

**LICENSES AND PERMITS**

**ARTICLE I. GENERAL PROVISIONS APPLICABLE TO BOTH LICENSES & PERMITS**

**SECTION 100. AUTHORITY.** This Chapter 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 M.R.S.A., § 3001, and the Brewer City Charter and any other applicable law.

**SECTION 101. APPLICATION REQUIRED.** (#15) Any person required by the provisions of this Chapter to obtain from the City, (1) a license to engage in the operation, conduct or carrying on of any trade, profession, business or privilege, or (2) a permit to commence, proceed or continue to perform any act, shall make a written application therefore over his or her signature to the City Clerk upon form provided by the City Clerk and shall be accompanied by the required fee, which will be returned if the license or permit applied for is not issued.

No license or permit 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.

**SECTION 102. CITY CLERK'S DUTY.** As agent of the City Council, the City Clerk is hereby authorized and directed to (1) receive all applications required by this Chapter unless otherwise specified, and (2) act thereon with reasonable promptness consistent with the nature of the matter, either by (a) issuing the license or permit as applied for subject to limitations on his or her authority as contained herein, or (b) set a public hearing and place the approval and issuance of the license on the next available City Council agenda when the completed license application does not meet the requirements of any Federal or State statute or City Codes or Ordinances or the approvals from City officials pursuant to Section 103.3 were not given to the City Clerk. No license shall be issued unless and until all past and current license fees have been paid in full. (#9)

**SECTION 103. CITY CLERK: AUTHORITY LIMITATIONS.** The authority of the City Clerk to issue licenses and permits is hereby limited as follows:

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**103.1 AGENT OF COUNCIL.** The City Clerk acts as agent of the City Council.

**103.2 COUNCIL RESERVATION.** In accordance with Title 30-A, M.R.S.A. and any other title of Maine Revised Statutes which constitutes the City Council as the licensing authority or board, the City Council, acting as the licensing authority of the City of Brewer, authorizes and directs the City Clerk as its agent to issue all licenses and permits after public notice as hereinafter provided, required to be issued by Maine Revised Statutes or by the Codes and Ordinances of the City of Brewer where the applicant for such license or permit satisfies the City Clerk that all of the requirements of the Statutes, Codes or Ordinances affecting such application and all recommendations required by agents are returned to the City Clerk with a favorable recommendation for the issuance of such permit or license. Where the required recommendations are not favorable or where all of the requirements of the Statutes, Codes or Ordinances have not been met, the City Clerk shall refer the application to the City Council as provided in Article 1, Section 102 of this Chapter. In the event the City Clerk has not acted upon the license or permit application within sixty (60) days from the date of the original written application, the application shall be deemed to have been denied. If the application is denied, the applicant shall have the right to appeal to the licensing authority as hereinafter provided.

**103.2 (a)** The City Clerk shall, upon the expiration of sixty (60) days from the date of the original written application, immediately notify the licensing authority, to wit: The City Council, of the denial.

**103.2 (b)** The applicant may apply in writing to the City Clerk for a hearing upon the refusal to act within the said sixty (60) days as herein provided for. Upon receipt of such request, the licensing authority, to wit: The City Council, shall set the matter for hearing before them at a date not more than seven (7) days from the date of the receipt of the request for appeal.

**103.2 (c)** The applicant at the hearing herein provided for, shall have the opportunity to be represented by legal counsel and present evidence in his or her behalf. The City Clerk or any agent of the City shall have a like opportunity to present evidence in support of his or her decision to refuse to act on the application within the said sixty (60) days period.

**103.2 (d)** The City Council acting as a licensing authority shall within three (3) business days of hearing make its decision to deny the license or permit or to issue the same upon such terms and conditions as it deems just so long as such terms and conditions are within its authority as the licensing authority.

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**103.2(e)** In making its determination, the licensing authority shall determine the following:

- (i) The specific requirements of the license or permit under Maine Revised Statutes and of the Codes and Ordinances of the City of Brewer.
- (ii) The facts with respect to the applicant meeting the requirements of the license or permit.
- (iii) In matters in which the licensing authority has discretion,
- (iv) it shall make its requirements for the license or permit understandable to the applicant

**103.3 APPROVAL.** In all cases where the approval of any City Official is required as a condition precedent to issuance of any license or permit by the City Clerk, he or she shall notify promptly such officer or officers and shall not issue such license or permit until and unless all required approval is received by written report or e-mail correspondence. (#12)

**103.4 PUBLIC NOTICE AND HEARING.** Upon receipt of a completed application for license or permit, accompanied by the required fee, the City Clerk shall immediately post such application for public inspection on the bulletin board at Brewer City Hall for forty-eight (48) hours, exclusive of Sundays and holidays. At the conclusion of this period, the City Clerk may issue the license or permit as provided in Article 1, Section 102 and 103.2 of this Chapter unless a public hearing is requested and granted as hereinafter provided. Within the forty-eight (48) hour public notice period, any person may request, in writing to the City Clerk, that a public hearing be held on the application. In requesting a public hearing on any license or permit, the person so requesting the hearing shall state in writing the reason for his request. Requests for hearings shall be considered only if the requesting party alleges that:

- (a) the specific requirements of the license or permit under Maine Revised Statutes and/or the Codes or Ordinances of the City of Brewer prohibit such activity.
- (b) the applicant does not or cannot meet the requirements of the license or permit.

Upon receipt of a request for public hearing and such request meeting the aforementioned criteria, the City Clerk shall, within three (3) business days, notify the City Council of such request. Upon receipt of such notice, the City Council shall set the matter for hearing before them at a date not more than seven (7) days from the date of

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the receipt of the request for hearing.

The person requesting the hearing shall have the opportunity to be represented by legal counsel and present evidence to support his or her allegations. The applicant for license or permit shall have a like opportunity to present evidence in support of his or her position.

The City Council acting as a licensing authority, shall within three (3) days of hearing, make its decision to grant the license or permit, deny the same or modify the same upon such terms and conditions as it deems just, so long as such terms and conditions are within its authority as the licensing authority.

In making its determination, the licensing authority shall determine the criteria in accordance with Article 1, Sec. 103.2(e) of this Chapter.

**103.5 CONFORMANCE WITH LAND USE CODE.** No license or permit shall be issued to any applicant for any use at any location where such use is prohibited by the Land Use Code, unless the Code Enforcement Officer shall certify on the application therefore that such use is an approved non-conforming use under such Land Use Code.

**104. SUSPENSION OR REVOCATION.** Unless otherwise provided for in this Chapter, any license or permit issued under the licensing authority of the City of Brewer may be suspended or revoked as follows:

**104(a)** The City Manager may, after receipt of a notice in writing from any department head or City employee charged with the issuing, supervision, monitoring, inspection or otherwise of any licensee that such licensee is in violation of any requirement of Maine Revised Statutes or City Codes and Ordinances respecting such license, without hearing, suspend any licenses granted by the licensing authority as herein provided for a period of five (5) days by notifying in writing a notice of suspension delivered to the licensee or his, her or its agent in hand by a constable of the City of Brewer. Such notice shall inform the licensee of the appeal procedure of such suspension. The suspension herein provided shall become a permanent suspension unless the licensee makes his, her or its appeal to the licensing authority as hereinafter provided.

**104(b)** The City Manager, upon such suspension, shall immediately notify the licensing authority, to wit: The City Council, of such suspension.

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**104(c)** The Licensee or permittee may apply in writing, to the City Clerk for a hearing upon the suspension herein provided for. Upon receipt of such application for reinstatement, the licensing authority, to wit: The City Council shall set the matter for hearing before them at a date no more than seven (7) days from the date of the receipt of the application for reinstatement.

**104(d)** The applicant, for reinstatement at the hearing herein provided, shall have the opportunity to be represented by legal counsel and present evidence in his, her or its behalf. The City Manager or any agent of the City shall have a like opportunity to present evidence in support of the City's position for suspension or revocation.

**104(e)** The City Council acting as the licensing authority will, within three (3) days of hearing, make its decision to continue the suspension or revocation or modify the same upon such terms and conditions as it deems just so long as such terms and conditions are within its authority as the licensing authority.

**104(f)** In making its determination, the licensing authority shall determine the following: (i) The specific requirements of the license or permit under Maine Revised Statutes and of the Codes and Ordinances of the City of Brewer. (ii) The facts with respect to the licensee or permittee meeting the requirements of the license or permit. (iii) In matters in which the licensing authority has discretion, it shall make its requirement for reinstatement specific and understandable to the licensee or permittee.

**SECTION 105.** Except as otherwise provided by this Chapter or by state law, the term of all licenses shall be for a period of one year, unless the license indicates a lesser period, and shall expire on the first Monday in May of each year.

**SECTION 106. TRANSFERABILITY.** No license or permit issued under this Chapter shall be transferable. When a business or enterprise is transferred to a new owner, the license shall immediately terminate and unless otherwise provided by statute, codes or ordinances, the new owner shall be required to apply for a new license under the terms of this Chapter. For the purposes of this Chapter, a new owner shall include, but not be limited to a landlord, mortgagee, property owner, or lessee who operates a business or enterprise formerly operated by a tenant or owner or mortgagee.

**SECTION 107. CITY COUNCIL ACTION.** Upon the referral by the City Clerk of a completed license application to the City Council in accordance with Article 1 Section 102 of this Chapter, the City

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Council shall hold a public hearing and therefore consider the completed license application. The City Council shall hear all relevant evidence, including reports of the City department heads. If the City Council determines the application does meet all Federal or State Statutes or municipal Codes and Ordinances, it may issue the license. If the City Council determines the application does not meet all Federal or State Statutes or municipal Codes and Ordinances, it may deny the application or approve the license subject to certain conditions when the City Council believes it is in the best interest of the public. Said license must be in compliance with any conditions imposed by the City Council within such time period as the City Council may determine, but not to exceed ninety (90) days after the license is issued on a conditional basis.

### **ARTICLE 2. LICENSES**

**SECTION 201. AUCTIONEERS.** No persons, partnerships, corporations or other legal entities shall engage in the trade or business of auctioneer in the City of Brewer unless such person shall have an auctioneer's license, as provided under State law.

**SECTION 202. BEANO.** No person, partnership, corporation or other legal entity shall operate or conduct the amusement commonly known as "Beano" or "Bingo" for the entertainment of the public within the City of Brewer, without obtaining a license from the City for such activity. The fee for such license shall be in accordance with Article 4 of this Chapter. Application for a "Beano" or "Bingo" license shall be made to the City Clerk on the license application form provided by the City Clerk. No license shall be issued to any person, partnership, corporation or other legal entity unless such person, partnership, corporation or other legal entity is licensed by the Maine State Police to operate or conduct "Beano" or "Bingo" in the City of Brewer. The City Clerk and the Deputy City Clerk are authorized to sign approvals, on behalf of the City Council, for applications to the Maine State Police for "Beano" or "Bingo" licenses. (#12)

**SECTION 202.1 GAMES OF CHANCE.** On behalf of the City Council, as the licensing authority, the City Clerk and the Deputy City Clerk may sign, as agent of said City Council, applications to be the Chief of the State Police from eligible persons, firms, corporations, associations or organizations for licenses to operate "Games of Chance", shall have the definition ascribed to this term in Title 17, M.R.S.A., § 330, et. seq. as amended. No application for license to operate a "Game of Chance" shall be signed by the City Clerk or the Deputy City Clerk, on behalf of the City Council, until and unless the Police Chief of the City approves such activity. The Brewer

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Police Chief may file a blanket letter of approval to cover one (1) or more eligible persons, partnerships, corporations, or other legal entities.

If the Police Chief objects to the issuance of the license, the application shall be referred to the City Council. The public hearing notice and hearing requirement of Article 1, § 103.4 of this Chapter shall not apply to applications for "Games of Chance". There shall be no City license or permit required for a "Game of Chance".

**SECTION 203. BOWLING ALLEYS: POOL ROOMS.** No person, partnership, corporation or other legal entity shall conduct, maintain or operate any place open to the public for bowling or for playing pool or billiards, without first obtaining a license. No such license shall be granted except upon the approval of the Police Chief, Code Enforcement Officer, Fire Chief and the Health Officer. Such establishments shall not operate and shall be closed to the public between 1:00 A.M., local time, and sunrise. A "pool room" shall be defined as a place where three (3) or more tables, whether coin-operated or not, may be operated by the public generally.

**SECTION 204. CARNIVALS AND CIRCUS.** Any person, partnership corporation or other legal entity intending to operate a carnival or circus within the limits of the City of Brewer, shall first make application to the municipal officers and receive therefrom, a license. Said application must be approved by the Police Chief, Health Office, Fire Chief and the Code Enforcement Officer. (#12)

### **SECTION 205. DANCE HALLS.**

**SECTION 205.1 DEFINITIONS.** For the purpose of this Article the term "dance hall" shall mean any building, room, terrace, balcony, stage or other structure or area wherein or whereat dancing is permitted. The term "dance hall" shall also include public or private parking lots, streets or squares set aside for dancing.

**SECTION 205.2 LICENSE FROM COMMISSIONER OF PUBLIC SAFETY.** No person, partnership, corporation or other legal entity, hereinafter referred to as "person", shall allow dancing upon any premise under his, her or its control until and unless such person shall have been issued a valid license from the State Commissioner of Public Safety, if required, to permit dancing on said premise. Such person shall cause this license to be posted on the premise at all times that dancing is being permitted. (#5)

**SECTION 205.3 DANCE HALL LICENSE.** No person, partnership, corporation or other legal entity shall allow dancing upon any

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premise under his, her or its control, when there are seventy-five (75) people or more gathered at such premises, until and unless such person shall have obtained a valid license from the City Council permitting dancing on said premises. Such person shall cause this license to be posted on the premises at all times when dancing is being permitted. (#5)

**SECTION 205.4 LICENSE FEE.** The fee for a dance hall license shall be in accordance with Chapter 4 of this Ordinance.

**SECTION 205.5 LOCAL APPROVAL.** No license for a dance hall shall be issued except upon approval of the Police Chief, the Fire Chief and the Code Enforcement Officer or their agents. (#5)

**SECTION 205.6 POLICE AND FIRE SUPERVISION.** Either the Police Chief or the Fire Chief, or both, may require the presence of one (1) or more members of their respective departments at any dance held in any public building at the expense of the person or organization conducting the dance. Notwithstanding the above, the Police Chief may authorize a private security guard or guards licensed under Title 32 M.R.S.A. Chapter 93 to be present at the dance in lieu of one (1) or more of the members of his department. A public dance at which minors are admitted may not be held in any pavilion, hall or other building unless a law enforcement officer or, with permission of the Police Chief, a private security guard licensed under Title 32 M.R.S.A., Chapter 93 is present during the dance and unless there are in such pavilion, hall or other building separate toilets for men and women. This sub-section does not apply to dances conducted by and for students in either public, private or state-owned school buildings or City owned buildings. (#5)

**SECTION 205.7 DANCE CURFEW.** No dancing shall be permitted in any pavilion, hall or other building or in any outdoor public or private parking lots, yards, streets or squares between the hours of 2:00 A.M. and 8:00 A.M. (#5)

**SECTION 205.8 PROHIBITED ACTIVITIES.** No person, partnership, corporation, or other legal entity licensed in accordance with this Section shall allow upon the premises licensed and under control, the exhibiting of bare or uncovered breast(s) at or below the areola area or the exhibiting of the breast(s) at or below the areola area of girls or women covered with a transparent or semi-transparent material which exposes to public view the breast(s) at or below the areola area, or exhibiting of bare or uncovered buttocks, genitals, pubic hair, or anus of either girls, women, boys or men covered with a transparent or semi-transparent material which exposes to public view the buttocks, genitals, pubic hair or anus.



**SECTION 205.9 EXEMPTIONS.** No person, partnership, corporation or other legal entity holding a valid Amusement License, or a valid On-premise Consumption of Alcohol License from the City shall be required to obtain a Dance Hall License. Dance classes and exercise programs held in private or public buildings and at which less than seventy-five (75) persons are present shall be exempt from the requirement for a local dance hall license. No license from the State Commissioner of Public Safety shall be required for dances held on public or private parking lots, streets or squares. Nothing in this Section shall be construed as to require the licensing of dances held in private homes. (#5)

**SECTION 205.10 REVOCATION OR SUSPENSION.** Dance Hall Licenses may be revoked or suspended in accordance with Article 1 of this Chapter and for violation of any rule, regulation or restriction imposed upon dance halls by the State Commissioner of Public Safety.

**SECTION 205.11 PENALTIES.** Any person who violates any provision of this Section shall be subject to a fine not to exceed Five Hundred (\$500.00) Dollars per day with each date being a separate violation. The City Shall also be entitled to recover its reasonable attorney fees and costs for successfully prosecuting a violation of this Article.

