations.

**Loading Space:** An off-street space or berth on the same lot with a building or contiguous to a group of buildings for the temporary parking of a commercial vehicle while loading or unloading merchandise or materials, and which abuts upon a street, alley or other appropriate means of access.

**Lot:** A parcel of land occupied or capable of being occupied by one (1) building and the accessory buildings or uses customarily incidental to it, including such open spaces as are required by this Land Use Code. Also, a parcel of land whose boundaries have been established by some legal instrument such as a recorded deed or a recorded map and which is recognized as a separate legal entity for the purposes of transfer of title.

**Lot Front Line:** The horizontal distance of a lot front measured along a street, highway or private way. In the event a lot has access only by private way then the horizontal distance of the lot front line closest to a street or highway.

**Lot Rear Line:** A lot line generally opposite a lot front line.

**Lot Side Line:** A line dividing one lot from another; not a rear line or a front line.

**Manufactured Housing:** A structural unit or units designed for occupancy and constructed in a manufacturing facility and transported, by the use of its own chassis or an independent chassis, to a building site. The term includes any type of building that is constructed at a manufacturing facility and transported to a building site where it is used for housing and may be purchased or sold by a

dealer in the interim. For purposes of this section, two types of manufactured housing are included. Those two types are:

- (1) Those units constructed after June 15, 1976, commonly called "newer mobile homes," that the manufacturer certifies are constructed in compliance with the United States Department of Housing and Urban Development standards, meaning structures transportable in one or more sections, that in the traveling mode are 14 body feet or more in width and are 750 feet or more square feet, and that are built on a permanent chassis and designed to be used as dwellings, with or without permanent foundations, when connected to the required utilities including the plumbing, heating, air conditioning or electrical systems contained in the unit.

- (a) This term also includes any structure that meets all the requirements of this subparagraph, except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the United States Department of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, United States Code, Title 42, Section 5401, et. seq.; and

- (2) Those units commonly called "modular homes," that the manufacturer certifies are constructed in compliance with Title 10, M.R.S.A. chapter 951, and rules adopted under that chapter, meaning structures, transportable in one or more sections, that are not constructed on a permanent chassis and are designed to be used as dwellings on foundations when connected to required utilities, including the plumbing, heating, air conditioning or electrical systems contained in the unit.

**Manufacturing:** Establishments engaged in the mechanical or chemical transformation of materials or substances into new products including the assembling of component parts, the manufacturing of products, and the blending of materials such as lubricating oils, plastics, resins or liquors.

**Major Thoroughfare:** A street or public way which has been given a Route number by the State.

**Marina:** A structure with associated pier, wharf or dock and water basin which is used for the servicing, maintenance or repair of ships, boats and craft of a similar nature.

**Material Storage:** The safekeeping of goods and commodities which are used in the process of construction or manufacturing. The term does not include sand and gravel, nor those items covered by the definition of automobile graveyard and junkyard in MRSA, 30-A, Sec. 3752, Items "1" and "2".

**Mobile Homes:** A structure, transportable in one or more sections, which is 8 body feet or more in width and is 32 body feet or more in length and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning and electrical systems contained therein. Such structures not bearing the State of Maine Seal of Approval for Industrialized (manufactured) Housing or meeting the United States Department of Housing and Urban Development standard under the National Manufactured Housing Construction and Safety Standards Act of 1974 shall not be considered as a dwelling unit.

**Mobile Home Park:** A parcel or adjoining parcels of land under unified ownership which has been planned and improved for the placement of two (2) or more mobile homes.

**Motel-Hotel:** A building or structure which contains rooms intended or designed to be used or which are used, rented or hired out to be occupied or which are occupied for sleeping purposes by the guests and where only a general kitchen and dining room are provided within the building or accessory building.

**Multifamily Development:** A subdivision which contains three or more dwelling units on land in common ownership, such as apartment buildings, condominiums or mobile home parks.

**Multiple Family House:** A building containing more than two (2) dwelling units.

**Museum:** A building or structure used for preserving and/or exhibiting works of art, scientific objects or other objects of a historical nature which contribute to the heritage of the community.

