

**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 of 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 firefighting 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%
- ❖ Super elevation 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 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 foot-candles 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; drainage way; 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 a 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 access way 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.

**410.6** Converted buildings shall meet the life safety requirements contained in Chapter 30 Housing Code, Article 1 Section 101.19 Residential house & multi-family housing vacant more than 12 months and new additions, of the City of Brewer Charter, Codes, and Ordinances. (#47)

**411 DAY CARE**

**411.1** All Day Care types shall be: (#2)(#46)

1. Licensed by the Maine Department of Human Services, Bureau of Social Services, Day Care Division. Approved by the State Fire Marshal's Office and/or any other required State or Federal approval.
2. Subject to annual City of Brewer permit.
3. Home Day Cares 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, and meet the criteria of Article 6, Site Plan Review of this Land Use Code. All Day Cares shall follow the procedures outlined in Article 3, Section 306.5 of this Land Use Code.
4. Fees for a home day care shall be a non-refundable application fee set forth in the then current City Council adopted fee schedule, payable to the City of Brewer. Fees for a child care center shall follow Article 6, Site Plan Review of the Land Use Code. (#37)

**411.2** OUTDOOR PLAY AREA FOR A CHILD DAY CARE (#46)

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. There must be an exit from the play area other than through a building. All parts of the play area must be under constant adult supervision. 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)(#46)

"Home Day Care" shall not operate between the hours of 6:00 p.m. and 6:00 a.m. unless specifically approved by the City's appropriate authority as defined by Article 3, Section 306.5.

**411.4** PARKING (#46)

"Home Day Care" 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 (#46)**

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

**411.6 EMPLOYEES (#46)**

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

**411.7 LIFE SAFETY REQUIREMENTS (#47)**

1. A minimum of one illuminated exit sign with emergency lights at main entrance of business.
2. A minimum of one fire extinguisher at main entrance of business.
3. Hard wired interconnected combination smoke and carbon monoxide detectors shall be located on all levels of the building.
4. Windows and any exterior opening on a second floor and higher that creates a hazard and/or window sills that is less than 24 inches from the floor must have proper fall protections.

**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 (#37)

- 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, plus the technical review/escrow account fee as defined in Article 6 of this ordinance for a minor site plan. The applicant is responsible for the legal notice fees for the required public hearing as set forth in the then current City Council adopted fee schedule.
- 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 (#46)**

**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.

**415.13** Home day cares shall be reviewed under Section 411 of the Brewer Land Use Code.

**415.14 LIFE SAFETY REQUIREMENTS (#47)**

1. A minimum of one illuminated exit sign with emergency lights at main entrance of business.
2. A minimum of one fire extinguisher at main entrance of business.
3. Hard wired interconnected combination smoke and carbon monoxide detectors shall be located on all levels of the building.
4. Windows and any exterior opening on a second floor and higher that creates a hazard and/or window sills that is less than 24 inches from the floor must have proper fall protections.

**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.

**416.8** Buildings with in-law apartments shall meet the life safety requirements contained in Chapter 30 Housing Code, Article 1 Section 101.19 Residential house & multi-family housing vacant more than 12 months and new additions, of the City of Brewer Charter, Codes, and Ordinances. (#47)

#### **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 improvement meet minimum parking requirements, setbacks, screening, buffering and all performance standards as applicable in the Brewer Land Use Code. (#35)

**420.2** All requirements of the District in which the uses are located are met, with the exception that uses may be in the same building. (#35)

**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)(#31)**

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.

421.1.1. 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. 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.

421.1.2. Commercial uses located within the Downtown Development District Shall be exempt from the requirements of this section if:

1. The total on-site parking requirements, as listed under Article 4 of this Land Use Code, for all uses on the land parcel is less than 25 spaces and there is adjacent on-street parking; or
2. There is a usable existing public parking lot or parking garage of 25 or more spaces within 1,000 feet of the building.

For commercial uses located within the Downtown Development District which meet the criteria in 424.1.2 above except that the required amount of parking is 25 spaces or greater can be exempt for their first 24 spaces. The remainder of their required parking must be met either on-site or as according to 424.11 above.