**SECTION 206. EXHIBITIONS, PERFORMANCES AND SHOWS (Public).** No person, partnership, corporation, or other legal entity shall conduct or operate on premises any live or recorded exhibition, performance or show, at which an admission fee is charged, without first obtaining a license therefore. No such license shall be granted except upon approval by the Police Chief, Fire Chief and the Health Officer. Either the Fire Chief or the Police Chief, or both, may condition their certificate of approval upon presence of one (1) or more members of their respective Departments at the event at the expense of the person conducting or operating the event. No person, partnership, corporation, or other legal entity licensed in accordance with this subsection shall allow upon the premises licensed and under their control, the exhibiting of bare or uncovered breast(s) at or below the areola area or the exhibiting of the breast(s) at or below the areola area of girls or women covered with a transparent or semi-transparent material which exposes to public view the breast(s) at or below the areola area, or exhibiting of bare or uncovered buttocks, genitals, pubic hair, or anus of either girls, women, boys or men covered with a transparent or semi-transparent material which exposes to public view the buttocks, genitals, pubic hair, or anus. (#12)

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This subsection shall not apply to any premises, which is licensed to serve alcohol and is licensed pursuant to some other section or subsection of this chapter.

**SECTION 207. EXPLOSIVES (Not Flammable Liquids).** The permit required by this Chapter shall be applied for and issued in writing by the City Clerk for and on behalf of the City Council. Said permit shall not be issued until approved by the Fire Chief and Police Chief. Said permit is conditioned to hold the City of Brewer harmless from all loss, costs, damages or expenses by reason of the storage sale or use of said explosives.

**SECTION 208. FLAMMABLE LIQUIDS.** The License required by this Chapter shall be applied for and issued in writing by the City Clerk for and on behalf of the City Council. Said License shall not be issued until certified by the Fire Chief. Said License is conditioned to hold the City of Brewer harmless from all loss, costs, damages or expenses by reason of the storage, sale or use of said flammable liquids.

**SECTION 209. TRANSIENT SELLER OF CONSUMER MERCHANDISE.** No person, partnership, corporation or other legal entity shall offer for transient sale any consumer merchandise, other than at his, her or its place of business, without obtaining a License from the City Clerk.

**SECTION 209.1** This Article shall not apply to persons or other entities selling by lists, catalogs, order forms or otherwise, consumer merchandise for future delivery nor shall this Section apply to persons or other entities selling bark, wood or forest products or to persons selling newspapers, magazines or religious literature.

**SECTION 209.2** Before any person, partnership, corporation or other legal entity is licensed by the City Clerk under this Section, such person must show proof of compliance with the State Laws on Transient Sales, if applicable.

**SECTION 209.2.1** For the purposes of this Chapter, a "transient sale" is defined as any sale by a transient seller of consumer merchandise as regulated by Title 32, M.R.S.A., § 14701 et. seq.  
(#12)

**SECTION 209.3** All transient sales and displays for transient sales shall be on private property. The person conducting the transient sales must have written permission from the owner of the property.

**SECTION 209.4** Transient sales shall only be conducted in the

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Convenient Business and General Business Zone within the City of Brewer.

**SECTION 209.5** The person conducting transient sales shall obtain a license from the City Clerk in accordance with Article 4 of this Chapter, which shall cover all transient sales within the City of Brewer, subject to the permit requirement which is hereinafter set forth. The License shall cover the period set forth on the license. (#8)

**SECTION 209.6** No license will be issued unless the applicant shows the City Clerk written permission to conduct the transient sales on private property during the date or dates the license is being requested for. The license issued shall only permit transient sales on the private property described in the written permission from the property owner. (#8)

**SECTION 209.7** Article 2, Sections 209 through and including 209.6 of this Chapter shall be enforced by the Brewer Police Department.

Any Licensee shall immediately show any Brewer Police Officer the license issued by the City Clerk. (#8)

Any person or entity not having the license shall immediately cease selling any consumer merchandise.

**SECTION 209.8** Notwithstanding any other provision of this Chapter, any violation of Article 2, Section 209 through 209.7 of this Chapter shall carry a fine of a minimum of One Hundred (\$100.00) Dollars and a maximum of Two Hundred Fifty (\$250.00) Dollars , with each day being a separate violation. The City shall also be entitled to recover its reasonable attorney fees and costs for successfully prosecuting any violation of this Article.

**SECTION 209.9** Article 2, Section 209 through 209.7 of this Chapter shall not apply to transient sales conducted in the Brewer Auditorium or by a member of the Farmer's Market located in the Brewer Auditorium parking lot or to sales conducted in a group sale or flea market licensed by the City.

### **SECTION 210. DEALERS IN USED MERCHANDISE AND PAWNBROKERS.**

#### **SECTION 210.1 DEALERS IN SECOND HAND ARTICLES.**

##### **SECTION 210.1.1 DEFINITIONS.**

a. "Antique" means a useful or decorative object of an earlier

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period that is valued for its age, scarcity, craftsmanship or historical significance. For the purpose of this Chapter, an object is an antique if:

1. it is 50 years old or older, or
  2. it was designed by a renowned craftsman such as Paul Revere or Thomas Chippendale and made at least 40 years ago, or
  3. both 1 and 2.
- b. "Collectible" means many of a wide variety of items collected as a hobby, for display or as an investment whose value may appreciate. The term "collectible" shall include, but not be limited to sports cards, stamps and works of fine art.
- c. "Dealer in Secondhand Articles" means any person, partnership, corporation or other legal entity who conducts transactions in used items of personal property, antiques, used precious metals, used precious stones, used gems, old coins and used jewelry and dealers in collectibles. For the purpose of the Chapter "Dealer in Secondhand Articles" shall not include merchants who sell used appliances or used lawn and garden maintenance equipment provided these items are acquired by such merchants as trade ins towards the purchase of new items of a similar nature and variety. The term secondhand dealer shall also not include merchants who sell used or rebuilt automobile parts, including tires, or used or rebuilt machine parts.
- d. "Flea Market" means the selling or offering for sale, to the public, or any services, goods, wares and merchandise or personal property by three or more individuals, groups or organizations from or at one location.
- e. "Gem" includes pearl, amber, amethyst, aquamarine, beryl, cameo, carnelian, chalcedony, coral diopside, garnet, jasper, jet, lapis, lazuli, moonstone, onyx and sardonyx.
- f. "Gemstone" includes diamond, ruby, emerald, sapphire, opal, turquoise, topaz, tourmaline, jade and carbuncle.
- g. "Itinerant Dealer" means any person, partnership, or other legal entity who engages in the business of dealer in secondhand articles and who does not have any permanent place of business within the City. Itinerant dealer does not include persons who sell at public fairs, expositions or bazaars or members selling on behalf of public service organizations.
- h. "Jewelry" means ornamental pieces made of precious metals or set with a precious stone or stones and which are worn for personal adornment.
- i. "Precious Metals" means gold, silver or platinum, any alloy containing gold, silver or platinum, whether or not they are in a worked or unworked state.
- j. "Precious Stones" means any cut and polished gemstone.
- k. "Transaction" means any purchase, sale, transfer, exchange or barter, offer for sale or purchase, promise to sell or buy,

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attempt to sell or buy any item.

1. "Used Items of Personal Property" includes used clothing, business or household furniture, appliances, antiques, business or household fixtures and decorations, and other household goods.

**SECTION 210.1.2 LICENSE REQUIRED.** No person, partnership, corporation or other legal entity shall engage in the business of Dealer in Secondhand Articles in the City of Brewer except under written license granted by the City Council and issued by the City Clerk.

**SECTION 210.1.3 LICENSE PROCEDURE.** Applications for license shall be made to the City Clerk on forms provided by him for that purpose. The fee for initial license and renewal license shall be in accordance with Article 4 of this Chapter. The applicant shall pay the initial license fee and the annual license fee at the time of application and shall furnish the City Clerk with any additional information pertinent to his, her or its operation, agency and his, her or its primary business location if other than in the City of Brewer.

**SECTION 210.1.4 LICENSE ISSUED.** The City Clerk, as an agent of the licensing authority, to wit, the City Council, may issue a license under this Section, only after favorable recommendation from the Police Chief, the Fire Chief, the Health Officer, the Code Enforcement Officer or their agents.

**SECTION 210.1.5 TERM OF LICENSE.** All licenses shall be issued for a one (1) year term and shall expire on the first Monday in May next following the date of issuance. Notwithstanding the foregoing, initial licenses may be issued for terms of less than one (1) year.

**SECTION 210.1.6 RECORD OF PURCHASES AND SALES.**

1. Records of Purchases Required. Every dealer in secondhand articles shall record the following information before completing the purchase of any used item for resale:
  - a. the date of the purchase;
  - b. the seller's name and address and
  - c. a brief description of the property, including any identification numbers.

Before recording the information required by this subsection, dealers shall require reasonable written proof of the seller's identification in the form of a motor vehicle operator's license, military identification card, adult liquor identification card or similar

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item.

2. Records of Sales Required. Every dealer in secondhand articles shall record the following information before completing the sale of any item sold for One Hundred (\$100.00) Dollars or more:
  - a. the date of the sale;
  - b. the purchaser's name and address; and
  - c. a brief description of the property, including any identification numbers.

Before recording the information required by this subsection, the dealer shall require reasonable written proof of the purchaser's identification in the form of a motor vehicle operator's license, military identification card, adult liquor identification card or similar item.

3. Form of Records. The records required by subsections 1 and 2 of this Section shall be kept for the purpose of complying with this Section, maintained in order by date of purchase and date of sale and contained either in a bound volume or ledger or in a binder in which pages can be affixed.
4. Availability for Inspection. Upon request by any law enforcement officer or prosecuting attorney, a dealer shall promptly make available for inspection at his, her or its principal place of business the records required by subsections 1 and 2 of this subsection.

**SECTION 210.1.7 GROUP SALES.** In the case of a sale of secondhand articles at a single location and with more than one participant, the sponsor of such sale shall obtain one (1) license as required by this Chapter. In addition, each participant in said sale shall obtain a license in accordance with Article 4 of this Chapter.

**SECTION 210.1.7.1 FLEA MARKETS.** The sponsor of a flea market shall obtain one (1) license as required by this Chapter. The license fee shall be in accordance with Article 4 of this Chapter for each participant, booth, table or space occupied by a dealer or participant. Notwithstanding the provision of this Chapter, individual participants in a flea market need not secure a Dealer in Secondhand Articles license, an itinerant dealers license, a transient seller of consumer merchandise license, or a yard sale permit as appropriate.

**SECTION 210.1.8 ITINERANT DEALERS.** A Dealer in Secondhand Articles with no permanent place of business in the City who wishes to conduct

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transactions in the City, shall obtain a license therefore from the City Clerk before conducting a transaction. A new license shall be required each time that dealer opens or reopens his, her or its business in the City. This licensing requirement shall not apply to itinerant dealers who come to the City for the purpose of buying secondhand articles provided such dealers do not establish any temporary offices such as in a motel, trailer or building while engaged in the purchase of secondhand articles and provided such dealers do not engage in the selling of secondhand articles as part of their temporary conduct of business in the City. This Section shall not apply to participants or dealers in a group sale or flea market licensed by the City.

### **SECTION 210.2 PAWNBROKERS.**

#### **SECTION 210.2.1 DEFINITIONS.**

1. **Pawn transaction.** "Pawn transaction" means the lending of money on the security of pledged tangible personal property that is delivered to a pawnbroker and held by the pawnbroker. The term also includes the purchase of tangible personal property on the condition that it may be repurchased by the seller for a fixed price within a fixed period of time.
2. **Pawnbroker.** "Pawnbroker" means a person, partnership, corporation or other legal entity who engages in pawn transactions.
3. **Tangible personal property.** "Tangible personal property" includes motor vehicles but does not include documents evidencing title to motor vehicles. The term also does not include checks, drafts or similar instruments or real estate.

**SECTION 210.2.2 LICENSING.** The City Council, or their designee, may grant licenses to any person, partnership, corporation or other legal entity of good moral character to be pawnbrokers for one year unless sooner revoked for violation of law. The annual license fee for pawnbrokers shall be in accordance with Article 4 of this Chapter and application for this license shall be made to the City Clerk on forms provided by him or her. Whoever carries on such a business without a license under this Section commits a civil violation for which forfeiture of not more than One Hundred (\$100.00) Dollars may be adjudged. The City shall be entitled to its reasonable attorney fees and costs for successfully prosecuting any violations under this Article. (#12)

**210.2.3 ACCOUNT OF BUSINESS DONE AND DISCLOSURE TO CONSUMER.**

1. **Account Kept.** Every pawnbroker shall maintain records in which the pawnbroker shall enter:
  - A. The date, duration, amount, periodic rate of interest and annual percentage rate of every loan that is made;
  - A-1. The finance charge, due dates for payment and the total payment needed to redeem or repurchase the pawned property;
  - B. An accurate account and description of the property pawned. An accurate description would include the make, model, serial number, or any other identifying marks when applicable. An example of an unacceptable description would be, "TV". An example of an acceptable description would be "19 inch Sony color TV, Model 17-A, Serial number 359".; (#2)
  - B-1. The terms of redemption or repurchase, including any reduction in the finance charge for early redemption or repurchase and the right of the consumer to or at least one extension of one month at the same rate of interest upon request in writing or in person; and
  - C. The name and residence of the consumer. Residence shall include a physical street address, not just the town of residence. A reasonable form of identification of the consumer will be used to obtain the name and residence of the person pawning the property. Reasonable forms of identification could include driver's licenses, State identification cards, or any other forms of identification that contain the person's picture as a positive form of identification. Social Security cards or numbers shall not be considered a reasonable form of identification. The type of identification used by the person pawning the property will also be noted on the pawn transaction record. The pawnbroker shall allow any Brewer Police Officer to inspect these records at all reasonable times. (#2)
2. **Delivery to Consumer.** At the time of the pawn transaction, the pawnbroker shall deliver to the consumer a signed, written disclosure complying with the truth-in-lending provisions of the Maine Consumer Credit Code, as the same way be amended, containing the items required by Section 210.2.3 of this Article and the name and address of the pawnbroker.



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3. **Lists Filed with Law Enforcement Agency.** Before the fifteen (15<sup>th</sup>) day of every month, the pawnbroker shall file with the Brewer Police Department, in a form acceptable to that agency, a summary of the pawn transactions entered into during the preceding calendar month. An acceptable form for reporting the property pawned shall include, at a minimum, the information specified in #1-B above (complete and accurate description of the property pawned). (#2)
4. **Violation.** A violation of this Section constitutes a violation of Title 9-A, M.R.S.A., Section 5-201, subsection 1, subject to the civil remedies of the Maine Consumer Credit Code, and constitutes a violation of the Maine Unfair Trade Practices Act.

### **210.2.4 PAWN TRANSACTION TERMS.**

1. **Maximum Finance Charge Established.** A pawnbroker may not directly or indirectly receive a finance charge of greater than twenty-five (25%) percent per month on that part of a loan that is Five Hundred (\$500.00) Dollars or less, nor more than twenty (20%) percent per month on that part of a loan that is more than Five Hundred (\$500.00) dollars, made upon property pawned. Accrued interest may not be incorporated as interest-bearing principal.
2. **Minimum Finance Charge Authorized.** Notwithstanding Section 210.2.4.1 of this Article, a pawnbroker may contract for and receive a minimum charge of not more than Two Dollars and Fifty Cents (\$2.50).
3. **Other Charges Prohibited.** A pawnbroker may not charge a fee in addition to a finance charge allowed under Sections 210.2.4.1 and 210.2.4.2 of this Article.
4. **Time Period.** The initial redemption or repurchase period of a pawn transaction, not including an extension under Section 210.2.4.5 of this Article may not exceed sixty (60) days.
5. **Extension Required Upon Request.** A consumer is entitled to at least one (1) extension of the pawn transaction of one (1) month at the same rate of interest upon request in writing or in person.
6. **Violation.** A violation of this section constitutes a violation of Title 9-A, M.R.S.A., Section 5-201, subject to the civil remedies of the Maine Consumer Credit Code and constitutes a violation of the Maine Unfair Trade Practices Act. Nothing in this Section prohibits a pawnbroker from charging a consumer a lower rate of interest than established by this Section.