**Narcotic Treatment Facility:** A building or structure used either in part or entirely for any system of treatment provided for chronic heroin or opiate-like drug dependent individuals that administers narcotic drugs under physician orders either for detoxification purposes or for maintenance treatment in a rehabilitative context offered by partnership, corporation, association, or person or groups of persons engaged in such administration. (#11)

**Natural Areas and Natural Communities, Unique Natural Areas and Natural Communities:** Areas identified by a governmental agency such as the Maine Department of Conservation Natural Areas Program as having significant value as a natural area and any areas identified in the municipality's Comprehensive Plan.

**Net Residential Acreage:** The total acreage available for the subdivision, as shown on the proposed subdivision plan, minus the area for streets or access and the areas that are unsuitable for development.

**Net Residential Density:** The average number of dwelling units per net residential acre.

**Non-Conforming Use:** A building, structure or use of land existing at the time of the enactment of this Land Use Code, and which does not conform to the regulations of the district in which it is located.

**Nursing Home:** A facility which is operated in connection with a hospital or in which nursing care and medical services are prescribed by or performed under the general direction of persons licensed to practice medicine or surgery in the State, for the accommodation of convalescent or other persons who are acutely ill and not in need of hospital care, but who do require extended care and not in need of hospital care, but who do require extended care and related medical services. The term "nursing home" shall be restricted to those facilities, the

purpose of which is to provide extended care and related medical services for a period of not less than 24 hours and related medical services for a period of not less than 24 hours per day to individuals admitted because of illness, disease or physical or mental infirmity and which provides a community service.

**Official Map of the City:** The Zoning Map of the City, overlays, and any amendments thereto, as adopted by City Council and on file with the City Clerk.

**Off-lot Sewage:** The connection or extension of any sewage line or system from any lot to a public sewer line.

**Off-lot Water:** The connection or extension of any water line or system from any lot to a public water line.

**Off-Street Parking Space:** An area, enclosed in the main building, or unenclosed, having an area of not less than 162 square feet (except as provided for hereafter), exclusive of driveways and maneuvering space permanently reserved for the temporary storage of one motor vehicle and connected with a street or alley by a driveway which affords satisfactory ingress and egress for motor vehicles. The 162 square foot standard is based on 90 degree parking angle with a 9 foot width and 18 foot length.

**Off-Lot:** The services such as sewer or water are supplied by the municipality.

**Open Space:** The area of a lot not used for structures, driveways, parking spaces, accessory buildings, including areas which are five (5) feet or less from any of the foregoing and the adjoining boundary line.

**Outside Storage:** The storage outside of a building.

**Person:** A firm, association, organization, partnership, trust, company, or corporation, as well as an individual.

**Pier, Wharf and Dock:** Structures which extend into the water for use as a landing place for ships, boats, canoes or things of a similar character.

**Planning Board:** The Planning Board of the City of Brewer.

**Planned Unit Development:** The development, according to a plan approved under Article 4, Section 425 of this Land Use Code, of a large tract of land where the three (3) or more buildings are built simultaneously on lots smaller than normally required in the district where located, provided the overall density of development of the tract does not exceed the density requirements of the district and land not built upon is permanently preserved as such.

**Planned Group Development:** An area of minimum contiguous area size, as specified in this

Ordinance. To be planned, designed and developed with one or more buildings, with one or more units in one or more ownerships in which one or more of the zoning or subdivision regulations, other than use regulations, may be waived or varied to allow flexibility and creativity in site and building design and location, with regards to setback requirements. Permanent easements to all interior and exterior common areas and associated parking, for commercial and institutional purposes and permanent access to a public way must be made available. The creating of individual exterior lots to accompany individual units within the principal structure will not be allowed. (#9)

**Preliminary Plan:** The preliminary drawings indicating the proposed layout of the subdivision to be submitted to the Planning Board for its consideration.

**Professional Engineer:** A professional engineer, registered in the State of Maine.

**Professional Offices:** Business offices for the following licensed uses: Physician, lawyer, dentist, architect, insurance, real estate, engineer, land surveyor or accountant.

**Public Street:** A street or roadway which has been formally accepted by the City Council of the City of Brewer as a public way.

**Recording Plan:** An original of the Final Plan, suitable for recording at the Registry of Deeds and which need show only information relevant to the transfer of an interest in the property, and which does not show other information presented on the plan such as sewer and water line locations and sizes, culverts, and building lines.

**Recreational Facilities - Indoor:** Swimming pools, tennis courts, gymnasiums and other recreational facilities which are enclosed by a building or other structure capable of accommodating more than ten (10) persons.