**424.2 GENERAL PARKING REQUIREMENTS (#2)(#4)(#11)(#12)(#16)(#19)(#31)(#48)**

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 DD, 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.
  - 3a.** 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.
  - 3b.** 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.
  - 3c.** 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.
  - 5a. 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.
  - 5b. The Code Enforcement Officer may reduce the side and rear parking setback requirements in the Convenience Business, Office Residential, and Downtown Development Districts for commercial uses utilizing existing buildings. In no case shall the side and rear parking setbacks be less than one (1) foot. In determining the appropriate side and rear parking setbacks, the Code Enforcement Officer shall consider specific on-site conditions and shall have the owner/applicant sign an agreement indicating that 1) the parking spaces are located on their property, 2) snow plowing and/or snow piles will be kept on their property unless agreed to with abutter, 3) any changes to stormwater flows meet ordinances regulations, and 4) they will comply with any additional conditions or restrictions imposed by the Code Enforcement Officer. (#48)
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:

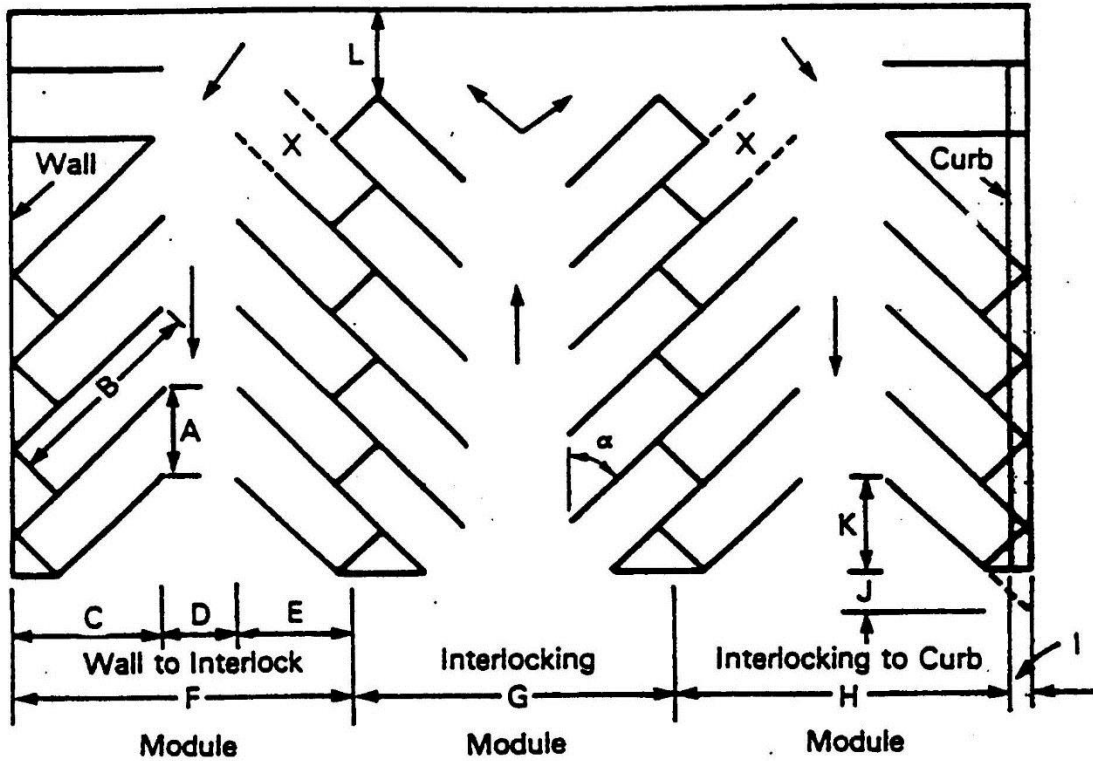
| DIMENSION | ON DIAGRAM | ANGLE ( $\theta$ ) |     |     |     |
|-----------|------------|--------------------|-----|-----|-----|
|           |            | 45°                | 60° | 75° | 90° |
|           |            |                    |     |     |     |

*Brewer City Ordinances, Chapter 24 Land Use Code, Article 4*

|                                 |    |      |      |      |      |
|---------------------------------|----|------|------|------|------|
| 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 as 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) plus one space for each employee            |