### **210.2.5 REGULATION OF PAWNBROKERS**

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1. **Exempt from State License.** A pawnbroker licensed by the City pursuant to Title 30-A, M.R.S.A Section 3961 is not required to obtain a supervised lender's license pursuant to Title 9-A Section 2-301 in order to engage in pawn transactions.
2. **Application of Law.** Pawnbrokers are subject to Title 9-A, M.R.S.A Sections 6-104, 6-106 and 6-203.
3. **Model Forms.** The Director of Consumer Credit Regulation may issue model disclosure forms and clauses to facilitate compliance with the disclosure and computational requirements of this subchapter, pursuant to the truth-in-lending provisions of the Maine Consumer Credit Code.

### **SECTION 210.3 YARD SALES**

**SECTION 210.3.1. PRIVATE SALES.** No person shall offer for sale any used household goods, used furniture or other second-hand articles, without first obtaining a license to be a dealer in second hand articles, except as provided in this Chapter.

**SECTION 210.3.2. EXCEPTION - YARD SALES.** Any resident of the City may conduct a temporary sale of his or her household goods from his or her place of residence in accordance with the following provisions:

**SECTION 210.3.3.** a permit shall be required for all "yard sales", conducted in the City. The term "yard sale" shall include private sales, advertised in local media or otherwise, as garage, yard, household or barn sales, moving sales and private sales of all, or a part of the household goods located at the seller's place of residence. The Tax Office shall issue a permit to any resident to conduct a "yard sale". The fee for such permit shall be in accordance with Article 4 of this Chapter. The application for such permit shall contain the name of the person selling his or her household goods, his or her agent, if any, and the days that such sale shall be conducted. Applications for "yard sale" permits shall not be subject to the public notice and hearing provisions of Article 1, § 103.4 of this Chapter. A permit shall allow the holder thereof to operate a yard sale for a period not to exceed (3) three consecutive days. If a person wishes to conduct a second yard sale or a third yard sale during any calendar year, he or she must purchase a separate permit.

**SECTION 210.3.4.** No such yard sale shall be operated longer than (3) three consecutive days and no more than (3) three such sales shall be conducted by any (1) one person or from any (1) one location in any

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calendar year. No third yard sale shall be conducted within (45) forty-five days of any second yard sale by any (1) one person or from any (1) one location in any calendar year. In the event a hardship situation develops which causes the cancellation of a sale, the Tax Office may issue another permit upon application from the person conducting the sale, setting forth the reason for such cancellation.

**SECTION 210.3.5.** In no instance shall goods be brought to the place of a sale from any other location for the purpose of selling said goods, except as permitted by this Chapter.

**SECTION 210.3.6.** Upon request of any police officer, or his or her agent, any person conducting a yard sale, shall file an itemized inventory of all goods to be offered for sale, with the City Clerk.

**SECTION 210.3.7.** A permit shall not be required for any temporary sign located at the place of a sale. All such signs shall conform to the City's Codes and Ordinances. All signs shall be removed immediately after the sale is ended. No signs advertising a sale shall be permitted on motor vehicles parked off the premises of the place of a sale.

**SECTION 210.3.8.** This Section shall be enforced by the Police Department.

**SECTION 210.3.9.** No prepared food shall be sold at any yard sale.

**SECTION 210.3.10.** Sales conducted by organized charitable, fraternal clubs, youth leagues, high school groups or classes shall be permitted but shall only be held on the organization's premises or within a City business zone.

**SECTION 210.3.11.** A yard sale permit shall be required for "rummage" sales, so called; however, a permit shall not be required for rummage sales conducted by organized charitable or religious groups and held on the organization's premises, provided all of the proceeds from the sale accrue to the organization. Wearing apparel shall be the only items of personal property sold at rummage sales. Wearing apparel shall be defined as clothes, linens and items incidental to clothing, and shall include shoes, hats, blankets, towels, sheets, bedspreads, pillows, pillow covers, umbrellas, pocketbooks, belts, skates and jewelry.

**SECTION 210.3.12.** Any person who violates any provisions of this Section, or fails to comply with any of its requirements, shall pay a fine of not less than Ten (\$10.00) Dollars or more than One Hundred (\$100.00) Dollars. Each day such violation continues, shall

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constitute a separate offense. The City shall also be entitled to recover its reasonable attorney fees and costs for successfully prosecuting a violation of this Article.

### **SECTION 211. JUNKYARDS AND AUTOMOBILE GRAVEYARDS.** (#6)

**SECTION 211.1 PURPOSE.** Junkyards and so-called "auto graveyards" have been steadily expanding and frequently encroach upon highways. These junkyards and graveyards have become a nuisance and a menace to safe travel on public ways, often distracting the attention of drivers of motor vehicles because it appears cars are parked on the highway or that an accident has occurred. It is declared that such junkyards and automobile graveyards are a nuisance and are properly subject to regulation and control.

It is recognized that recycling of automobiles is a business enterprise that, when conducted in accordance with certain standards, differs from the enterprise of an automobile graveyard and that adoption of uniform state standards for this type of business enterprise would assist in development and regulation of that business.

Junkyards, automobile graveyards and automobile recycling businesses pose potential risks to the environment, particularly to groundwater and surface water quality if gasoline, oil or other fluids are not managed and disposed properly. Proper location and operation of these facilities are critical to ensure protection of groundwater and surface water quality, other natural resources and the health and welfare of Maine citizens. These facilities may create nuisance conditions potentially affecting abutting landowners and others if not located and operated properly. For these reasons, it is declared that these facilities are appropriately subject to certain environmental and operational standards and to appropriate municipal and state regulation. (State Statute Ref. Title 30-A M.R.S.A. §3751)

### **SECTION 211.2 PERMIT REQUIRED.**

No individual, partnership, corporation or other legal entity shall establish, operate or maintain any "junkyard" or "automobile graveyard" within the City of Brewer without first obtaining a non-transferable permit from the City Council, as provided in Title 30-A M.R.S.A. Section 3753 et. seq. as amended. The terms "automobile graveyard" and "junkyard" shall have the definitions ascribed to them in Section 3752 sub sections 1 and 4 respectively of said Title 30-A.

**SECTION 211.3** Junkyard and automobile graveyard permits issued under this Chapter are annual, non-transferable and shall expire on October

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1st of each year.

**SECTION 211.4** Application for permit shall be made to the City Clerk upon a form provided by him or her.

**SECTION 211.5** Upon receiving a completed application for a new permit, the City Clerk shall set a time for hearing before the City Council, on the application. The City Council may hold public hearings annually regarding the re-licensing of these facilities. The City Clerk shall publish notice of any hearing as required by Title 30-A M.R.S.A. Section 3754, as amended.

**SECTION 211.6** After receiving evidence and hearing testimony on the application for permit, the City Council may establish reasonable conditions under which the automobile graveyard or junkyard may be established, operated and maintained. The City Council shall, in reviewing an application for a permit, and before establishing reasonable conditions upon the permit, consider the following criteria in addition to other criteria set forth in Title 30-A, M.R.S.A. Section 3754, as amended.

- (a) The junkyard or automobile graveyard shall be at all times maintained in a sanitary condition.
- (b) No water shall be allowed to stand in any place on the junkyard or automobile graveyard in such manner as to afford a breeding ground for mosquitoes or other insects.
- (c) Weeds and vegetation on the junkyard or automobile graveyard, other than trees and shrubs, shall be kept at a height of not more than six (6) inches.
- (d) No garbage or other waste liable to give off a foul odor or attract vermin shall be kept on the junkyard or automobile graveyard; nor shall any refuse of any kind be kept on said premises unless said refuse is as defined under this Chapter or applicable State Law.
- (e) The automobile graveyard/junkyard shall be screened from ordinary view of the adjoining public and/or private property. Such screening may be accomplished by natural or manmade objects, plantings, or properly constructed fences; any of which must completely screen the automobile graveyard/junkyard from ordinary view throughout the entire calendar year. Such screening must complement the colors, textures and tones found in the surrounding area. Certain facilities may be required to provide internal screening because of size and topography.

Ordinary view shall be based on line of sight determination of the public and adjoining property owners' buildings. Line of sight views from adjoining property buildings shall be taken from the

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highest vantage point in normal, everyday use by occupants of such buildings not to exceed eighteen (18) Inches from ground level.

Where buildings and or fences are employed as screening for distances of one hundred (100) lineal feet or more, evergreen plantings which attain a height of six (6) feet or greater at maturity shall be planted and maintained as a textural foil. Such plantings shall be a minimum of three (3) feet high at planting and planted at a rate of four per one hundred (4/100) lineal feet, approximately twenty-five (25) feet on center [(with an allowance of ten (10) feet so as to allow an element of randomness over the course of the plantings.)]

Holders of license year 1984 permits which were in active operation prior to October 25, 1984 shall be subject to the textural foil plantings provision standards as of license year 1986. Those holders of 1984 permits which do not meet the "screening from ordinary view of the public and adjoining property owners" provision of this Chapter shall be subject to the following provisions for license review.

- 1) Maintenance of a good faith effort towards meeting the purpose and intent shall be the criterion used in license review. Good faith effort shall consist of the following elements: Average vertical tree growth of eighteen (18) inches per year and replacement of dead or diseased trees.

The intent of such provision is to preclude conditions which meet the definition of a "miscellaneous nuisance: under 17 M.R.S.A., Section 2802; viz"...as to be unsightly, detracting from the natural scenery and injurious to the comfort and happiness of individuals and the public, and injurious to property rights..."

- (f) No motor vehicles or major parts may be stacked or piled on top of each other so as to protrude above the screening. In any event, stacking shall not exceed twelve (12) feet above ground level.
- (g) stacking and/or parking of motor vehicles shall be arranged in a grid fashion which employs, at maximum either a seventy (70) foot square pattern or a twenty-five (25) feet by two hundred (200) feet block pattern. Fourteen (14) foot aisle spaces shall be provided for fire fighting apparatus access to such squares or blocks. Parking along screening in a continuous manner is also permitted.

**SECTION 211.6.1** The City Council, in reviewing an application for permit shall consider the applicants compliance with this Chapter and

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shall consider the recommendations of the Police Chief, Fire Chief, Code Enforcement Officer and Health Officer, or their duly authorized agents, with respect to the criteria specified in Article 2, Section 212.4 of this Chapter and Title 30-A M.R.S.A. § 3751, et. seq.

**SECTION 211.7** No junk shall be delivered to a junkyard or automobile graveyard on Sundays, legal holidays or before the hour of 6:00 A.M. or after the hour of 7:00 P.M. on other days, except that special permission may be granted by a member of the Brewer Police Department in the event of extenuating circumstances.

**SECTION 211.8** Any equipment used to crush motor vehicles shall only be operated within the area enclosed by screening of junked motor vehicles. No such equipment shall be operated on Sundays, Legal holidays or before the hour of 6:00 A.M. or after the hour of 7:00 P.M. on other days, except that special permission may be granted by a member of the Brewer Police Department in the event of extenuating circumstances.

**SECTION 211.9 RIGHT OF ENTRY.** The City Council, or their designees may, to carry out the provisions of this ordinance to determine compliance with any laws, ordinances, license or permit approvals, decisions or conditions:

Enter any automobile graveyard or junkyard property and inspect all outside areas, equipment and activities at reasonable hours for compliance with the laws or ordinances; and

Enter any building on the property with consent of the owner, occupant or agent to inspect the building and activities within the building for compliance with the laws or ordinances.

A City Councilor's or designee's entry onto property under this section is not a trespass.

**SECTION 212. AUTOMOBILE RECYCLING BUSINESS.** No person, partnership, corporation or other legal entity shall establish, operate, or maintain an automobile recycling business within the City of Brewer without first obtaining a non-transferable permit from the City Council, as provided in Title 30-A, M.R.S.A. Section 3753 et. seq., as the same may be amended from time to time; provided, however, if a person, partnership, corporation or other legal entity has a valid junkyard or automobile graveyard permit, no permit shall be required under this section. The term "automobile recycling business" shall have the definitions set forth in Title 30-A, M.R.S.A. § 3752 sub-section 1-A, as the same may be amended from time to time.

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**SECTION 212.1** All permits issued under this Chapter are non-transferable and shall expire five (5) years after the date issued, provided the permit holder complies with the provisions of Title 30-A M.R.S.A. § 3753, as the same may be amended from time to time.

**SECTION 212.1.1** The fee for a permit shall be in accordance with Article 4 of this Chapter.

**SECTION 212.2** Application for permit shall be made to the City Clerk upon a form provided by him or her.

**SECTION 212.3** Upon receiving a completed application for an automobile recycling business permit, the City Clerk shall set a time for a hearing before the City Council on the application. The City Clerk shall publish notice of this hearing as required by Title 30-A M.R.S.A. § 3754, as the same may be amended from time to time.

**SECTION 212.4** After receiving evidence and hearing testimony on the application for permit, the City Council may establish reasonable conditions under which the automobile recycling business may be established, operated and maintained. The City Council shall, in reviewing an application for a permit, and before establishing reasonable conditions upon the permit, consider the following criteria in addition to other criteria set forth in Title 30-A, M.R.S.A. § 3755-A, as the same may be amended from time to time.

(a) The automobile recycling business shall be at all times maintained in a sanitary condition.

(b) No water shall be allowed to stand in any place on the automobile recycling business in such manner as to afford a breeding ground for mosquitoes or other insect.

(c) Weeds and vegetation on the automobile recycling business property, other than trees and shrubs, shall be kept at a height of not more than six (6) inches.

(d) No garbage or other waste liable to give off a foul odor or attract vermin shall be kept at the automobile recycling business; nor shall any refuse of any kind be kept on said premises unless said refuse is as defined under this Chapter or applicable State Law.

(e) The outside storage shall be screened from ordinary view of the adjoining public and/or private property. Such screening may be accomplished by natural or manmade objects, plantings, or properly constructed fences; any of which must completely screen the outside storage of the automobile recycling business from ordinary view throughout the entire calendar year. Such screening must complement the colors, textures, and tones found in the surrounding area. Certain facilities may be required to provide internal screening because of size and topography. Ordinary view shall be based on line



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of sight determination of the public and adjoining property owners' building. Line of sight views from adjoining property buildings shall be taken from the highest vantage point in normal, everyday use by occupants of such buildings not to exceed eighteen (18) inches from ground level.

Where buildings and or fences are employed as screening for distances of one hundred lineal feet or more, evergreen plantings, which attain a height of six (6) feet or greater maturity shall be planted and maintained as a textural foil. Such plantings shall be minimum of three (3) feet high at planting and planted at a rate of four per one hundred (100) lineal feet, approximately twenty-five (25) feet on center [(with an allowance of ten (10) feet so as to allow an element of randomness over the course of the plantings).]

The intent of such provision is to preclude conditions which meet the definition of a "miscellaneous nuisance: under 17 M.R.S.A. § 2802; viz...as to be unsightly, detracting from the natural scenery and injurious to the comfort and happiness of individuals and the public, and injurious to property right..."

- (f) No motor vehicles or major parts may be stacked or piled on top of each other so as to protrude above the screening. In any event, stacking shall not exceed twelve feet above ground level.
- (g) Stacking and/or parking of motor vehicles shall be arranged in a grid fashion which employs, at a maximum, either a seventy (70) foot square pattern or a twenty five (25) feet by two hundred (200) feet block pattern. Fourteen (14) foot aisle spaces shall be provided for fire fighting apparatus access to such squares or blocks. Parking along screening in a continuous manner is also permitted.

**SECTION 212.4.1** The City Council, in reviewing an application for automobile recycling business permits, shall consider the applicant's compliance with this Chapter and shall consider the recommendations of the Police Chief, Fire Chief, Code Enforcement Officer and Health Officer, or their duly authorized agents, with respect to the criteria specified in Section 219.4 of this Article and Title 30-A M.R.S.A.as the same may be amended from time to time.

**SECTION 212.5** No vehicles for dismantling shall be delivered to an automobile recycling business and no crushing or dismantling of vehicles shall occur at or on an automobile recycling business on Sundays, legal holidays or before the hour of 6:00 A.M. or after the hour of 7:00 P.M. on other days, except that special permission may be granted by a member of the Brewer Police Department in the event of extenuating circumstances.

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**SECTION 212.6 RIGHT OF ENTRY.** The City Council, or their designee, or the Code Enforcement Officer may, to carry out the provisions of this ordinance to determine compliance with any laws, ordinances, license or permit approvals, decisions or conditions:

Enter any automobile recycling business property and inspect all outside areas, equipment and activities at reasonable hours for compliance with the laws or ordinances; and

Enter any building on the property with the consent of the owner, occupant or agent to inspect the building and activities within the building for compliance with the laws or ordinances.

A city Councilor's or designee's or the Code Enforcement Officer's entry onto property under this section is not a trespass.