**Recreational Facilities - Outdoor:** Swimming pools, tennis courts, playing fields, basketball courts, golf courses and other recreational facilities which are not in any way permanently enclosed by a building or structure and capable of accommodating more than ten (10) persons. Such facilities may include building or other structures as accessory uses for such facility.

**Recycling Center:** A facility which handles recycled solid materials that have been separated from the City of Brewer's solid waste prior to their receipt at the recycling facility, and are free from and will not produce putrescible or other solid wastes, liquid wastes, or any special or hazardous wastes. A recycling facility shall not include any facility which requires a permit for the operation of an automobile graveyard/junkyard and automobile recycling business as defined in this Article. A recycling center may include a redemption center as an ancillary and subsidiary use.

**Redemption Center:** A facility licensed by the Maine Department of Agriculture which collects beverage containers and refunds the statutory deposit pursuant to Title 32 M.R.S.A., Sec. 1861 (1988 and Supp. 1991). The facility shall also store the beverage containers on-site for a period of time not to exceed thirty (30) days and for the ultimate collection by the beverage distributor.

**Religious Services as an Ancillary Use:** The conduct of activities constituting a "Church Use" in a building other than a religious structure. Such ancillary use is not the primary use of the property but rather subordinate and minor in significance.

**Residential Street:** A street or public way which is used primarily for access to abutting properties.

**Research Facility:** A building or part of a building devoted to scientific inquiry and ancillary functions. No manufacturing is conducted on the premises except as related to the scientific research being conducted. (#2)

**Research & Development Facility:** A building or part of a building devoted to either (a) the manufacturing, propagation, maintenance and distribution of products or materials for use in scientific inquiry; or (b) the initial development and commercialization, including manufacturing, of research into marketable products, materials, or processes. Manufacturing cannot become the primary use of the property. (#2)

**Restaurant:** A business principally engaged in serving prepared foods and drinks to the public on the premises during set business hours.

**Rooming House:** See Boarding Home.

**School:** The educational use of an area of land, whether primary, secondary, college or vocational nature.

**Screening:** Either (1) a hedge or buffer strip at least five (5) feet wide, consisting of densely planted shrubs or trees at least four (4) feet in height at time of planting, and eventually reaching a mature height of at least six (6) feet; or (2) a wall or fence at least six (6) feet in height, but not exceeding eight (8) feet, which provides an effective visual barrier.

**Secondary Thoroughfare:** A street or public way which is used to connect two (2) or more collector streets with a major thoroughfare.

**Service Business:** Any business or establishment which provides a service of a non-retail nature for hire by others, conducted through the application of some specialized knowledge, training, skill or talent, or through the employment of some special action or work. By definition, a service business does not entail outside storage of goods or equipment nor utilize vehicles larger than 9,000 lbs. gross vehicle weight (GVW). An automobile service station shall not be considered a service establishment.

**Set-Back:** The distance from any street, highway or right-of-way line abutting a lot or parcel of property to the building situated on said lot. Set-back shall apply on all sides of a lot abutting any street, highway or right-of-way unless otherwise specified within this Land Use Code.

**Shipping Containers:** A unit with or without wheels originally or specifically used or designed to store goods or merchandise during shipping or hauling by a vehicle including, but not limited to, trailers, box cars and/or crates.

**Shopping Center:** A group of architecturally unified commercial establishments built on a site which is planned, developed, owned and managed as an operating unit related in its location, size, and type of shops to one trade area that the unit serves. The unit provides on-site parking in definite relationship to the types and total size of the stores.

**Sight Distance:** The length of approaching highway which is visible to the driver. The criteria and standards found in the Maine Department of Transportation Highway Design Guide, January, 1994 revision, shall be used.

**Site Plan Review:** The review to be conducted by the Planning Board using the guidelines provided in this Land Use Code.

**Sketch Plan:** Conceptual maps, renderings, and supportive data describing the project proposed by the applicant for initial review prior to submitting an application for subdivision approval.

**Stable:** A business primarily engaged in letting horses and/or conducting a riding school.

**Street:** Public and private ways such as alleys, avenues, highways, roads, and other rights-of-way, as well as areas on subdivision plans designated as rights-of-way for vehicular access other than driveways.

**Street Highway Line or Right-Of-Way Line:** The boundary line between a parcel of property or lot and the abutting street.

