

## **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, Fifth Edition, Copyright 2014, on file in the City Clerk's Office. (#39)

**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 Sadomasochistic 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.

**Artisan Manufacturing Studio:** An establishment to include the production of goods by the use of hand tools or small-scale, light mechanical equipment to be sold primarily on-site. Said goods may include food, beverage, art or craft production. Said goods shall not be transported in bulk off-site for sale at other locations. (#39)

**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.

**Bar, Tavern, or Lounge:** An establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and that derives fifty (50) percent or more of its gross revenue, on a monthly basis, from the sale of said alcoholic beverages. Typically does not include accommodations for dancing. Music and/or entertainment only allowed as an accessory use. Minors are not allowed entry unless accompanied by a parent or guardian. Does not include establishments where alcohol service is a secondary activity, such as a bowling alley, or fitness club. (#39)

**Barnyard Animals:** Domestic animals including, but not limited to, cattle, horses, pigs, sheep, chickens, ducks, geese, turkeys, goats, mules, hogs and other like animals that have been traditionally found on farms and are considered to have a value for use as pets, food, or fiber production, whether or not the owner currently utilizes or capitalizes on any of the perceived values. Dogs, birds (except chickens, ducks, geese and turkeys) and cats are specifically excluded from this definition. (#40)

**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.

**Best Management Practices (BMP)** - "Best Management Practices" or BMPs" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. (#44)

**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."

**Brewpub:** An establishment engaged in the manufacture, storage and bottling of beer in conjunction with the same beer to be sold and consumed on the premises and/or for retail sale from the premises in sealed bottle or other sealed containers. A brewpub shall have a full kitchen and also conduct the sale of food and other beverages for consumption on the premises. Minors are allowed entry. (#39)

**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 three or more children. Child Care Centers, with or without consideration for the services rendered, may be operated as a service business within a church or community building in any zoning district. This does not include home day cares per the definition contained in this article. (#46)

**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.

**Dance Hall:** Any building, room, hall or other place which is kept or used for public dancing or in which, for compensation paid directly or indirectly to the owner, manager, or operator thereof, men, women, or children are permitted to engage in dancing. (#39)

**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 cannot 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 off 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 Laundromat. (#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 than 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 aids, 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.

**Home Day Care, 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 or more children. (#46)

**Home Day Care, 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 or more adults over the age of 16. (#46)

**Homeowners Association** – An incorporated nonprofit organization operating under recorded land agreements through which (a) each lot and/or homeowner in a planned unit or other described land area is automatically a member; (b) each lot is automatically subject to a charge for a proportionate share of the expenses for the organization’s activities, such as maintaining common property; and (c) the charge if unpaid becomes a lien against the property. (#44)

**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.

**Lounge:** See Bar. (#39)

**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".

**Microbrewery:** An establishment engaged in the manufacture, storage and bottling of beer to be sold from the premises in sealed bottles or other sealed containers for consumption off the premises. Microbreweries shall not include the retail sale of food or beer for consumption on the premises with the exception of brew tours or special events as considered an accessory use by the Brewer Code Office. (#39)

**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.

**Nightclub:** An establishment in which the primary use is dancing and musical entertainment with the dispensing of alcoholic beverages for consumption on the premises. Typically includes a stage and/or dance floor. Minors are not allowed entry when any alcohol is being served in the establishment. (#39)

**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.

**Stormwater** - "Stormwater" means any stormwater runoff, snowmelt runoff, and surface runoff and drainage; "Stormwater" has the same meaning as "Storm Water". (#44)

**Stormwater Management Facilities and/or Systems** - “Stormwater Management Facilities and/or Systems” means any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures and/or systems that are part of the stormwater management plan for a new development or redevelopment. (#44)

**Stormwater Management Plan** - “Stormwater Management Plan” means BMPs and post stormwater management facilities and/or systems employed by a new Development or Redevelopment to meet the stormwater standards of Chapter 24, Land Use, of the City of Brewer’s Charter, Codes and Ordinances and approved by the Municipal Permitting Authority. (#44)

**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.

**Tavern:** See Bar. (#39)

**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.

**Mobile Food Business.** A business that serves food or beverages from a self-contained unit either motorized or in a trailer on wheels, and conducts all or part of its operations on premises other than its own and is readily movable, without disassembling, for transport to another location. (#49)

**Mobile Food Court.** A parcel of land where two (2) or more mobile food businesses congregate to offer food or beverages for sale to the public. Any cluster of more than one mobile food business, vending cart and seasonal farm stand, located on the same parcel of land shall be considered a mobile food court. (#49)

**Mobile Food Trailer.** A mobile food business that serves food or beverages from a non-motorized vehicle that is normally pulled behind a motorized vehicle. The term “mobile food trailer” shall not include vending carts, mobile food trucks, or mobile ice cream vendors. (#49)

**Mobile Food Truck.** A mobile food business that serves food or beverages from an enclosed self-contained motorized vehicle. The term “mobile food truck” shall not include vending carts, mobile food trailers, or mobile ice cream vendors. (#49)

**Mobile Ice Cream Vendors.** Individuals selling pre-packaged novelty ice cream from a non-stationary vehicle or mobile pushcart. Open food handling such as, but not limited to, flavored grinding ice and pretzels are not allowed. (#49)

**Mobile Food Pushcart.** A portable vending device, pushcart, or other wheeled vehicle or device which may be moved without the assistance of a motor and which is not required to be licensed and registered by the Department of Transportation, used for the displaying, storing, or transporting of food offered for sale by a vendor. Said cart may be up to four (4) feet in width, six (6) feet in length, excluding auxiliary items such as handles or fenders, or otherwise the cart shall not occupy space greater than a total of twenty-four (24) square feet. (#49)

**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 top 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.

**Watershed-** "Watershed" means the area of land that catches rain and snow that eventually drains or seeps into a marsh, stream, river, lake or groundwater. (#44)

**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.