**SECTION 213. MOTION PICTURES: THEATERS.** No person, partnerships, corporation or other legal entities shall operate an indoor or outdoor theater, with live, filmed, electrical or electronic presentations, without first obtaining a license therefor. The fee for said license shall be in accordance with Article 4 of this Chapter. No such license shall be granted, except on certification of the Police Chief, Code Enforcement Officer, Fire Chief and the Health Officer.

### **SECTION 214. TAXICABS (#19)**

#### **Section 214.1 Definitions.**

For the purposes of this Chapter, the following terms are to be deemed and construed to have the meanings indicated in this section:

**BUS.** An unmetered commercial passenger vehicle which carries more than 15 persons, including the driver, and operates on a fixed route for a fare.

**BUSINESS LICENSE YEAR.** The period of time commencing on the first day of May of one year and expiring on the thirtieth day of April of the following year.

**CITY.** The City of Brewer.

**CITY COUNCIL.** The City Council of the City of Brewer as established by Article II of the Charter of the City of Brewer.

**COURTESY VEHICLE.** A commercial vehicle service that carries passengers

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over a short distance to or from a fixed destination (e.g. the airport) at no charge to the customer.

**DISPATCH CENTER.** Any person, firm, association, partnership or corporation that provides dispatching services, including any form of electronic dispatch, to owners of taxicabs or liveries, in the City of Bangor.

**DRIVER.** Any person who is engaged in the driving of a taxicab or livery for hire.

**EMPLOYED BY OR EMPLOYEE.** Includes, but is not limited to, any employee, independent contractor, lessee or person permitted to drive a taxicab or livery of the business licensee.

**FOR HIRE.** The transportation of passengers for compensation.

**LIVERY.** A motor vehicle used for the transportation of passengers for hire, having the following characteristics:

- A. A seating capacity of at least three and no more than fifteen passengers behind the driver's seat;
- B. Hired by means of a request or contract arranged in advance of the time transportation is needed;
- C. Charge is by flat fee or by the minute;
- D. A price estimate is provided to the customer in advance of pickup; and
- E. Does not operate on a fixed route.

**LIMOUSINE.** Any unmetered luxury vehicle designed to carry no less than five and not more than fourteen passengers behind the driver's seat which is of a type built or modified for use as a luxury "stretch limousine" and is used for the transportation of passengers for-hire, solely by pre-arrangement, on a reserved hourly or flat rate basis.

**OPERATE.** The act of driving, attempting to drive, or exercising control over a vehicle.

**OWNER.** The person, firm, association, partnership or corporation to whom or to which a taxicab or livery business license has been issued.

**TAXICAB.** A motor vehicle used for the transportation of passengers for hire, having the following characteristics:

- A. A seating capacity of nine passengers or fewer, including the driver;
- B. Operated on call and demand;

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- C. Operated without fixed routes or termini;
- D. The destination and route of which are under the control of the passenger or passengers being carried therein; and
- E. The fares for which are at rates per mile, or fraction thereof, or wait time, or both.

**TAXIMETER.** A mechanical instrument or device by which the fare for hire of the taxicab is automatically calculated, either for distance traveled or waiting time or both, and plainly and accurately indicated in figures that are illuminated and clearly visible to the passenger.

### **SECTION 214.2. APPLICABILITY.**

- A. The provisions of this article Chapter and Sections 214, et seq. shall apply to taxicabs and liveries which operate within Brewer City limits.
- B. The following vehicles are exempt from the provisions of this Chapter except as otherwise indicated herein.
  - 1. Limousines.
  - 2. Buses.
  - 3. Courtesy vehicles.
  - 4. Livery operators which hold a current interstate operating authority from the Federal Motor Carrier Safety Administration and the liveries covered by such interstate operating authority.
  - 5. Vehicles used solely in connection with transportation for funerals.
  - 6. Vehicles being used to conduct prearranged rides on behalf of a transportation network company by a transportation network company driver, as defined in 24-A M.R.S.A § 7302.
- C. No livery or limousine shall operate as a taxicab nor accept passengers on a "hail" or walk-up basis.

### **SECTION 214.3. PERMITTED FOR-HIRE VEHICLES.**

No person shall operate or cause to be operated any vehicle transporting passengers for hire unless they are operating a licensed taxicab or livery, or a vehicle qualifying as exempt under 214.2(B).

### **SECTION 214.4. LICENSES REQUIRED.**

- A. It shall be unlawful for any person to operate or cause to be operated in the City of Brewer any taxicab or livery unless such taxicab or livery is covered d by a business license provided for

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by Section 214.5 of this Chapter; provided, nevertheless, that it shall not be deemed to be the operation of a taxicab or livery or the causing of a taxicab or livery to be operate within the meaning of this chapter if an owner licensed to operate a taxicab or livery in any municipality which grants the same rights as are granted herein to taxicabs and liveries licensed in the City of Brewer, shall upon previous call therefore, take a passenger or passengers from Brewer to the City in which such taxicab or livery is licensed or to Brewer from the City in which such taxicab or livery is licensed.

- B. Business license. Each taxicab or livery business, whether an individual, corporation, d/b/a, limited liability corporation, partnership, or other legal entity, shall obtain a taxicab or livery license from the City Clerk's office prior to permitting the operation of any taxicab or livery vehicles in the city. A taxicab or livery business license shall be obtained which covers all vehicles which will be used under the license. There shall be a fee for each vehicle listed on the business license in accordance with the attached schedule of fees for taxicab or livery. Only those vehicles listed on the business license may be used by the licensee as a taxicab or livery in the City. Vehicles can only be used for one purpose, i.e. either a taxicab or livery, and can only be listed on one license, either a taxicab business license or a livery business license.
- C. Driver's license. No person shall operate a taxicab or livery, whether or not carrying passengers, within the City unless such taxicab or livery is covered by a taxicab or livery business license and the driver thereof is currently licensed by the City to operate a taxicab or livery; except when a taxicab or livery is clearly marked on at least one door per side of the vehicle with a magnetic "out of service" sign with letters no less than 2.5 inches in height, an unlicensed driver may operate the taxicab or livery for the following purposes:
- 1) A mechanic operating the vehicle for the purpose of diagnosing a problem or testing to assure that a mechanical issue is resolved.
  - 2) Any individual operating the vehicle for the purpose of moving it between locations while not in operation as a taxicab or livery.
- D. Licenses non-transferable. Licenses issued hereunder are not transferable.

### **SECTION 214.5. TAXICAB OR LIVERY BUSINESS LICENSE.**

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A. A taxicab or livery business license shall be issued upon compliance with the following:

- 1) Applicants shall obtain and complete application forms from the City Clerk's Office.
- 2) Every application shall be signed and verified by each of the principal officers of the applicant if the applicant is a corporation, and in all other cases by all persons having an actual ownership interest in the applicant. All applications shall state the name, address, and phone number of every person having management authority in the business of the applicant.
- 3) Applicant shall provide a comprehensive list including the make, model, passenger capacity, year, vehicle identification number (VIN), taxicab or livery identification number and license plate number of each vehicle which is to be covered by the taxicab or livery business license.
- 4) Applicants for a taxicab business license shall obtain from the Maine Sealer of Weights and Measures, at his, her or its own cost, a written statement that the taximeter installed in each taxicab for which the taxicab business license is sought complies with the requirements of Subsection B, below.
- 5) Applicants shall obtain from the Chief of Police, or his or her designee, a written statement that an inspection has been made of each taxicab or livery for which the taxicab or livery business license is sought, and each taxicab or livery has been found to be safe and suitable for taxicab or livery service in accordance with Subsection D, of this Section below.
- 6) Applicant shall submit to the City Clerk the applicable items listed in Subsection A(1) through (5) above of this Section, the nonrefundable annual fee for a taxicab or livery business license as provided for in 214.4(B), a valid State of Maine motor vehicle registration certificate for each vehicle listed in Subsection (3) of this Section, and certificate(s) of insurance from a reputable insurance agency stating that the vehicles for which the taxicab or livery business license is sought are insured in accordance with Subsection E of this Section, below and listing the City of Brewer as an additional insured.
- 7) A person or business may obtain both a livery and taxicab business license, but there must be a separate application form and fee for each such license. A vehicle may not be licensed nor used as both a taxicab and a livery.

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- B. Taximeters. Every taxicab shall be equipped with a taximeter tested, approved and sealed by the Maine Sealer of Weights and Measures which accurately calculates no more than the maximum rates of fare hereinafter set forth and mileage by means of clear and distinct figures which are electronically illuminated during the period between sunset and sunrise, and which clearly indicates the type of fare being charged, mileage and/or time. The taximeter shall be placed so that the figures are in plain view of all passengers. The taximeter shall be permanently affixed to the taxicab and sealed by the Maine Sealer of Weights and Measures. It shall be the responsibility of the owner to submit his or her taxicab or taxicabs for inspection to the Maine Sealer of Weights and Measures. If, upon inspection of the taximeter, the Maine Sealer of Weights and Measures determines that the taximeter meets the requirements of this Section, he or she shall issue a statement stating that the taximeter complies with the requirements of this Section.
- C. Updates. It is the responsibility of the applicant to update, in the City Clerk's office, the list of vehicles covered by the taxicab or livery business license throughout the year if any vehicles are removed from or added to the taxicab or livery business fleet. A fee will be charged for each vehicle added in accordance with Section 214.4(B) of this article. The City Clerk must be notified of a vehicle being added to the fleet within 15 days of completing the taxicab or livery inspection, and before the vehicle is put in service. It is also the responsibility of the applicant to update, in the City Clerk's office, the list of licensed drivers operating their taxicabs or liveries throughout the year if drivers are hired or no longer employed by the taxicab or livery business licensee; notification must be provided within 15 days of the driver being hired or employment terminating and before the driver begins operating a taxicab or livery, and must include the driver's current address and telephone number. Failure to update the list shall result in the automatic suspension of the taxicab or livery business license until the list is updated and a reinstatement fee of as set out in Section 214.4(B) of this ordinance is paid.
- D. Inspection of Taxicabs and Livery.
- 1) Frequency. The Chief of Police, or his or her authorized agent, shall have the authority to inspect, or cause to be inspected, any and all taxicabs and liveries so as to ensure that any taxicab or livery is safe and suitable for taxicab or livery service as follows:

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- a. Prior to issuance of any new taxicab or livery business license;
  - b. Once each calendar year prior to the renewal of any existing taxicab or livery business license;
  - c. Prior to adding a taxicab or livery to a taxicab or livery business license; and
  - d. At any other time, at the discretion of the Chief of Police or his or her authorized agent.
- 2) Scope. During any taxicab or livery inspection, the Chief of Police or his or her authorized agent shall inspect each taxicab or livery and find that such vehicle:
- a. Has a valid State of Maine motor vehicle registration certificate;
  - b. Has a valid State of Maine inspection sticker placed on the windshield in accordance with state law issued the same month or the month immediately preceding the inspection by the Chief of Police, or his or her designee;
  - c. In the case of a taxicab, is equipped with a sealed taximeter placed in accordance with Subsection B of this Section;
  - d. Meets the identifying lights and identifying markings requirements of Section 214.8 of this Chapter;
  - e. In the case of a taxicab, meets the fare markings requirements of Section 214.9 of this Chapter;
  - f. Has a "No Smoking" sign clearly visible on all passenger windows inside the taxicab or livery.
  - g. Is in a clean and sanitary condition, inside and out, with no unsightly soil spots;
  - h. In all other respects is safe and suitable for taxicab or livery service;
  - i. Complies with the following standards:
    1. No dents larger than six inches in diameter.
    2. No missing or hanging mirrors, trim or body work.
    3. No cracks in the windshield or windows.
    4. No missing hubcaps.
    5. No visible primer paint.
    6. All original and replacement parts and components of the vehicle are similar in appearance and are of the same color or design.
    7. No rust greater than one inch in diameter.
    8. No loose trash or large amounts of dirt or sand in the interior passenger area, whether or not the area



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is currently occupied by a passenger.

9. No visible tears in carpeting or seat upholstery.
10. No unpleasant odors or strong fragrances inside.
11. Seat belts for all passenger seats visible and in working order.
12. Two operating doors affording direct entrance and exit to and from the passenger compartment.

j. A taxicab or livery shall at all times be maintained in compliance with the laws of the State of Maine relating to passenger vehicles and the rules and regulations of the State Commissioner of Transportation enacted pursuant thereto.

3) The City Clerk shall issue a nontransferable Brewer Taxicab or Brewer Livery inspection sticker to each taxicab or livery inspected under this Section, valid for one 1 year from the date of issue, unless the vehicle is added to a taxicab or livery business license after the initial date of issuance of said license, in which case the vehicle inspection sticker will expire upon expiration of the taxicab or livery business license. All taxicabs and liveries operating in the City of Brewer shall display said stickers in accordance with Section 214.8.

E. Insurance. Each taxicab or livery shall be insured for the period over which the taxicab or livery business license is to remain in force, insuring persons and property from liability for injuries and damages resulting from the use and operation of such taxicab or livery. Such insurance policy or coverage shall be issued in an amount or amounts sufficient to meet state law requirements.

F. Termination and Expiration of taxicab or livery business license. Unless revoked or suspended under Section 214.15 or Section 214.16 of this Ordinance, each taxicab and livery business license shall expire on the 1st day of May next after the date of issuance; provided, however, that any new application filed between May 1 and May 15 and approved shall be valid until April 30 of the following year.

G. It shall be a violation of this article for any taxicab or livery business, or the owner thereof, to allow any person not holding a valid City of Brewer taxicab or livery driver's license to operate a taxicab or livery licensed as part of their fleet, unless under the conditions specified in Section 214.4(C).

### **SECTION 214.6. DRIVER AND VEHICLE LISTS.**

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- A. Every dispatch center shall, on the first day of January and July of each year, file with the City Clerk a current list of all taxicab and livery companies and owners for whom the dispatch center provides dispatching services.
- B. Every taxicab or livery company or owner shall, on the first day of January and July of each year, file with the City Clerk a current list of its taxicab and livery drivers.
- C. Every taxicab or livery company or owner shall, on the first day of January and July of each year, file with the City Clerk a current list of its taxicabs or liveries, including the make, model, passenger capacity, year, vehicle identification number (VIN), taxicab or livery identification number as required by Section 214.8(D) and license plate number of each vehicle which is covered by the taxicab or livery business license.

### **SECTION 214.7. TAXICAB OR LIVERY DRIVER'S LICENSE.**

It shall be unlawful for any person to operate any taxicab or livery for hire without first obtaining a taxicab or livery driver's license.

- A. Fees. If a person has not previously held a City of Brewer taxicab or livery driver's license or if a person is renewing an existing license after the 15th of the month in which such license shall expire the nonrefundable new/late licensing fee shall be as set forth in of this Code. Any person renewing an existing taxicab or livery driver's license between the 1st and 15th of the month in which such license shall expire be charged a nonrefundable renewal fee as set forth in the Chapter, Codes and Ordinances of the City of Brewer. All taxicab or livery driver's licenses shall expire annually on the last day of the month in which the license was issued except that any license renewed within 3 months following the expiration of the license will expire the following year on the last day of the month in which the expired license was issued. Any license renewed more than 3 months after its expiration will be treated as a first-time license.
- B. Application and issuance.
  - 1. An application for a taxicab or livery driver's license shall be made upon forms furnished by the City Clerk and shall be signed in front of the City Clerk by the applicant. The application shall require the applicant to set out the following information:

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- a. That the applicant is 18 years of age or older.
  - b. That the applicant has held a valid driver's license for more than two years.
  - c. Current contact information, including home and work address, and home, work and cell telephone numbers, and e-mail address if available.
  - d. Maine Driver's License number.
  - e. List of all states in which the applicant has resided over the past 7 years.
  - f. List of all criminal convictions from any and all jurisdictions, not including convictions for crimes committed as a juvenile.
  - g. Whether any driver's license held by the applicant is presently revoked or has been revoked during the three (3) years preceding the application and the reasons for such revocation(s).
  - h. Applicant's signature certifying that all information provided is complete and accurate and that they understand the taxicab and livery driver rules.
  - i. Any other information requested by the City Clerk, Chief of Police, or City Council.
2. Before such license shall be issued by the City Clerk, the application must be approved by the Chief of Police, or his or her designee, and the applicant must:
- a. Present a valid State of Maine driver's license.
  - b. Demonstrate to the City Clerk that he or she can read, write and speak the English language.
  - c. Present the taxicab or livery driver's license to be renewed, if renewal is sought.
  - d. Pay the nonrefundable annual fee for a taxicab driver's license as required under Section 214.7(A) above.
  - e. In the case of a new application, have his or her photograph taken at a place, time and date designated by the Chief of Police, or his or her designee, for City photo identification to be displayed as provided in Subsection D, below. In the case of a renewal application, the applicant must present their City photo identification.
  - f. Demonstrate to the Chief of Police, or his or her designee, that the applicant is competent to operate a motor vehicle safely and in accordance with all applicable traffic laws and ordinances. In determining whether the applicant is competent to operate a motor vehicle safely and in accordance with law, the Chief of

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Police, or his or her designee, shall consider factors including but not limited to whether the applicant has any of the following:

1. Three or more convictions for motor vehicle violations within the past 3 years.
  2. One or more major moving violations within the past 3 years, including but not limited to attempting to evade the police, reckless driving or driving on a suspended or revoked license.
- g. Satisfy the Chief of Police, or his or her designee, that the applicant is at present of such good moral character that the applicant can be trusted with the safe care and custody of taxicab passengers. In determining whether the applicant is of "good moral character," the Chief of Police, or his or her designee, shall consider factors including, but not limited to, the following:
1. Whether the applicant has been convicted at any time of murder, manslaughter, or a Class A, B, or C crime against a person;
  2. Whether the applicant has been convicted within the past 7 years of operating under the influence of drugs or alcohol, fraud, a sexual offense, use of a motor vehicle to commit a felony, a crime involving property damage or theft, an act of violence or an act of terror, a drug-related crime, criminal threatening, or harassment; and
  3. Whether the applicant made any false statement or omission on the application or in the course of the application process.
  4. No license will be issued until the results of the State Bureau of Investigation (SBI) criminal background check are received and found to be acceptable by the Chief of Police, or his or her designee.
  5. Have no outstanding warrants of arrest in Maine or any other jurisdiction; and
  6. Not be a convicted sex offender who is required to register as a sex offender within the State of Maine or is on the national sex offender registry.
  7. Failure to meet any of the requirements in Subsection (a)-(j) of this section shall be grounds for denial of a taxicab or livery driver's license.