**Structure:** Anything constructed, built or erected, the use of which requires a temporary or permanent location on the ground, or attached to something temporarily or permanently located on the ground. This term shall not include sidewalks, walkways, driveways, out-door parking lots and their attendant paving.

**Subdivision:** The division of a tract or parcel of land into 3 or more lots within any 5-year period, that begins after September 23, 1971. This definition applies

whether the division is accomplished by sale, lease, development, buildings or otherwise. The term "subdivision" also includes the division of a new structure or structures on a tract or parcel of land into 3 or more dwelling units within a 5-year period, the construction or placement of 3 or more dwelling units on a single tract or parcel of land and the division of an existing structure or structures previously used for commercial or industrial use into 3 or more dwelling units within a 5-year period.

In determining whether a tract or parcel of land is divided into 3 or more lots, the first dividing of such tract or parcel shall be considered to create the first 2 lots and the next dividing of either of the first 2 lots, by whomever accomplished, unless otherwise exempted herein shall be considered to create a third lot, unless:

1. Both dividings are accomplished by a subdivider who has retained one of the lots for the subdivider's own use as a single-family residence or for open space land as defined in Title 36 M.R.S.A., Section 1102 for a period of at least 5 years before the second dividing occurs; or
2. The division of the tract or parcel is otherwise exempt under this definition.

A lot of 40 or more acres shall be counted as a lot.

A division accomplished by devise, condemnation, order of court, gift to a person related to the donor by blood, marriage or adoption or a gift to a municipality or by transfer of any interest in land to the owner of land abutting that land does not create a lot or lots for the purposes of these regulations, unless the intent of the transferor in any transfer or gift is to avoid the objectives of these regulations. If real estate exempt under this paragraph by a gift to a person related to the donor by blood, marriage or adoption is transferred within 5 years to another person not related to the donor of the exempt real estate by blood, marriage or adoption, then the previously exempt division creates a lot or lots for the purposes of this definition. The grant of bona fide security interest in an entire lot that has been exempted from the definition under this paragraph, or subsequent transfer of that entire lot by the original holder of the security interest or that person's successor in interest,

does not create a lot for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of these regulations.

In determining the number of dwelling units in a structure, the provisions regarding the determination of the number of lots shall apply, including exemptions from the definition of a subdivision of land.

Notwithstanding the provisions of this definition, leased dwelling units are not subject to subdivision review if the Municipal Reviewing Authority has determined that the units are otherwise subject to municipal review at least as stringent as that required under Article 7 of this Land Use Code. (#2)

**Subdivision, Major.** A subdivision which requires the construction of a new street or the extension of an existing public street, or the extension of existing off-lot water and/or sewage.

**Subdivision, Minor:** A subdivision which is located on an existing public street and which does not require the extension of off-lot water and/or sewage.

**Telecommunication Facilities:**

**Antenna** means any system of wires, poles, rods, reflecting discs, or similar devices used for the transmission or reception of electromagnetic waves when such system is either external to or attached to the exterior of a structure. Antennas shall include devices having active elements extending in any direction, and directional beam-type arrays having elements carried by and disposed from a generally horizontal boom that may be mounted upon and rotated through a vertical mast or tower interconnecting the boom and antenna support, all of which elements are deemed to be a part of the antenna.

**Antenna - Building Mounted** means any antenna, other than an antenna with its supports resting on the ground, directly attached or affixed to a building, tank, tower, building mounted mast less than 10 feet tall and 6 inches in diameter, or structure other than a telecommunication tower.

**Ground Mounted** means any antenna with its base, single or multiple posts, placed directly on the ground or a mast less than 10 feet tall and 6 inches in diameter.

**Antenna - Omni-directional** means any antenna which transmits and/or receives radio frequency signals in a 360 degree radial pattern. For the purpose of this Land Use code, an omni-directional antenna is up to fifteen feet (15') in height and up to four inches (4") in diameter.

**Antenna - Parabolic** means any device incorporating a reflective surface that is solid, open mesh, or bar configured that is shallow dish, cone, horn, bowl or cornucopia shaped and is used to transmit and/or receive electromagnetic or radio frequency communication/signals in a specific directional pattern. This definition is meant to include, but is not limited to, what are commonly referred to as satellite earth stations, TVROs and satellite microwave antennas.

**Antenna - Portable** means any device used to transmit and/or receive electromagnetic or radio frequency communication/signals in a specific directional pattern, located on a portable or moveable base designed to be placed either for temporary or long-term use at a given site.

