

**ARTICLE 1 GENERAL**

**101 TITLE**

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

**102 AUTHORITY**

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

**103 PURPOSE (#2)**

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

**104 JURISDICTION**

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

**104.1 PERMITS. (#34) (#50)**

No license or permit, or approval shall be issued pursuant to this Chapter under the following circumstances:

- All real estate and personal property taxes, sewer user fees and other charges owed to the City by the applicant have not been paid in full, if any of them are two (2) years or more years overdue.
- All assessments for real estate taxes, sewer user fees and other charges owed to the City against the property on which the licensed or permitted activity is to take place have not been paid in full, if any of them are two (2) years or more years overdue.
- Any and all approved projects or land use permits within the City of Brewer (ie. site plans, subdivisions, fill & grading plans, and building permits) by the applicant are not in compliance with their local approvals except as noted below.
- Any and all approved projects or land use permits on the same parcel of land (ie. site plans, subdivisions, fill & grading plans, and building permits) in which the applicant is seeking a land use approval are not in compliance with their local approvals. The Brewer Code Officer may make an exception if the applicant is proposing changes in order to bring the property into compliance.
- Any and all activities on the same parcel of land and/or activities having a common scheme of development in which the owner and/or occupant has failed to obtain any necessary license, permit, or approval pursuant to this Chapter. The Brewer Code Officer may make an exception if the applicant is proposing changes in order to bring the activities into compliance.

**105 CONFLICTS WITH OTHER CODES OR ORDINANCES**

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

**106 VALIDITY AND SEVERABILITY**

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

**107 EFFECTIVE DATE**

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

**108 AMENDMENTS**

**108.1 INITIATION**

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

**108.2 ZONING AMENDMENTS (#4)**

**1. PUBLIC HEARING DATE AND NOTICE**

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

**2. PUBLIC HEARING PROCEDURES**

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

**3. PLANNING BOARD ACTION**

The Planning Board shall, after the public hearing, or joint public hearing with the City Council, meet and vote either to recommend or not recommend that the Zoning Ordinance change or amendment be made by the City Council. The Planning Board shall

file with the City Clerk its recommendations to the City Council within ten (10) days after the public hearing, or any continuation thereof, has been concluded. (#4)

4. COUNCIL ACTION (#18)

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

**SUBSECTION**

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

**108.3 SHORELAND ZONING AMENDMENTS**

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

**108.4 CITY CLERK ATTESTATION**

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

**109 CONTRACT ZONING**

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

**109.1 PURPOSE**

It is the general purpose of this Section, in furtherance of the goals provided in the preamble of this Land Use Code, to provide for the reasonable regulation of agricultural, residential, commercial, industrial, and civic and institutional uses of land and structures, and to provide for the orderly development thereof within the City of Brewer. On occasion, where competing and incompatible uses conflict, traditional zoning methods and procedures, such as variances and site plan approval, are inadequate. In these special situations, more flexible and adaptable zoning methods are needed to permit differing, land uses in both developed and undeveloped areas, and at the same time recognize the effects of change. In consideration of a change in zoning classification for a particular

property or group of properties, it may be determined that public necessity, public convenience, or the general welfare require that provision be made to impose certain limitations or restrictions on the use or development of the property. Such conditions are deemed necessary to collectively protect the best interests of the property owner, the surrounding property owners and the neighborhood, all other property owners and citizens of the City, and to secure appropriate development consistent with the City's Comprehensive Plan. The provisions of this Section shall not exempt the use of development of any property from other minimum standards or requirements otherwise provided in this Land Use Code, or as otherwise provided by law.

## **109.2 MANDATORY CONDITIONS**

Any zone change adopted pursuant to this Section shall:

1. Be consistent with the Comprehensive Plan of the City of Brewer, as amended;
2. Be consistent with the existing and permitted uses within the original zone;
3. Only include conditions and restrictions which relate to the physical development or operation of the property;
4. Be subject to an agreement executed by authorized representatives of both the property owner and the City providing for the implementation and enforcement of all terms and conditions imposed and agreed to by the parties pursuant to this Section.
5. Be passed by a two-thirds majority vote of the City Council present and voting in the instance of a Planning Board recommendation against such contract zone change.

## **109.3 DISCRETIONARY CONDITIONS**

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

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

6. The dedication or conveyance of property for public purposes, including but not limited to, streets, scenic and conservation easements, parks and utility systems.

#### **109.4 FINDINGS OF FACT**

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

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

2. That the proposed use will not create unreasonable traffic congestion on contiguous or adjacent streets. The proponent of the zone change shall submit the following evidence;
  - A. The estimated peak-hour traffic to be generated by the proposed change.
  - B. Existing traffic counts on surrounding streets and roads;
  - C. Traffic accident data covering the most recent four-year period. Such data shall be by date, and indicate both personal and property damage by accident;
  - D. The capacity of surrounding roads and streets and any improvements necessary to accommodate anticipated traffic generation, including traffic signals, signs, other directional markers as well as geometric street/road changes.
3. That the proposed zone change and use(s) authorized shall be insured by providing and maintaining adequate and appropriate utilities, drainage, access, parking and loading and the necessary site improvements. The proponent shall submit materials, documents and plans which employ standard engineering methods to the City Planner for review not less than 15 work days prior to the public hearing. The City Planner shall provide a written commentary on the adequacy of same. Copies of the City Planner's commentary shall be made available to the applicant and Planning Board.
4. That the proposed use(s) will conform to the general character of the neighborhood. In making such a determination the following shall be considered:
  - A. Building & Structure
    - 1) Do the color and materials match or complement those used on nearby structures?

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

B. Preservation of Landscape.

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

C. Set Backs and Landscape

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

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

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

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

D. Parking/Loading (#2)

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

children from entering the premises shall be provided and be maintained in good condition.

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

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

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

#### **109.5 PROCEDURE (#37)**

- 1. A request for a new or amended contract zone agreement shall include the application form (including its supplemental information), application fee, and technical review/escrow account fee. Once written, the proposed contract zone agreement will be placed on the next available Planning Board meeting agenda for a public hearing, review, and recommendation to the City Council.
- 2. All proposed amendments to this Land Use Code being considered under this Section shall be processed in accordance with the provisions of this Article and Title 30-A MRSA Section 4352, Subsection 8. Notice of any public hearing required shall be published at the applicant's expense. If at all possible, the processing of the application under both contract zoning and site plan shall be accomplished concurrently. All application fees and technical review/escrow account fees must be paid when application is filed. All Contract Zoning Agreements shall, at the applicant's expense, be recorded in the Penobscot County Registry of Deeds.
- 3. **APPLICATION FEE AND TECHNICAL REVIEW/ESCROW ACCOUNT.** All applications for a contract zone agreement shall be accompanied by a non-refundable application fee as set forth in the then current City Council adopted fee schedule, payable to the City of Brewer. In addition, an applicant applying for a contract zone agreement shall pay a separate technical review and escrow account fee of \$1,000.00 upon submitting the application. Said funds shall be held in escrow and used to cover the cost of legal notices, recording plans and documents in the Registry of Deeds, and



for any of the following support services which the City of Brewer reasonably incurs in the review, approval or disapproval of the application:

- A. attorney, including the City Solicitor
- B. engineer
- C. architect
- D. surveyor
- E. any other expert the Planning Board, City Council, City Planner and/or Code Enforcement Officer feels is necessary to adequately evaluate the proposed application. All technical review consultants shall be chosen by the City and not the applicant.

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

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