C. Identification tag. Upon the issuance of the taxicab or livery driver's license, the Chief of Police, or his or her designee,

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shall also deliver to the licensee an identification tag containing the applicant's photograph. The identification tag shall be worn in a conspicuous place on the licensee's uniform at all times while operating a taxicab within the City of Brewer. Failure to display the identification tag in a conspicuous place at all times constitutes ground for license revocation.

- D. Expiration of taxicab or livery driver's license. Unless suspended or revoked under this Chapter, all taxicab and livery driver's licenses shall expire annually on the last day of the month in which the license was issued. Any license renewed within 3 months following the expiration of the license will expire the following year on the last day of the month in which the license was originally issued. Any license renewed more than 3 months after its expiration will be treated as a first-time license.
- E. Record of denial. The City Clerk shall make and keep a written record of every decision to deny an application for a taxicab driver's license. Records of denial shall be kept for three years from the date of denial.

### **SECTION 214.8. IDENTIFICATION OF TAXICABS AND LIVERIES.**

- A. Name and logo. Every taxicab and livery shall have the name of the owner or the owner's dispatch center or trade name and, in the case of a taxicab, the word "taxicab" or "taxi" or "cab," or in the case of a livery, the word "livery" permanently placed on the exterior of one door on each side of the vehicle, or in the case of livery said doors or each rear fender of the vehicle, in letters at least 2 inches high. In lieu thereof, a logo or monogram, approved by the Chief of Police, or his or her designee, containing the same information and being not less than eight inches in diameter, shall be permanently placed on one door on each side of the taxicab or livery.
- B. Lights. In addition to the outside lights required by law, all taxicabs shall be equipped with an identifying light attached to the top of each taxicab. Such identifying light shall be constructed in one unit consisting of an illuminated plate or cylinder upon which is printed the word "taxicab" or "taxi" or "cab" or the name of the taxicab business. The overall dimensions of such identity light shall not exceed eight inches in height and 23 inches in length. Other than the outside lights required by law, a livery vehicle is prohibited from having an exterior light.
- C. Identification sticker. Every taxicab or livery inspected to

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operate in the City of Brewer shall display a valid Brewer taxicab or livery sticker on the front windshield adjacent to the state inspection sticker.

- D. Identification number. Every taxicab or livery licensed to operate in the City of Brewer shall display their taxicab or livery identification number, on the rear of the vehicle and on the exterior by the door handles in letters and numbers at least 2 inches high. Identification numbers must be in numerical order starting with 1 and must be filed and updated with the City Clerk.
- E. Taxicab contact number. Every taxicab licensed to operate in the City of Brewer shall display a telephone number for the taxicab business or dispatch center on the rear and each side of the vehicle in numbers at least 2 inches high.
- F. Notice to the Public. Every taxicab and livery shall display a card, provided by the City Clerk's office, in clear view of all passengers, in the passenger compartment, illuminated between the hours of sunset and sunrise, displaying the following rules and information:
  - 1. For taxicabs only, maximum fare schedule;
  - 2. Smoking is prohibited in any taxicab or livery vehicle and failure to comply will result in a fine;
  - 3. Taxicab or livery identification number; and
  - 4. Contact information passengers can use for reporting any violations or misconduct observed during taxicab or livery transportation.

### **SECTION 214.9. TAXICAB RATES OF FARE.**

- A. Fares to be collected from any taxicab passenger or passengers shall be no greater than that shown on the taximeter, and no owner or driver shall charge rates to such passenger or passengers for taxicab services within the limits of the City of Brewer greater than the following:
  - 1. For the first 1/6 of a mile or fraction thereof: \$2.50
  - 2. For each 1/6 of a mile or fraction thereafter: \$0.35
- B. Provided, however, that in addition to the rates of fare permitted under Subsection A(1) and (2) above, a fare of not more than \$0.30 per minute may be charged in the event that any taxicab is forced, by reason of traffic conditions or other circumstances beyond the driver's control, to travel at a speed of less than 10 miles per hour for a continuous period of more than two minutes.

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- C. All taxicabs operated under a license granted by the City of Brewer must display the notice to the public card provided by the City of Brewer, which sets forth the maximum rates permitted under this chapter, as outlined in Section 214.8. Maximum rates, including for the initial 1/6 mile, for each additional 1/6 mile, and for wait time, shall also be permanently placed on the exterior of one door or fender on each side of the taxicab in letters at least 1 inch high.
- D. Additional passengers. If there is more than one passenger having the same origin and destination, each passenger may be charged not more than an equal proportionate part of the charges shown on the taximeter. At the option of the owner of such taxicab, an additional charge of not more than \$0.25 may be made for each additional passenger having the same origin and destination as the first passenger. If there is more than one passenger and the destinations are different, each passenger may be charged not more than his or her equal proportionate part of the difference between the amount then shown on the taximeter and the amount shown by the taximeter at the next preceding stop.
- E. Waiting time. If the taxicab waits for the passenger after the taxicab has arrived at the place of origin, at the expiration of five minutes after such taxicab has arrived or after being requested to wait by the passenger, whichever comes sooner, the passenger may be charged not more than a maximum rate of \$20 per hour, or any such fraction thereof, as the actual waiting time bears to one hour. No charge shall be made for waiting time in advance of the time at which the taxicab is required in the request for the taxicab service, nor for the delay due to the inefficiency of the taxicab or its operation, nor for mileage or time other than proceeding in the most direct way to the destination.
- F. Hand luggage. Hand luggage shall be carried free of charge.
- G. Surcharge. The Brewer City Council may, by order, authorize the levy of a surcharge per trip in addition to the fare authorized by this section where it determines that such surcharge is warranted by conditions beyond the control of taxicab drivers and companies and where such conditions affect the cost of providing taxicab services.
- H. No taxicab or livery driver shall engage in barter with a passenger in lieu of the arranged compensation.

**SECTION 214.10. RECORD OF DAILY TRIPS.**

The owner or licensed operator of a taxicab or livery shall keep daily records of all trips made by such vehicle, the beginning and end time and place of each trip, and the amount of payment received, not including any tip or gratuity given voluntarily by the customer. Such records, upon demand, shall be open to inspection by the City Clerk or any police officer. Said records shall be kept for a period of not less than three years.

**SECTION 214.11. TAXI STANDS; SOLICITING PASSENGERS.**

- A. Taxi stands. The Chief of Police, or his or her designee, by and with the consent of the City Manager, is hereby empowered to assign, to each and every licensed taxicab owner, suitable taxi stand space on public streets and ways.
- B. Passenger soliciting. No driver of a taxicab shall solicit any passenger or passengers within 50 feet of an established taxicab stand except while parked in said stand.

**SECTION 214.12. CONDUCT OF TAXICAB AND LIVERY DRIVERS.**

To facilitate the safe, orderly and professional provision of taxicab and livery services, taxicab and livery drivers are required to follow these guidelines.

- A. Cell Phones. Taxicab and livery drivers shall not use their cell phone while transporting a passenger unless it is an emergency or to receive calls from dispatch or customers.
- B. Appearance. Every taxicab or livery driver operating a taxicab or livery that is in service shall be suitably and professionally dressed, and neat and clean in appearance. No clothing which is ripped or torn or has a large or unsightly stain is permitted. Gym or workout shorts or pajama pants are not permitted. Footwear must be closed-toe and clean.
- C. Personal Hygiene: Taxicab and livery drivers will maintain good personal hygiene.

**SECTION 214.13. NO SMOKING.**

- A. No person, including but not limited to taxicab and livery operators and passengers, may smoke in a taxicab or livery at any time, including times when there are no passengers in the vehicle or when the vehicle is not in operation as a taxicab or livery.
- B. Notwithstanding Section 214.13(A) above, if allowed under state law, an owner of a taxicab or livery who is also the sole



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operator of the taxicab may smoke in the taxicab or livery as long as he or she does not do so while the vehicle is in operation as a taxicab or livery or less than an hour before or after the vehicle is in operation as a taxicab or livery.

### **SECTION 214.14. DISPLAY OF LICENSES.**

A copy of the taxicab or livery business license issued for a taxicab or livery must be kept inside the vehicle. The taxicab or livery driver's license issued to the driver of that taxicab or livery shall be conspicuously displayed on their person.

### **SECTION 214.15. LICENSE SUSPENSION AND REVOCATION.**

#### A. Automatic revocation.

1. Conviction of a crime. No taxicab or livery driver's license shall be valid for purposes of this article upon the licensee's conviction of a crime listed in Section 214.7(B)(2)(f). It is the responsibility of the driver and business owner employing said driver to notify the City Clerk of any such conviction.
2. Conviction of motor vehicle violations. No taxicab or livery driver's license shall be valid for the purposes of this article upon conviction of three or more motor vehicle violations during a license year, or one major moving violation as defined in Section 214.7(B)(2)(e)[2]. It is the responsibility of the driver and business owner to notify the City Clerk of any such convictions.

B. Automatic suspension. No taxicab or livery driver's license shall be valid for the purposes of this article during any period in which the state driver's license of the licensee is suspended or revoked. It is a violation of this ordinance for a licensee to continue to operate a taxicab or livery vehicle after suspension or revocation of his or her state driver's license. It is the responsibility of the driver and business owner employing said driver to notify the City Clerk of any such suspension or revocation.

#### C. Grounds for suspension or revocation of driver's license.

In addition to the grounds for denial of a taxicab driver's license set forth in Section 214.7(B), which are also grounds for suspension or revocation of a license, a taxicab or livery driver's license shall be subject to suspension or revocation

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upon a determination that the licensee:

1. Knowingly took a longer route to his or her destination than was necessary unless so requested by the passenger, provided that longer routes may be necessary due to traffic, construction, detours, accidents, weather, road conditions, and other reasonable factors;
2. Knowingly conveyed any passenger to a place other than that which the passenger or paying party specified;
3. Solicited taxicab or livery passenger business in the manner prohibited by Section 214.11;
4. In the case of a livery driver, picked up or attempted to pick up a passenger on the street or in a public place, without an agreement arranged in advance for such pick up; the burden shall be on the livery business or driver licensee to show the existence of such a pre-arranged agreement;
5. Transported any person in addition to or other than the passenger first engaging the taxicab or livery without the express consent of the original passenger;
6. Drove a taxicab or livery when the licensee was not clean and neat in appearance;
7. Drove a taxicab or livery that was out of compliance with any of the provisions of this article when the licensee knew or should have known it was out of compliance;
8. Refused to transport any orderly person upon request, unless the taxicab or livery was already engaged, or unless, three or more times in the previous six months, a person has failed to appear to be transported from the requested address or when the call for transport was made from the same phone number. Examples of a person who is not orderly may include someone who is aggressive, or excessively dirty or unhygienic. Drivers are not required to assist passengers in entering or exiting their vehicle;
9. In the case of a taxicab driver, charged more than the maximum fare specified in this Chapter;
10. Failed to carry change sufficient to make change for a \$20 bill;

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11. Violated the no smoking section of this Chapter more than 2 times within a 12-month period.
12. Removed or obscured any notice or decal required to be posted in the taxicab or livery by this chapter;
13. Was convicted of a crime in any jurisdiction; or
14. Acted in an aggressive, threatening, verbally abusive or disorderly manner while engaged in taxicab or livery services.

### D. Grounds for suspension or revocation of business license.

In addition to the grounds for denial set forth in Section 214.5, which shall also be grounds for suspension or revocation of a license, a taxicab or livery business license shall be subject to suspension or revocation upon a determination that the owner or manager of the taxicab or livery business:

1. Caused another person to transport any person in addition to or other than the passenger first engaging the taxicab or livery without the express consent of the original passenger;
2. Caused another person to refuse to transport any orderly person upon request unless, in the case of business operating a single taxicab or livery, the taxicab or livery is engaged, or, in the case of a business operating more than one taxicab or livery, all vehicles were then engaged; or unless, three or more times in the previous six months, a person has failed to appear to be transported from the requested address or when the call for transport was made from the same phone number. Examples of a person who is not orderly may include someone who is aggressive, or excessively dirty or unhygienic. Drivers are not required to assist passengers in entering or exiting their vehicle;
3. In the case of a taxicab business, caused or allowed a passenger to be charged more than the maximum fare specified in this chapter;
4. Removed, or obscured, or caused to be removed or obscured from a taxicab or livery the notice or decal required to be posted in the vehicle by this chapter;
5. Knew of a driver's conviction, repeated motor vehicle offenses, or the suspension or revocation of his or her

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State of Maine driver's license and failed to notify the City Clerk of the same as required under Section 214.15(A) or (B).

6. Operated, or any person employed by such licensee operated, a taxicab or livery without a current and valid taxicab or livery driver's license;
7. Operated, or any person employed by such licensee operated, a taxicab or livery which is not covered by a current and valid taxicab or livery business license;
8. Operated, or any person employed by such licensee operated, a taxicab for which the telephone number required under Section 214.8(E) at any time did not ring through to a person capable of dispatching a taxicab; provided that the if the number may ring through to an answering machine or voicemail if the caller is then directed to call a number that does ring through to a person capable of dispatching a taxicab. This Section 214.15(D) (8) shall not be grounds for suspension or revocation of a taxicab or livery business license if the failure to ring through to a person capable of dispatching a taxicab is due to severe weather conditions or unexpected illness or injury.
9. Operated a taxicab or livery business after there had been repeated violations by the driver(s) employed by the licensee which resulted in three or more suspensions of the same driver, or five or more suspensions of employees of the licensee, within any three-year period; or
10. Operated a taxicab or livery business after the taxicabs or liveries covered by the taxicab or livery business license have collectively been the subject of two or more violation notices for failure to comply with the standards set forth in Section 214.5.

### **SECTION 214.16. SUSPENSION AND REVOCATION PROCESS.**

The Board of Appeals may suspend or revoke a taxicab or livery driver's license or taxicab or livery business license for the grounds listed in Section 214.15(C) or (D) according to the following procedure:

- A. The Chief of Police, or his or her designee, shall give notice in writing of the grounds for suspension or revocation of the license. Said notice shall be directed to the licensee and the

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City Clerk.

- B. Upon receipt of the notice, the City Clerk shall notify the Chair of the Board of Appeals, who shall take action to have the matter heard at a regular or special meeting of the Board of Appeals within 40 days of the City Clerk's receipt of the notice. Before the hearing, the City Clerk shall notify the licensee, the Board of Appeals members, the Chief of Police, or his or her designee, and any appropriate members of City staff of the time and place of the hearing.
- C. The hearing shall be conducted in accordance with the following:
1. The Chief of Police, or his or her designee, shall be heard first to present the grounds for suspension or revocation of the license. The licensee shall then present his or her position in response.
  2. All parties shall be given the opportunity to be represented by an attorney or other spokesperson.
  3. Evidentiary and presentation standards shall be as set in 30-A M.R.S. § 2691, Subdivision 3D.
  4. A hearing shall not be continued to another time except for good cause.
- D. After the hearing, the Board of Appeals may suspend a taxicab or livery driver's license or taxicab or livery business license for a period of up to one year or revoke said license if it finds that the grounds for suspension or revocation presented by the Chief of Police, or his or her designee, were sufficient to warrant suspension or revocation and were consistent with this chapter, including but not limited to Section 214.15. Notice of suspension or revocation of a taxicab or livery driver's license shall be sent to the driver and to the business for which the driver works. Notice of suspension or revocation of a taxicab or livery business license shall be sent to the business.