**Antenna - vertical** means a vertical type antenna without horizontal cross-sections greater than one half inch in diameter.

**Co-location** - see telecommunication facility co-located.

**Commercial Use** means a use that involves the exchange of cash, goods or services, barter, forgiveness of indebtedness, or any other remuneration in exchange for goods, services, lodging, meals, entertainment in any form, or the right to occupy space over a period of time.

**Direct broadcast satellite service** is a system in which signals are transmitted directly from a satellite to a small (not exceeding 18 inches) home receiving dish. DBS competes with cable television.

**Equipment building, shelter or cabinet** means a cabinet or building used to house equipment used by telecommunication providers to house equipment at a facility.

**Inhabited Area** means any residence, any other structure regularly occupied by people, or any outdoor area used by people on a regular basis.

**Lattice Tower** means a self-supporting support structure, erected on the ground, which consists of metal crossed strips or bars to support antennas and related equipment.

**Public service use or facility** means a use operated or used by a public body or public utility in connection with any of the following services: water, waste water management, public education, parks and recreation, fire and police protection, solid waste management, transportation or utilities.

**Public Rights of Way** means and includes all public streets and utility easements, now and hereafter owned by the City, but only to the extent of the City's right, title, interest or authority to grant a license to occupy and use such streets and easements for telecommunications facilities.

**Quasi-Public Use** means a use serving the public at large, and operated by a private entity under a franchise or other similar governmental authorization, designed to promote the interests of the general public or operated by a recognized civic organization for the benefit of the general public.

**Readily Visible** means an object that stands out as a prominent feature of the landscape when viewed with the naked eye.

**Related equipment** means all equipment ancillary to the transmission and reception of voice and data via radio frequencies. Such equipment may include, but is not limited to, cable, conduit and connectors.

**Satellite Earth Station** means a telecommunication facility consisting of more than a single satellite dish smaller than 10 feet in diameter that transmits to and/or receives signals from an orbiting satellite.

**Silhouette** means a representation of the outline of the towers and antenna associated with a telecommunication facility, as seen from an elevation perspective.

**Structure Ridge line** means the line along the tope of a roof or top of a structure, if it has no roof. Telecommunication Facility means a facility that transmits and/or receives electromagnetic signals. It includes antennas, microwave dishes, horns, and other types of equipment for the transmission or receipt of such signals, telecommunication towers or similar structures

supporting said equipment, equipment buildings, parking area, and other accessory development.

**Telecommunications Facility - Exempt** include, but are not limited to, the following:

- A. A single ground or building mounted receive-only radio or television antenna including any mast, for the sole use of the tenant occupying the residential parcel on which the radio or television antenna is located; with an antenna height not exceeding twenty-five feet (25');
- B. A ground or building mounted citizens band radio antenna including any mast, if the height (post and antenna) does not exceed thirty-five feet (35');
- C. A ground, building, or tower mounted antenna operated by a federally licensed amateur radio operator as part of the Amateur Radio Service, if, the height (post and antenna) does not exceed thirty-five feet (35');
- D. A ground or building mounted received only radio or television satellite dish antenna, which does not exceed thirty-six inches (36") in diameter, for the sole use of the resident occupying a residential parcel on which the satellite dish is located; provided the height of said dish does not exceed the height of the Ridge line of the primary structure on said parcel;
- E. All citizens band radio antenna or antenna operated by a federally licensed amateur radio operator as part of the Amateur Radio Service which existed at the time of the adoption of this Land Use Code.
- F. Mobile services providing public information coverage of news events of a temporary nature.
- G. Hand held devices such as cell phones, business-band mobile radios, walkie-talkies, cordless telephones, garage door openers and similar devices as determined by the Code Enforcement Officer.

- H. City government owned and operated receive and/or transmit telemetry station antennas for supervisory control and data acquisition (SCADA) systems for water, flood alert, traffic control devices and signals, storm water, pump stations and/or irrigation systems, with heights not exceeding thirty-five feet (35').

**Telecommunication Facility - Major** are all telecommunication facilities not clearly set forth and included in the definition of exempt minor or mini facilities.