*Brewer City Ordinances, Chapter 24 Land Use Code, Article 4*

|   |  |
|---|--|
| <p>Medical Clinics,<br/>                 Medical Offices<br/>                 Narcotic Treatment<br/>                 Facilities (#11)<br/>                 Medical Marijuana<br/>                 Registered<br/>                 Dispensary (#16)<br/>                 Medical Marijuana<br/>                 Cultivation<br/>                 Facility (#16)</p> | <p>1 per each 175 sq. ft. of gross floor area<br/>                 1 per each 175 sq. ft. of gross floor area<br/>                 1 space per each 175 sq. ft. of gross floor area</p> <p>1 space per 350 sq. ft. of gross floor area of<br/>                 office, sales, or display area (minimum of<br/>                 four spaces) plus 1 space per<br/>                 5,000 sq. ft. of growing or storage area</p> |
| <p>Industrial<br/>                 Manufacturing,<br/>                 compounding<br/>                 processing or packing<br/>                 of goods and/or<br/>                 products</p>  | <p>1 per 1,000 sq. feet plus 1 per each 350 sq. ft.<br/>                 of office, sales or other space to be used by<br/>                 visitors, customers or salesmen</p>  |
| <p>Warehousing &amp; Storage</p>  | <p>1 space per 1½ employees on each shift, plus<br/>                 1 per each 350 sq. ft. of office, sales or other<br/>                 space to be used by visitors, customers or<br/>                 salesmen</p>  |
| <p>Apartment<br/>                 Houses/Multi-Family<br/>                 Housing, Studio<br/>                 Apartment</p>   | <p>1¼ spaces per unit</p>  |
| <p>One Bedroom<br/>                 Apartment</p>   | <p>1½ spaces per unit</p>  |
| <p>Two Bedroom<br/>                 Apartment</p>   | <p>1¾ spaces per unit</p>  |
| <p>Three (+) Bedroom<br/>                 Apartment</p>   | <p>2 spaces per unit</p>   |
| <p>Hotels or Motels</p>   | <p>1 per hotel or motel room; plus additional<br/>                 spaces as required for other functions such as<br/>                 bar, restaurant, meeting rooms, etc.</p>  |
| <p>Recreation – Indoor</p>  | <p>Spaces equal to 30% of total permitted<br/>                 occupancy (BOCA CODE)</p>   |
| <p>Recreation – Outdoor</p>   | <p>1 per 4 users</p>   |
| <p>Housing specifically<br/>                 designed, constructed<br/>                 and managed for the<br/>                 elderly</p>  | <p>1.2 spaces per dwelling unit</p>  |
| <p>Retail business,<br/>                 business services and<br/>                 personal</p>  | <p>1 per each 350 sq. ft. of net leasable area;<br/>                 (except) automobile service stations and<br/>                 garages for minor repairs which shall have a<br/>                 minimum of 6 spaces</p>   |

|                               |   |
|-------------------------------|---|
| 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 homeowner's 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;
    - 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 insurance and 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 homeowner's corporation or by retaining ownership and responsibility for maintenance himself. In the case of a homeowner's 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 setbacks 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 an 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 separate lot, unless the Planning Board, after site plan review, authorize 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.

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.

SECTION 439 STORMWATER MANAGEMENT (#44)

1. 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, which must not have adverse impacts on abutting or downstream properties.
2. To the extent possible, the drainage system must retain stormwater on the site using the natural features of the site.
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. Non-stormwater discharges to the City's storm drainage system are prohibited as detailed in Chapter 31, Article 6-B, Sections 605 A, B, and C of the City of Brewer's Charter, Codes and Ordinances.
8. Developments disturbing over 1 acre of area are required to provide a continuing stormwater management plan with annual inspections and reporting per Chapter 31, Article 6-C of the City of Brewer's Charter, Codes and Ordinances.

#### SECTION 440 EROSION CONTROL (#44)

1. The proposed site plan shall have a soil erosion and sediment control plan that will effectively prevent soil erosion from leaving the site and entering the City stormwater system, water bodies of Maine, wetlands, and adjacent properties.
2. 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.
3. 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 Best Management Practices (BMPs) Manual for Designers and Engineers, October 2016 published by the Maine Department of Environmental Protection.
4. The procedures outlined in the erosion and sedimentation control plan shall be implemented during the site preparation, construction, and clean-up stages.