### **SECTION 214.17. REMOVAL OF TAXICAB OR LIVERY FROM SERVICE.**

- A. If a law enforcement officer determines that there is a violation of this Chapter which poses a threat to the health or safety of passengers, they may order the taxicab or livery to be removed from service immediately and may remove or order removed from the vehicle the taxicab or livery inspection sticker. The Chief of Police, or his or her authorized agent, shall make him or herself available for a re-inspection of the vehicle no more than three business days thereafter. If, upon appeal of the law enforcement officer's determination that there was a threat to the health or

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safety of passengers, it is found that there was no such threat, the inspection sticker shall be replaced at no cost.

- B. If a law enforcement officer determines that there is a violation of this Chapter that is not directly linked to the health or safety of passengers, then the officer may issue a written order to correct the violation within 30 days; if, after 30 days, the taxicab or livery does not pass re-inspection, an officer may order the vehicle to be removed from service. There shall be a fee as set in the schedule of fees in this ordinance for each re-inspection of any taxicab or livery ordered removed from service hereunder.
- C. A law enforcement officer may immediately order any taxicab or livery that fails to display the decal required by Section 214.8(C) be removed from service until said decal is displayed.
- D. The Chief of Police, or his or her authorized agent, at his or her discretion, may require a licensee to present a taxicab or livery for inspection.

### **SECTION 214.18. RECEIPT UPON DEMAND.**

The driver of any taxicab or livery shall, upon demand by the passenger, render to such passenger a receipt for the amount paid. Such receipt shall bear the name of the owner, the name of the driver, the date of transaction and the amount paid.

### **SECTION 214.19. REFUSAL TO PAY LEGAL FARE.**

The refusal of any passenger to pay the legal fare as shown on the taximeter of a taxicab shall be unlawful, and, upon conviction therefor, shall be subject to such penalties provided for in Section 214.20 of this Chapter.

### **SECTION 214.20. VIOLATIONS AND PENALTIES.**

Violations of this chapter shall be subject a fine of \$100.00 per day with each day being a separate violation. Any such fine may be in addition to the provisions of this chapter providing for the suspension or revocation of the taxicab or livery business license and the taxicab or livery driver's license. In the case of a suspension or revocation, both the license and the right of the licensee to apply for or renew a license are suspended or revoked. A licensee whose license is revoked cannot apply for a new/renewal license for 1 year. If a license is denied, the applicant may not reapply for 6 months thereafter. Suspensions and revocations issued by the Board of Appeals

may last up to one year from the date of suspension or revocation.

**SECTION 214.21. APPEALS.**

A. Any person aggrieved by a denial by the City Clerk of an application for a taxicab or livery business license or a taxicab or livery driver's license filed under Section 214.5 or Section 214.7 of this Chapter, or removal of a vehicle from service or a violation notice under 214.17, may appeal said denial, removal or violation notice to the Board of Appeals, subject to the following:

1. Notice of said appeal shall be in writing, shall state briefly the grounds therefor, shall be directed to the Board of Appeals, and shall be filed with the City Clerk not more than 15 days after notice of said denial has been received by the applicant. No fee shall be required for the appeal.
2. Upon receipt of a notice of appeal, the City Clerk shall immediately notify the Chair of the Board of Appeals, who shall take action to have it heard at a regular or special meeting of the Board of Appeals within 40 days of receipt of the notice. Before the hearing, the City Clerk shall notify the applicant, the Board of Appeals members, and any appropriate members of City staff of the time and place of the hearing.
3. The hearing shall be conducted in accordance with the following:
  - a) The appellant's case shall be heard first. The City Clerk or other City representative shall then present the position of the City.
  - b) All parties shall be given the opportunity to be represented by an attorney or other spokesperson.
  - c) Evidentiary and presentation standards shall be as set in 30-A M.R.S. § 2691, Subdivision 3D.
  - d) A hearing shall not be continued to another time except for good cause.
4. Decisions and notices of decisions shall be rendered in public in accordance with 30 M.R.S.A. § 2691, Subdivision 3E. This decision must be based solely on evidence presented at the hearing.

B. Further appeals. Any decision of the Board of Appeals pursuant to Subsection A of this section may be appealed to the Superior

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Court pursuant to Rule 80B of the Maine Rules of Civil Procedure.

### **SCHEDULE OF FEES TAXICAB LICENSE AND TAXICAB OPERATOR LICENSE**

Taxicab License Chapter 20 Licenses and Permits Art. 2 \$86.00 per vehicle plus SBI background check fee for new drivers of the permittee

Taxicab Operator License Chapter 20 Licenses and Permits Art. 2 \$32.00 plus SBI background check fee for new drivers of the permittee

**SECTION 215. VICTUALERS.** Any person, partnership, corporation or other legal entity engaging in the business of preparing and selling any food commonly consumed by persons either on the premises or off the premises, shall be designated a common victualer for the purpose of this Chapter and shall obtain a license therefor. The term "common victualer" shall include persons engaged in the restaurant, bakery, sandwich and delicatessen business. Charitable, religious or fraternal organizations holding breakfasts, lunches, dinners or suppers at the Brewer Auditorium or on the premises of a religious organization shall be exempt from the licensing required by this Chapter. No such license shall be granted except upon certification by the Health Officer, Code Enforcement Officer, Police Chief and Fire Chief.

The fees for victualer License shall be established in accordance with Article 4 of this Chapter.

**SECTION 215.1** Any person, partnership corporation or other legal entity desiring to operate a one (1) day concession within the City at which food commonly consumed by persons is to be sold shall obtain a (1) one-day victualer's license. Said license shall state the time and place at which said concession is to operate. There shall be a limit of four (4) total licenses issued per year to any person, partnership, corporation or other legal entity wishing to obtain a one (1) day victualer's license. The fee for said license shall be in accordance with Article 4 of this Chapter. (#12) (#13)

### **SECTION 215.2 MOBILE FOOD BUSINESS**

Any persons, partnership, corporation or other legal entity desiring to operate a mobile food business within the City shall obtain a license. Said mobile food businesses are categorized as either a mobile food trailer, mobile food truck, mobile ice cream vendor, or mobile food pushcart as defined in Article 14 of Chapter 24, Land Use Code of the City of Brewer. Such license shall be issued by the City



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Clerk upon submission of proof of insurance and certification of the Health Officer, Code Enforcement Officer, Police Chief, and the Fire Chief, or their designees. Operation of a mobile food business shall meet the performance standards set forth in Article 4, section 441 of said Land Use Code. The fee for said license shall be in accordance with Article 4 of this Chapter. In addition to the annual license requirement, mobile food businesses, except mobile ice cream vendors, which wish to operate on public properties must obtain a permit as detailed in said Land Use Code, Article 4, section 441.

**SECTION 215.3** Any mobile food business to be a permanent fixture on private property will have to comply with Chapter 24, Land Use Code of the City of Brewer and all ordinances and codes of the City of Brewer. (#12) (#13)

**SECTION 216. LODGING HOUSES.** Any person, partnership, corporation or other legal entity, operating a lodging house within the City shall obtain a license therefor in accordance with this Section. For the purposes of this section, the term "lodging house" shall mean "Rooming House" and "Motel-Hotel" as defined in the Brewer Land Use Code. No license to operate a lodging house shall be granted unless approved by the Police Chief, Fire Chief, Health Officer and the Code Enforcement Officer. The fee for the lodging house licenses shall be established in accordance with Article 4 of this Chapter.

**SECTION 216.1 CONCESSION STANDS.** Any person, partnership, corporation or other legal entity desiring to operate a concession stand within the City at which food commonly consumed by persons is to be sold shall obtain a license. A one-day victualer license may be purchased, with a limit of up to four (4) days, up to four (4) times per year - not to be used consecutively. All sales shall be on private property. The person operating the concession stand must have written permission from the owner of the property. Must have all State of Maine Licenses that pertain to concession stands and the sale of food therein. The fees for a Concession Stand shall be the same as that of a Lunch Wagon. (#12) (#13)

**SECTION 216.2** Concession Stands may only locate in the Convenience Business and General Business Zones within the City of Brewer. Any Concession Stand to be a permanent fixture on private property will have to comply with Chapter 24, Land Use Code of the City of Brewer and all ordinances and codes of the City of Brewer. (#12)

### **SECTION 217. AMUSEMENT LICENSING.**

**SECTION 217.1** No person, partnership, corporation or other legal entity shall operate an establishment within the City of Brewer which

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offers alcoholic beverages of whatever form or nature, to be consumed on the premises, and offers dancing, entertainment and/or music of whatever form or nature, except for music provided by a radio or other mechanical device not related to live entertainment, without obtaining a license each year. The fee for said license shall be in accordance with Article 4 of this Chapter, which shall include the cost of publishing the notice of hearing as provided in Article 2, Section 217.5. of this Article. The fee for Amusement License renewal shall be in accordance with Article 4 of this Chapter. Amusement Licenses shall expire on the first Monday in May of each year.

**SECTION 217.1.1** No person, partnership, corporation or other legal entity licensed in accordance with this Section shall allow upon the premises, licensed and under their control, the exhibiting of bare or uncovered breast(s) of girls or women at or below the areola area or the exhibiting of the breast(s) at or below the areola area of girls or women covered with a transparent or semi-transparent material which exposes to public view the breast(s) at or below the areola area, or exhibiting of bare or uncovered buttocks, genitals, pubic hair, or anus of either girls, women, boys or men; or the exhibiting of the buttocks, genitals, pubic hair or anus of either girls, women, boys or men covered with a transparent or semi-transparent material, which exposes to public view the buttocks, genitals, pubic hair or anus.

**SECTION 217.2** The provisions of Article I of this Chapter shall apply to the issuance of Amusement Licenses.

**SECTION 217.3** Application shall be made to the City Clerk on a form approved by the City Council.

**SECTION 217.4** The person, partnership, corporation or other legal entity making application must meet all of the requirements of the City Ordinances and State Statutes in effect at the time of application.

**SECTION 217.5** Upon receipt of the application, the City Council shall give notice and hold a public hearing on the application. Notice of the public hearing shall be published in a newspaper in general circulation in the City of Brewer at least seven (7) days prior to the date of hearing. Following the public hearing, the City Council shall meet in public session and vote to grant, grant with conditions, or deny the license application. In granting, granting with conditions, or denying an application, the City Council shall indicate the reasons for their decision and provide a copy to the applicant. A license may be denied if the City Council finds that the

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issuance of the permit would be detrimental to the public health, safety or welfare, or would violate municipal Codes or Ordinances and regulations. A license may be denied on one (1) or more of the following grounds:

- A. Conviction of the applicant of any Class A, Class B or Class C crime;
- B. Noncompliance of the licensed premises or its use with the Land Use Code or other land use Code or Ordinance not directly related to liquor control;
- C. Conditions of record such as waste disposal violations, health or safety violations or repeated parking or traffic violations on or in the vicinity of the licensed premises and caused by persons patronizing or employed by the licensed premises or other such conditions caused by persons patronizing or employed by the licensed premises that unreasonably disturb, interfere with or affect the ability of persons or businesses residing or located in the vicinity of the licensed premises to use their property in a reasonable manner;
- D. Repeated incidents of record of breaches of the peace, disorderly conduct, vandalism or other violations of law on or in the vicinity of the licensed premises and caused by persons patronizing or employed by the licensed premises;
- E. A violation of any provision of the Maine Liquor Laws;
- F. A determination by the City Council that the purpose of the application is to circumvent the provisions of Title 28-A M.R.S.A. § 601, et. seq.

In issuing or denying a new or renewed license, the City Council shall give consideration to:

- a. The character of any applicant;
- b. The location of the place of business;
- c. The manner in which it has been operated; and
- d. Whether the operation has endangered the health or safety of persons in or on areas surrounding the place of business.

**SECTION 217.6** The applicant shall be given written notice of the City Council's decision within fifteen (15) days from the date of hearing.

**SECTION 217.7** An applicant cannot reapply from the denial of an application until thirty (30) days from the date of the denial.

**SECTION 217.8** After the issuance of a license, the City Council may suspend or revoke the license in accordance with the provisions of

Article I of this Chapter.

**SECTION 217.9** Any person, partnership, corporation or other legal entity aggrieved by any denial, suspension or revocation may appeal to the Board of Appeals for the City of Brewer in accordance with Chapter 34 of the Charter, Codes and Ordinances of the City of Brewer and applicable State Statutes. The appeal must be taken within thirty (30) days from denial, suspension or revocation of the license.

**SECTION 218. CHILD CARE CENTERS, HOME DAY CARE, DAY CARE FACILITIES.**

No person, partnership, corporation or other legal entity shall operate a child-care center, home day care or day care establishments within the City of Brewer without obtaining a license from the City in accordance with this Chapter.

**SECTION 218.1. DEFINITIONS.** A child-care center, home day care and day care facility shall have the meaning ascribed to them in the Land Use Code of the City of Brewer Code of Ordinances.

**SECTION 218.2. LICENSE APPLICATION.** Application for a City license shall be made to the City Clerk on forms provided by the City Clerk's office. The fee for this license shall be in accordance with Article 4 of this Chapter. The license year shall commence on the first Monday of May of each year and shall expire at 12:01 a.m. of the Tuesday of May next following the first Monday of May.

**SECTION 218.3. APPROVALS.** No license shall be issued unless the Code Enforcement Officer certifies that the business or facility:

1. has a current license from the State of Maine as required;
2. has an active Certificate of Occupancy for a Home Occupation, if applicable; and
3. has an active site plan review approval from the Brewer Planning Board, if applicable.

**SECTION 219. LIQUOR LICENSES.** (#4)

**SECTION 219.1 NEW LICENSES.** (#14) (#20) Applications to the Maine Bureau of Liquor Enforcement and Licensing for licenses for the sale of spirits, wine or malt liquor to be consumed on the premises require the approval of the City Council. The City Council may, at its discretion hold a public hearing on any new or amended license. Applications for such state liquor licenses will require a public

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hearing before the City Council if the Police Chief, the Fire Chief, the Code Enforcement Officer or the Health Officer refuses to approve the license because of a violation or violations of any City Code or Ordinance. Upon notification of any such disapproval, a public hearing will be called and held on the license renewal application. The City Clerk shall publish notice of any public hearing in a newspaper as required by the Maine Liquor Laws. The City Clerk shall send, by first class mail, a notice that the City Clerk's office has received an application for a new or renewed license application and that the City Council will consider the application at a specified upcoming public hearing or meeting of the City Council. Notice shall be mailed to abutting landowners, including those directly across the street of the establishment by the City Clerk's office at least seven days prior to the public hearing or meeting.

In granting or denying an application, the City Council shall indicate the reasons for their decision and provide a copy to the applicant. A license may be denied on one or more of the following grounds:

- A. Conviction of the applicant of any Class A, Class B or Class C crime;
- B. Noncompliance of the licensed premises or its use with any local Land Use Code or other Land Use Ordinance not directly related to liquor control;
- C. Conditions of record such as waste disposal violations, health or safety violations or repeated parking or traffic violations on or in the vicinity of the licensed premises and caused by persons patronizing or employed by the licensed premises or other such conditions caused by persons patronizing or employed by the licensed premises that unreasonably disturb, interfere with or affect the ability of persons or businesses residing or located in the vicinity of the licensed premises to use their property in a reasonable manner;
- D. Repeated incidents of record of breaches of the peace, disorderly conduct, vandalism or other violations of law on or in the vicinity of the licensed premises and caused by persons patronizing or employed by the licensed premises;
- E. A violation of any provision of the Maine Liquor Laws;
- F. A determination by the City Council that the purpose of the application is to circumvent the provisions of 28-A M.R.S.A. § 601, et. seq.

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- G. After September 1, 2010, server training, in a program certified by the bureau and required by local ordinance, has not been completed by individuals who serve alcoholic beverages.

In issuing or denying licenses, the City Council shall also give consideration to:

- e. The character of any applicant;
- f. The location of the place of business;
- g. The manner in which it has been operated; and
- d. Whether the operation has endangered the safety of persons in or on areas surrounding the place of business.