**Telecommunication Facility - Mini** is an attached wireless communication facility consisting, but not limited to, the following:

- A. A single ground or building mounted receive-only radio or television antenna including any mast, for the sole use of the tenant occupying the parcel on which the radio or television antenna is located; with an antenna height not exceeding fifty feet (50');
- B. A ground or building mounted citizens band radio antenna including any mast, if the height (tower, support structure, post and antenna) does not exceed seventy feet (70');
- C. A ground, building, or tower mounted antenna operated by a federally licensed amateur radio operator as part of the Amateur Radio Service, if the height (post and antenna) does not exceed seventy feet (70');
- D. A ground or building mounted received only radio or television satellite dish antenna, with diameter exceeding thirty-six inches (36") less than 8' in diameter, for the sole use of the resident occupying a residential parcel on which the satellite dish is located; provided the height of said dish does not exceed the height of the Ridge line of the primary structure on said parcel;
- E. City owner and operated antennae used for emergency response services, public utilities, operations and maintenance if the height does not exceed seventy feet (70'). If a facility does not meet these criteria then it is considered either a minor or major telecommunication facility.

**Telecommunication Facility - Minor** means any of the following:

- A. Antenna which meet the definition of mini with the exception of the height limit;
- B. Telecommunication facilities less than thirty-five feet (35');
- C. A single ground or building mounted whip (omni) antenna without a reflector, less than four inches (4") in diameter whose total height does not exceed thirty-five feet (35'), including any mast to which it is attached, located on commercial and/or industrial zoned property;
- D. A ground or building mounted panel antenna whose height is equal to or less than four feet (4') and whose area is not more than 480 square inches in the aggregate (e.g., one foot (1') diameter parabola or 2' x 1.5' panel) as viewed from any one point, located on commercial or industrial zoned property. The equipment cabinets shall be designed, placed and screened to be unobtrusive and effectively unnoticeable;
- E. More than three (3) antennas, satellite dishes (greater than 3' in diameter), panel antennas, or combination thereof, are proposed to be placed on the commercial or industrial parcel, including existing facilities;
- F. Building mounted antennas which, in the opinion of the Code Enforcement Officer, are unobtrusive or undetectable by way of design and/or placement on the building, regardless of number, when located on CB, GB, IND or IND-2 zoned property;
- G. Telecommunication facilities less than fifty feet (50') in height, in compliance with the applicable Sections of this Land Use Code, located on a parcel owned by the City of Brewer and utilized for public and/or quasi-public uses where it is found by the Code Enforcement Officer to be compatible with the existing City uses of the property;
- H. Telecommunication facilities, including multiple antennas, in compliance with the applicable Sections of this Land Use Code, located on a parcel located in the CB, GB, IND or IND-2 zones and utilized for the sole use and purpose of a research and development tenant of said parcel, where it is found by the Code Enforcement Officer to be aesthetically compatible with the existing and surrounding structures.

**Telecommunication Facility - Co-located** means a telecommunication facility comprised of a single telecommunication tower or building supporting one or more antennas, dishes, or similar devices owned or used by more than one public or private entity.

**Telecommunication Facility - Commercial** means a telecommunication facility that is operated primarily for a business purpose or purposes.

**Telecommunication Facility- Multiple User** means a telecommunication facility comprised of multiple telecommunication towers or buildings supporting one or more antennas owned or used by more than one public or private entity, excluding research and development industries with antennas to serve internal uses only.

**Telecommunication Facility - Non Commercial** means a telecommunication facility that is operated solely for a non business purpose.

**Telecommunication Tower** means a mast, pole, monopole, guyed tower, lattice tower, free-standing tower, or other structure designed and primarily used to support antennas. A ground or building mounted mast greater than ten feet (10') tall and six inches (6") in diameter supporting one or more antenna, dishes, arrays, etc., shall be considered a telecommunication tower.

**Tract or Parcel of Land:** All contiguous land in the same ownership, provided that lands located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof.

**Trailer:** A vehicle used or so constructed as to permit its being used as a conveyance on the public streets and highways and duly licensed as such, and constructed in such a manner as will permit occupancy thereof as a temporary dwelling or a sleeping place for one or more persons.

**Trailer Parks:** A plot of ground on which two (2) or more trailers, occupied for dwelling or sleeping purposes, are located.

**Transportation Uses:** Freight and passenger terminals.

**Two Family Dwellings:** Two (2) separate dwelling units in a single structure on one (1) lot.

**Usable Open Space:** That portion of the common open space which due to its slope, drainage characteristics and soil conditions can be used for active recreation, horticulture or agriculture. Parcels having surficial geology with any of the following characteristics shall be discounted by 50% in usable open space area:

Calculations:

1. Soils rated "very poorly drained"
2. Slopes of 20% or greater;
3. Land classified as "rock land" or "stony land" with 50% or more of the surface with stone cover.