**SECTION 219.2 LICENSE RENEWALS.** (#4) Applications for renewal of state liquor licenses will require a public hearing before the City Council if the Police Chief, the Fire Chief, the Code Enforcement Officer or the Health Officer refuses to approve the renewal of such license because of a violation or violations of any City Code or Ordinance. Upon notification of any such disapproval, a public hearing will be called and held on the license renewal application. If no hearing is held, the City Clerk, in his/her capacity as agent of the City Council, is authorized to sign approval of the license renewal application.

### **SECTION 219.3 OFF-PREMISES CATERING OF SPIRITS, WINE AND MALT LIQUOR.**

Persons, partnerships, corporations or other legal entities licensed by the State to conduct off-premises catering of spirits, wine and malt liquor for public events or public gatherings sponsored by a charitable, non-profit organization or civic group or private events or private gatherings sponsored by an individual person, organization, or association of persons, must obtain approval from the City Council for such events. The City Clerk, as agent of the City Council, is authorized to sign, on behalf of the City Council, approval of applications for such catered events unless a written objection is submitted to the City Clerk stating that the event is in violation of any City Code or Ordinance.

### **SECTION 219.4 AGENT OF THE CITY COUNCIL.**

The City Council may, on annual basis, authorize the City Clerk, or in the absence of the City Clerk, the Deputy City Clerk, to approve, on behalf of the City Council, applications to the State of Maine for renewal of licenses for the sale of spirits, wine or malt liquor to be consumed on the premises subject to the limitations set forth in

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Section 103 of Article 1 of this Chapter. The City Council may also, on an annual basis, authorize the City Clerk, in the absence of the City Clerk, the Deputy City Clerk, to approve, on behalf of the City Council, applications for off-premises catering of spirits, wine and malt liquor for public events or public gatherings sponsored by a charitable, non-profit organization or civic group or private events or private gatherings sponsored by an individual person, organization, association of persons or legal entity.

**SECTION 219.5 ON-PREMISE CONSUMPTION OF ALCOHOL.** No person, partnership, corporation or other legal entity not licensed to sell intoxicating liquor by the Maine Bureau of Alcoholic Beverages, shall permit the consumption of alcoholic beverages on his, her premises, or on premises rented or leased to him, her or it, without first obtaining an annual license from the City. Application for such license shall be made to the City Clerk upon forms provided by him. The fee for the license provided herein shall be in accordance with Article 4 of this Chapter for all applicants other than non-profit organizations and clubs.

**SECTION 219.6** Licenses issued under this section shall be restricted as follows:

- a. The licensee shall not allow the consumption of intoxicating liquor on licensee's premises or on premises rented or leased by the licensee between 1:00 A.M. and 12:00 Noon on Sundays or legal holidays.
- b. The licensee shall not allow the consumption of intoxicating liquor between the hours of 1:00 A.M. and 8:00 A.M. on Sundays or legal holidays.

**SECTION 219.7** Except as hereunder provided, this licensing requirement shall apply only to an unlicensed person, partnership, corporation or other legal entity who allows the consumption of intoxicating liquor on the licensee's premises or on premises rented or leased to the licensee and who may charge admission to said premises and/or charges for additives to the intoxicating liquor, such as carbonated or non-carbonated beverages, ice, water, etc. and/or cups or glasses or other related material.

**SECTION 219.8** For the purposes of this Section, a non-profit organization or club shall mean an organization or club, no part of the income or profit from which is distributed to its members, directors, officers, governing body, employees or agents.

**SECTION 219.9** The Chief of the Brewer Police Department or his or her

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authorized agent shall have the right to inspect the records of any license, non-profit organization or club, to determine its compliance or non-compliance with this licensing Section.

**SECTION 219.10** The Chief of the Brewer Police Department or his or her authorized agent or agents, shall have the right to obtain a restraining order, preliminary injunction and permanent injunction in Penobscot County Superior Court against any person, partnership, corporation, or other legal entity not licensed as required by this Chapter and not found to be a non-profit corporation or a club having an annual dues of at least Fifty (\$50.00) Dollars per member. The City shall also be entitled to its reasonable attorney fees and costs for the successful prosecuting any violation under this Section.

**SECTION 219.11** Licenses issued under this Section may be suspended or revoked as provided in this Chapter.

### **SECTION 220. OUTDOOR EVENTS WITH MUSIC AND WITH OR WITHOUT ALCOHOL SERVED.**

Any person, partnership, corporation or other legal entity desiring to hold an outdoor event shall make application to the City Clerk upon forms provided by him/her. All applications will be presented to the City Council for approval at a City Council meeting. There will be no fee charged for such events. Each establishment shall only be allowed one event per year unless the City council grants special approval for more. (#12)

The City Council may allow an applicant to hold more than one outdoor event annually if located within that portion of the Convenience Business (CB) zoning district which lies between the Penobscot Bridge and the Veteran's Memorial Bridge and also between Main Street and the Penobscot River subject to, but not limited to, review of the following:

- a) Requested number of times per year;
- b) Requested days and time/hours of events. Unless granted special approval, outdoor events shall only be allowed Thursdays through Sunday afternoons;
- c) Proposed type of entertainment (ie. Live music, show, gathering) at each event;
- d) Anticipated number of patrons at each event;
- e) Anticipated noise level at each event. Unless granted special approval, amplified music is not allowed outdoors. Speakers are not allowed to be placed in open windows or piped outside with the exception of background music;
- f) Location of any additional parking, if needed;



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g) Provisions for security and public safety, if needed. (#16)

**SECTION 220.1.** A single application may include requests for multiple events, where applicable, and shall be processed all at once with one review and public notice. Copy of each application for outdoor event will be forwarded to the City Inspectors (Health Officer, Code Enforcement, Deputy Police Chief and Deputy Fire Chief) for their approval and a written report shall be sent back to the City Clerk to be forwarded to the City Council before they approve such event. Notice shall be mailed to abutting landowners, including those directly across the street of such outdoor event by the City Clerk's office at least 7 days before the City Council meeting which contains the orders for City Council to approve these events. The applicant shall be responsible for the cost of mailing notices to abutting property owners as set forth in the then current City of Brewer Schedule of Fees. (#12) (#16) (#17)

### **SECTION 220.2. RESERVED**

**SECTION 220.3.** All establishments with State of Maine Liquor Licenses making application for an outdoor event in an enclosed area and serving alcohol shall follow all of State of Maine Liquor Laws for such events. (#12)

### **SECTION 221. SOLAR ENERGY SYSTEMS.**

No person, partnership, corporation or other legal entity shall operate a large-scale solar energy system within the City of Brewer without obtaining a license from the City in accordance with this chapter. A large-scale solar energy system shall have the meaning ascribed in the Land Use Code of the City of Brewer Code of Ordinances. Said license shall be required for each new operator and every five years thereafter. The fee for said license shall be in accordance with Article 4 of this Chapter.

**SECTION 221.1. LICENSE APPLICATION.** Application for a City license shall include the following:

1. All required forms provided by the City Clerk.
2. The name and contact information of the responsible person for public inquiries.
3. A written statement from the operator stating they meet and follow their City of Brewer site plan as approved.
4. A written statement from the operator stating they meet and follow their approved Operations and Maintenance Plan.
5. A written statement from the operator stating they meet and follow their approved Vegetation Management Plan.
6. An updated Decommissioning Plan and cost estimate as detailed in

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Article 4 of the Brewer Land Use Code.

7. The status of their surety guarantee including any adjustment based on the updated Decommissioning Plan and cost estimate as detailed in Article 4 of the Brewer Land Use Code.

**SECTION 221.2. LICENSE APPROVALS.** No license shall be issued unless the application has been reviewed and found acceptable by the Brewer Code Enforcement Officer, City Engineer, Finance Director, and Fire Department. (#22)

### **ARTICLE 3. STREET OPENINGS ORDINANCE**

#### **SECTION 301. DEFINITIONS**

The following words and phrases, when used in this Article, have the meanings respectively ascribed to them:

**EXCAVATION.** Any opening in the surface of a public place made in any manner whatsoever, except an opening in a lawful structure below the surface of a public place, the top of which is flush with the adjoining surface and so constructed as to permit frequent openings without injury or damage to the public place.

**FACILITY.** Pipe, pipeline, tube, main, service, trap, vent, manhole, meter, gauge, regulator, valve, conduit, wire tower, pole, pole line, anchor, cable, junction box or any other material, structure or object of any kind or character, whether enumerated herein or not, which is or may be lawfully constructed, left, placed or maintained in, upon, along, across, under or over any public place.

**NEWLY CONSTRUCTED, RECONSTRUCTED OR REPAVED STREETS.** Any street which has been constructed, reconstructed or repaved within the past five (5) years.

**PERMITTEE.** A person, utility or company who has obtained a permit as required by this Article.

**PUBLIC PLACE.** Any public street, way, place, sidewalk, park, square, plaza or any other similar public property owned or controlled by the City and dedicated to public use, and any dedicated but unaccepted street or way.

**SUBSTRUCTURE.** Any pipe, conduit, duct, tunnel, manhole, vault, buried cable or wire or any other similar structures located below the surface of any public place.

**CITY.** The City of Brewer and/or its authorized representatives

including the City Engineer and the Public Works Director.

**UTILITY.** A private company, corporation or quasi-municipal corporation under the direction and control of the Public Utilities Commission. For the purposes of this Chapter, the City of Brewer shall not be considered a Utility.

**SECTION 302. STREET OPENING PERMITS**

**SECTION 302.1** (#18) No person or utility shall make any excavation or fill any excavation in any public place without first obtaining a permit to do so from the City. This includes entrances to private driveways; which entrances are situated on public ways. Applications for Street Opening Permit shall be made to the Code Enforcement Officer or his or her designee. Said application shall state the place and the time of the opening to be made. The City Engineer, or his or her designee, shall promptly inspect said opening. The Applicant shall, on the Application for Street Opening Permit, provide the City with an estimate of the cost of work proposed within the street right of way, including all paving and cleanup work. This cost estimate shall be considered by the City Engineer, or his or her designee, in determining the Street Opening Permit Fee in accordance with the following:

- A. A fee shall be assessed in accordance with Article 4 of this Chapter for each single residential or commercial lot where water, sewer and/or a driveway is to be installed or repaired.
- B. Utilities shall be assessed a fee in accordance with Article 4 of this Chapter for each distinct area to be opened for the purpose of spot repairs or maintenance.
- C. For new installations by Utilities, a fee of \$50.00 or one half ( $\frac{1}{2}$  %) percent of the estimated total project cost, whichever is greater, shall be assessed. The estimated cost shall be reviewed and approved by the City Engineer or his or her designee. No street opening permits will be issued to Utilities for new installations until the Utility has applied for, and been granted, a utility location permit by the City Manager or his/her designee, and the assessed street opening permit fee has been paid.
- D. There will be no fee assessed for street opening permits for contractors working under contract with the City for the installation or maintenance of City owned facilities.

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- E. Prior to any contractor being issued a street opening permit by the Code Enforcement Officer, or his or her designee, the contractor will provide the City with an Insurance Certificate acceptable to the City Engineer, or his or her designee, listing the City as a Policy Holder or an Insured Other, at no expense to the City.
- F. The City Engineer, or his or her designee's, approval as required by this Article prior to the issuance of the street opening permit by the Code Enforcement Officer, or his or her designee, may be sent to the Code Enforcement Department in hand, by FAX or by e-mail.
- G. Any forms necessary under this Section shall be approved by the City Engineer and the Code Enforcement Officer, or their respective designees.

**SECTION 302.2** No excavation permit shall be issued unless a written application on a form provided by the City for the issuance of an excavation permit, is submitted to the City. The written application shall state the name and address of the applicant, the name and address of the contractor performing the work, the name of the public place to be excavated and street number, the beginning and completion dates of proposed work, the type of work to be done and the estimated cost of the portion of the proposed work located within the City right of way.

**SECTION 302.3** Excavation work must be started no later than ninety (90) days from the date of the issue of the excavation permit. After the expiration of this ninety (90) day period, such an application shall become null and void and shall have to be renewed and a new permit application fee paid.

**SECTION 302.4** If a street opening is not approved by the City Engineer or the Director of Public Works, or their designee, the utility or persons may apply to the City Manager. Fees for permits issued by the City Manager shall be set on a case-by-case basis by the City Manager or his or her designee.

### **SECTION 303 CONSTRUCTION AND NOTIFICATION STANDARDS**

#### **SECTION 303.1 Relocation and Protection of Utilities**

The permittee shall not interfere with any existing facility without the written consent of the City and the owner of the facility. If it becomes necessary to relocate an existing facility, this shall be done by the owner of the facility at the permittee's expense. No

facility owned by the City shall be moved to accommodate the permittee unless approved by the City Engineer and the cost of such work is borne by the permittee. The cost of moving privately owned facilities shall be similarly borne by the permittee unless it makes other arrangements with the person owning the facility. The permittee shall support and protect by timbers or otherwise in accordance with utility standards and recommendations, all poles, wires or other apparatus which may be in any way affected by the excavation work and do everything necessary to support, sustain and protect them under, over, along or across the work. The permittee shall secure approval of the method of support and protection from the owner of the facility. In case any pipes, conduits, poles, wires or apparatus shall be damaged, and for this purpose pipe coating or other encasements or devices are to be considered as part of a substructure, the permittee shall promptly notify the owner thereof.

All damaged facilities shall be repaired by the agency or person owning them, and the expense of such repairs shall be charged to the permittee. It is the intent of this Section that the permittee shall assume all liability for damage to facilities and any resulting damage or injury to anyone because of such facility damage, and such assumption of liability is a contractual obligation of the permittee.

The only exception will be such instances where damage is exclusively due to the negligence of the owning utility. The City shall not be made a party to any action because of this Section. The permittee shall inform itself as to the existence and location of all underground facilities and protect the same against damage.

**SECTION 303.2. Protection of Public Property**

The permittee shall not remove, even temporarily, any trees or shrubs which exist in the street area without first obtaining the consent of the appropriate City department or City official having control of such property.

**SECTION 303.3. Emergency Work**

- A. When traffic conditions, the safety or convenience of the traveling public or the public interest requires that the excavation work be performed as emergency work, the City Engineer or his/her designee shall have the full power to order, at the time the permit is granted, that a crew and adequate facilities be employed by the permittee beyond normal working hours, including up to twenty four (24) hours a day, to the end that such excavation work may be completed as soon as possible.
- B. Nothing in this Article shall be construed to prevent the making of such excavations as may be necessary for the preservation of

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life or property or for the location of trouble in a conduit or pipe or for making repairs, provided that the person making such excavation shall apply to the City for such a permit on the first working day after such work commenced. Before any excavation work is started, the person or utility excavating must contact all utilities for on-the-spot locations and comply with all provisions of the Maine "Dig Safe" regulations.

### **SECTION 303.4. Noise, Dust and Debris**

Each permittee shall conduct and carry out excavation work in such a manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. The permittee shall take appropriate measures to reduce to the fullest extent practicable in the performance of the excavation work, noise, dust and unsightly debris and between the hours of 10:00 P.M. and 7:00 A.M. shall not use, except with the express written permission of the City Engineer or his or her designee or in case of an emergency as herein otherwise provided, any tool, appliance or equipment producing noise of sufficient volume to disturb the sleep of occupants of the neighboring property.

### **SECTION 303.5. Preservation of Monuments**

Any monument set for the purpose of locating or preserving the lines of any street or property subdivision or a precise survey reference point or a permanent survey benchmark within the City shall not be removed or disturbed or caused to be removed or disturbed without first obtaining permission, in writing, from the City Engineer or his or her designee to do so. Permission to remove or disturb such monuments, reference points or benchmarks shall be granted only when no alternate route for the proposed substructure or conduit is available. If the City Engineer or his or her designee is satisfied that no alternate route is available, permission shall be granted only upon condition, by an agreement in writing, that the person or utility applying for such permission shall pay all expenses incident to the proper replacement of this monument. Replacement of monuments shall be accomplished and certified by a licensed professional land surveyor.

### **SECTION 303.6. Curbs**

No person or utility shall remove, damage, haul away or cause misalignment of any bituminous curb or granite curbing, including radius curb and catch basin stones, for any reason whatsoever without first receiving written permission from the City Engineer or his or her designee. Any curb missing, damaged, or misaligned shall be

replaced or aligned by the City and the cost thereof will be charged to the permittee; provided, however, that the City Engineer, at his or her option, may allow the permittee to replace or realign that portion of the curb damaged by the permittee's excavation. In such event, replacement or realignment shall be done in a manner and under specifications prescribed by the City and subject to inspection by the City Engineer or his or her designee and shall be completed within a period of ninety (90) days after such authorization to complete such work. The permittee shall, for a period of three (3) years thereafter, be fully liable for all defects in materials and workmanship, including settlement, relating to such work and shall promptly repair or replace the same upon notice of the City Engineer and to the satisfaction thereof.