Source of these criteria is Soils Suitability Guide, Misc. Publication 667 (REV), Maine Soil & Water Commission

**Use:** The purpose for which land or a building is arranged, designed or intended, or for which either land or a building is or may be occupied or maintained.

**Unvegetated Area:** Shall mean an area of land that has been impacted by creating an impervious or semi-impervious area designed for human activities, such as foundations, parking lots, or other developments. (#17)

**Variance:** A relaxation of the terms of the Brewer Zoning Ordinance, granted in strict compliance with the provisions of this Land Use Code.

**Vegetated Area:** Shall mean an area of land that is generally undeveloped and is in a natural state replanted and is pervious. (#17)

**Volume of a Structure:** The volume of all portions of a structure enclosed by roof and fixed exterior walls as measured from the exterior faces of these walls and roof.

**Warehousing:** The storage of goods of others for a fee.

**Water Recreational:** A public or private swimming pool and/or any beach, marina, pond or lake open for admission to the general public.

**Water Storage:** A farm pond or water tower used as a reservoir of water for fire protection and/or human or animal consumption.

**Wildlife Habitat, Significant Wildlife Habitat:** Areas identified by the Maine Department of Inland Fisheries and Wildlife as having significant value as habitat for animals and any areas identified in the municipality's Comprehensive Plan.

**Yard Front or Front Yard:** An open unoccupied space extending the full width of the lot and situated between the street line and the front line of a building projected to the side lines of the lot.

**Yard Rear or Rear Yard:** An open unoccupied space between the rear line of a building and the rear line of the lot and extending the full width of the lot.

**Yard Side or Side Yard:** An open unoccupied space situated between a building and the side line of the lot and extending from the front yard to the rear yard.

## **ZONE MAPS**

1. Land Use
2. Shore Zones
3. Manufactured Housing

### END OF CHAPTER NOTATIONS

(#1)	Enacted 04/09/02, effective 04/14/02	2002-C007
(#2)	Enacted 08/13/02, effective 08/18/02	2002-C046
(#3)	Enacted 08/20/03, effective 08/25/03	2003-C013
(#4)	Enacted 03/02/04, effective 03/07/04	2004-C006
(#5)	Enacted 07/18/04, effective 07/18/04	2004-C016
(#6)	Enacted 09/20/04, effective 09/25/04	2004-C021
(#7)	Enacted 11/07/05, effective 11/12/05	2005-C022
(#8)	Enacted 04/11/06, effective 04/16/06	2006-C005
(#9)	Enacted 08/14/07, effective 08/19/07	2007-C003
(#10)	Enacted 12/09/08, effective 12/14/08	2008-C014
(#11)	Enacted 05/26/09, effective 06/01/09	2009-C004
(#12)	Enacted 03/02/10, effective 03/07/10	2010-C002
(#13)	Enacted 06/01/10, effective 06/06/10	2010-C008
(#14)	Enacted 07/13/10, effective 07/18/10	2010-C009
(#15)	Enacted 07/13/10, effective 07/18/10	2010-C012
(#16)	Enacted 11/15/10, effective 11/20/10	2010-C019
(#17)	Enacted 01/11/11, effective 01/16/11	2010-C023
(#18)	Enacted 06/07/11, effective 06/12/11	2011-C002
(#19)	Enacted 11/14/11, effective 11/19/11	2011-C015
(#20)	Enacted 11/14/11, effective 11/19/11	2011-C011
(#21)	Enacted 12/13/11, effective 12/18/11	2011-C016 (Matrix)
(#22)	Enacted 12/13/11, effective 12/18/11	2011-C017
(#23)	Enacted 01/10/12, effective 01/15/12	2011-C018
(#24)	Enacted 02/14/12, effective 02/19/12	2011-C020
(#25)	Enacted 07/24/12, effective 07/29/12	2012-C010
(#26)	Enacted 09/11/12, effective 09/16/12	2012-C015 (Matrix)
(#27)	Enacted 10/09/12, effective 10/14/12	2012-C017
(#28)	Enacted 10/09/12, effective 10/14/12	2012-C018
(#29)	Enacted 02/11/13, effective 02/16/13	2013-C001 (Matrix)