**SECTION 303.7 Maintenance of Drawings**

Every person or utility owning, using, controlling or having an interest in substructures under the surface of the public way used for the purpose of supplying or conveying gas, electricity, communication, impulse, water, steam ammonia or oil in the City shall keep on file an up to date map or set of maps, each drawn to an appropriate scale, showing in detail the plan, location, size and kind of installation, if known, of all new or renewed substructures, except service lines designed to serve single properties. The locations of these facilities shall be provided to the City Engineer, or other Utilities, upon request for the purpose of coordinating installations within the public way.

**SECTION 303.8 Submission of Annual Work Program by Utilities**

Each year on or before December 1, each utility shall submit to the City Engineer its planned work program for the ensuing construction season, generally defined as April 15<sup>th</sup> through October 31<sup>st</sup>, which shall not include emergencies and unanticipated house service lines. Thereafter, no permit shall be issued to a utility for excavations not contained within its planned work program, except for emergencies and house service lines, until prior written application for such excavation shall have been submitted to and approved by the City Engineer or his or her designee. To the fullest extent possible, all Utilities shall coordinate all work with the City Engineering Department on a continuing basis to facilitate multiple projects within the same location and to avoid repeated openings at the same location.

**Section 304. EXCAVATION STANDARDS**

**SECTION 304.1 Clearance of Vital Structures**

The excavation work shall be performed and conducted so as not to interfere with access to fire hydrants, fire stations, fire escapes, water gates, underground vaults, valve housing structures, traffic signal cables and loops and all other vital equipment as designated by the City or other utilities.

**SECTION 304.2 Protective Measures and Routing of Traffic**

A. Safe Crossing

The permittee shall in general maintain safe crossings for the two (2) lanes of vehicle traffic at all street intersections where possible and safe crossings for pedestrians. If any excavation is made across any public street or sidewalk, adequate crossing shall be maintained for vehicles and for pedestrians. If the street is not wide enough to hold the excavated material without using part of the adjacent sidewalk, a passageway at least one half (½) of the sidewalk width shall be maintained along such sidewalk line.

B. Barriers and Warning Devices

It shall be the duty of every permittee cutting or making an excavation in or upon any public place to place and maintain barriers and warning devices necessary for safety of the general public. Traffic control in the vicinity of all excavations affecting vehicular, pedestrian and bicycle traffic shall be subject to final review and approval of the City Engineer. Barriers, warning signs, lights, etc., shall conform to the latest edition of the Manual on Uniform Traffic Control Devices. Warning lights shall be electrical markers or flashers used to indicate a hazard to traffic from sunset of each day to sunrise of the next day. Electrical markers or flashers shall emit light at sufficient intensity and frequency to be visible at a reasonable distance for safety. Reflectors or reflecting material may be used to supplement, but not to replace, light sources.

C. Normalizations of Traffic Conditions

The permittee shall take appropriate measures to assure that during the performance of the excavation work, traffic conditions as near normal as possible shall be maintained at all times so as to minimize inconvenience to the occupants of the adjoining property and to the general public.



**D. Closing of Streets**

When traffic conditions permit, the City Engineer or his or her designee, with the approval of the Police and Fire Departments of the City, may, by written approval, or by verbal approval in case of emergency, permit the closing of streets to all traffic for a period of time prescribed by him or her, if in his or her opinion it is necessary. The written approval of the City Engineer may require that the permittee give notification to various public agencies and to the general public. In such cases, such written approval shall not be valid until such notice is given. In case of an emergency on weeknights, weekends or holidays, the utility company having such emergency shall contact the Police and Fire Departments by phone before closing a street to traffic.

**E. Interference with Arterial Streets**

The permittee is also informed that construction activities, unless an emergency condition exists, shall not interfere with the normal flow of traffic on arterial streets of the City. The full inbound roadway lane width shall be maintained between the hours of 6:45 a.m. and 8:30 a.m., and the full outbound roadway lane width shall be maintained between the hours of 4:00 p.m. and 5:45 p.m.

**F. Shifting Traffic to Opposite Side**

The permittee may shift traffic to the opposite side of the roadway to maintain required lane widths. The permittee may only make such shift with the approval of the City Engineer following proper review of detour plans to ensure adequate safe two (2) way traffic flow and proper number and placement of police officers.

**SECTION 304.3 Breaking Through Pavement in Streets and Sidewalks**

- A. All excavations on paved street and sidewalk surfaces shall be precut in a neat straight line with pavement breakers, saws or asphalt cutters.
- B. Heavy-duty pavement breakers may be prohibited by the City when the use endangers existing substructures or other property.
- C. Cutouts of the trench lines must be normal or parallel to the trench line.

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- D. Pavement edges shall be trimmed to a vertical face and neatly aligned with the centerline of the trench.
- E. Unstable pavement shall be removed over cave-outs and overbreaks, and the subgrade shall be treated as the main trench.
- F. The permittee shall not be required to pay for the repair of pavement damage existing prior to the excavation unless his or her cut results in small floating sections that may be unstable, in which case the permittee shall remove the unstable portion, and the area shall be treated as part of the excavation.
- G. When three (3) or more street openings are made in sequence [(Fifteen (15) feet or less center to center, between each adjacent opening)], the permittee shall neatly cut and remove the area of pavement between these adjacent openings and shall patch as once trench.
- H. On concrete sidewalks, all cuts shall be made from the nearest joint or score line on the other side of the excavation.

### **SECTION 304.4 Care of Excavated Material**

- A. All material excavated from trenches and piled adjacent to the trench or in any street shall be piled and maintained in such manner as not to endanger those working in the trench, pedestrians or users of the streets and so that as little inconvenience as possible is caused to those using streets and adjoining property. Where the confines of the area being excavated are too narrow to permit the piling of excavated material beside the trench the City Engineer or his or her designee shall have the authority to require the permittee to haul the excavated material to a storage site and then rehaul it to the trench site at the time of backfilling.
- B. It shall be the permittee's responsibility to secure the necessary permission and make all necessary arrangements for all required storage and disposal sites.
- C. All material excavated shall be laid compactly along the side of the trench and kept trimmed so as to cause as little inconvenience as reasonably possible to vehicular and pedestrian traffic, or as specified by the City Engineer or his or her designee. Whenever necessary in order to expedite the flow of traffic or to abate the dirt or dust nuisance, boards or bins

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may be required by the City Engineer or his or her designee to prevent the spreading of the dirt into traffic lanes.

- D. All excess material generated during excavation shall remain the property of the City and shall be hauled to an approved fill area as directed by the City Engineer or his or her designee. All material storage sites shall be protected with erosion and sedimentation controls in accordance with the Maine Department of Environmental Protection's best management practices prior to storage of material.

### **SECTION 304.5 Backfilling of Excavation**

Crushed stone or sand shall be used to bed and backfill all underground utilities and shall be thoroughly compacted under and around and to a minimum of six (6) inches above the structure or in accordance with Utilities' Operation and Maintenance requirements, which in some cases may be more stringent. After being properly bedded, the backfill material for all other substructures shall be of fine material, free from lumps and frozen materials and with no stones larger than four (4) inches in diameter. All backfill materials shall be placed in eight (8) to ten (10) inch lifts and thoroughly compacted with approved mechanical compactors. Within twenty (24) inches of the subgrade of the pavement, gravel shall be used as backfill material, consisting of eighteen (18) inches of bankrun and six (6) inches of crushed or screened gravel in accordance with the City's specifications. The City Engineer may require soil tests to be furnished by a recognized soil testing laboratory or registered professional engineer specializing in soil mechanics when, in his or her opinion, backfill for any excavation is not being adequately compacted. In order for the resurfacing to be permitted, such test must show that the backfill material meets the minimum requirements as prescribed by the City. All expense of such tests shall be borne by the permittee.

### **SECTION 304.6 Trenches**

The maximum length of an open trench in an excavation permissible at any time shall be one hundred (100) feet, and no greater length shall be opened for pavement removal, excavation, construction, backfilling, patching or any other operation without the written permission of the City Engineer or his or her designee.

### **SECTION 304.7 Prompt Completion of Work**

After an excavation is commenced, the permittee shall prosecute with diligence and expedite all excavation work covered by the excavation

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permit and shall promptly complete such work and restore the street as specified in this Article. The permittee shall perform such restoration work so as not to obstruct, impede or create a safety hazard to public travel by foot or vehicle.

### **SECTION 304.8 Excavations During Winter**

No person or utility shall be granted a permit to excavate or open any street or sidewalk from the time of November 1 of each year to April 15 of the following year, unless an emergency or special condition exists and permission is obtained, in writing, from the City Engineer or his or her designee. Any person or utility wishing to obtain a street opening permit between these aforementioned dates shall first explain fully, in writing, the emergency situation existing to the City Engineer before issuance is granted. If a hazardous condition, which could endanger life or property, exists, excavation shall not be delayed by this subsection; however, a written explanation shall be delivered to the City Engineer as soon as possible, and a street opening permit obtained for the opening made.

### **SECTION 304.9 Manholes and/or Catch Basins**

No person or utility shall remove, damage, haul away or otherwise disturb any manhole and/or catch basin castings, frames and/or covers owned by the City without first receiving written permission from the City Engineer or his or her designee. Any manhole and/or catch basin castings, frames and/or covers missing, damaged or disturbed shall be repaired and/or replaced by the permittee in accordance with the specifications set forth by the Public Works Department.

### **SECTION 304.10 Excavation in Reconstructed Streets**

Whenever the City has developed plans to reconstruct a street, the City or its representative shall give written notice thereof to public utilities, which have or may wish to lay pipes, wires or other facilities in or under the highway. Upon receipt of such written notice, such utility shall have sixty (60) days in which to install or lay any such facility. If an extension of time is needed by a utility for the installation of such facilities, the utility shall make a written application to the City explaining fully the reason for requesting such an extension of time. At the expiration of the time fixed and after such street has been reconstructed, no permit shall be granted to open such street for a period of five (5) years unless an emergency condition exists or unless the necessity for making such installation could not reasonably have been foreseen at the time such notice was given, in the judgment of the City Manager.

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The above-mentioned five (5) year moratorium for street openings also pertains to all new public or private streets, i.e. new subdivisions or developments that have been accepted in accordance with City specifications.

### **SECTION 304.11. Incurred Expenses Through Repairing and Backfilling by the City**

- A. If the work or any part thereof mentioned in this Article for repairing or backfilling the trenches or excavations shall be unskillfully or improperly done, the City shall cause the same to be skillfully and properly done and shall keep an account of the expenses thereof, and in such case such property owner, contractor or utility shall pay the City an amount equal to the whole of the expense incurred by the City, with an additional amount of fifty (50%) percent. Thereafter, upon completion of the work and the determination of the costs thereof, the City shall issue no further or new permits to said property owner, contractor or utility until it shall receive payment of the cost.
  
- B. Any person or utility that continues to violate any section of this Article shall receive no further permits until such time as the City is satisfied that the person or utility shall comply with the terms of this Article.

**SECTION 304.12 Civil Penalties.** The following provisions apply to violations of this Article. Monetary penalties may be assessed on a per-day basis and are civil penalties.

- A. The minimum penalty for violating this Article is One Hundred (\$100.00) Dollars, and the maximum penalty is Two Thousand Five Hundred (\$2,500.00) Dollars.
  
- B. The minimum penalty for a specific violation is One Hundred (\$100.00) Dollars, and the maximum penalty is Two Thousand Five Hundred (\$2,500.00) Dollars.
  
- C. The violator may be ordered to correct or abate the violations. When the Court finds that the violation is willful, the violator shall be ordered to correct or abate the violation unless the abatement or correction results in:
  - (1) A threat or hazard to public health or safety;
  - (2) Substantial environmental damage; or
  - (3) A substantial injustice.

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D. If the City is the prevailing party, the City shall be awarded its reasonable attorney fees and costs.

E. In setting a penalty, the Court shall consider, but is not limited to, the following:

- (1) Prior violations by the same party;
- (2) The degree of environmental damage that cannot be abated or corrected;
- (3) The extent to which the violation continued following written notification by the City; and
- (4) The extent to which the City contributed to the violation by providing the violator with incorrect information or by failing to take timely action.

### **Section 305. RESURFACING OF STREETS AND SIDEWALKS**

#### **SECTION 305.1 Temporary Resurfacing by the Permittee**

The top surface of backfill shall be covered with four (4) inches compacted depth of bituminous temporary resurfacing material, by the permittee. Such temporary paving material shall be cold mix, except that the permittee may use or the City Engineer may require hot mix.

All temporary paving material shall be compacted so that it is hard enough and smooth enough to be safe for pedestrian travel over it, as well as for vehicular traffic to pass safely over it at a legal rate of speed. The permittee shall maintain the temporary paving and shall keep the same safe for pedestrian and vehicular traffic until the excavation has been resurfaced with permanent paving by the permittee, except that if it is not possible to maintain the surface of the temporary paving in a safe condition for pedestrian and vehicular traffic, then the permittee shall maintain barriers and lights when required herein.

#### **SECTION 305.2 Permanent Resurfacing by the Permittee**

Upon completion of the backfilling and temporary resurfacing of an excavation within a public place, the permittee will permanently resurface that portion of the street surface damaged by the permittee's excavation. In such event, permanent resurfacing shall be done in a manner and under specifications prescribed by the City and subject to inspection by the City Engineer or his or her designee and shall be completed within a period of ninety (90) days after such authorization to complete final resurfacing. The permittee shall, for a period of three (3) years thereafter, be fully liable for all defects in materials and workmanship, including settlement, relating

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to such resurfacing and shall promptly repair or replace the same upon notice of the City Engineer and to the satisfaction thereof.

### **SECTION 305.3 Lawn Restoration**

Any disturbance of lawns or landscaping within the City right of way shall be repaired such that the areas are returned to their preconstruction conditions. Grass and plantings shall be appropriately maintained until permanent growth is achieved and any areas that do not achieve permanent growth shall be replaced.

### **SECTION 306. INSPECTIONS.**

The City Engineer or his or her designee shall make such inspections as are reasonably necessary in the enforcement of this Article. The City shall have the authority to promulgate and cause to be enforced such rules and regulations as may be reasonably necessary to enforce and carry out the intent of this Article.

**SECTION 307. UTILITY LOCATION PERMITS.** Any person, partnership, corporation or other legal entity engaged in the business of transmission of intelligence, heat, light or power by electricity, applying for a permit to construct facilities upon and along highways and public roads of the City, shall submit such application to the City Manager.

The City Manager is hereby designated by the City Council to accept applications for utility location permits in their behalf. Any decision made by the City Manager under this authority shall be filed with the City Clerk within one (1) week from the date thereof. Within two (2) weeks from the filing, any person aggrieved may appeal such decision as provided under Title 35-A M.R.S.A.

## **ARTICLE 4. LICENSE AND PERMIT FEES SCHEDULE.**

**SECTION 400. AUTHORITY.** The City Council shall by order or resolve establish fees for City licenses and permits unless such fees are established by Maine Statute. All license fees are annual, except as otherwise provided above. Where the amount of the fee shown in the above schedule is for a year or for a day, there shall be no lesser charge for part of a year or part of a day.

**SECTION 401. LICENSE FEES - INITIAL APPLICATION.** The fee for an initial annual business license shall be fifty (50%) percent of the amount set in this chapter if the date of issuance of said license is less than six (6) months from the date established as the license expiration date following the date of issuance of said license.

**SECTION 402. PENALTY.** Any person, partnership, corporation or other legal entity who violates the provisions of this Article shall be punished upon a finding of a violation by the imposition of a penalty not to exceed Five Hundred (\$500.00) Dollars with each day being a separate violation. The City of Brewer shall be entitled to its reasonable attorney fees and costs in successfully prosecuting a violation of this Article.

**ARTICLE 5. ADULT USE ESTABLISHMENT ARTICLE (#1)**

**SECTION 500. PURPOSE.** The purpose of the Adult Use Establishment Article is to regulate uses which, because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances thereby having a deleterious effect upon the adjacent areas or when they are in proximity to residences, schools, houses of worship, or public parks. Special regulation of these uses is necessary to insure that these adverse secondary effects will not contribute to the blighting or downgrading of the surrounding neighborhood. The primary control or regulation is for the purpose of preventing a concentration of these uses in any one area or in proximity to residences, schools, houses of worship, or public parks.

This article is based on the numerous studies which have been done throughout the United States and the numerous cases which have been decided by the Court.

**SECTION 501.** The following definitions shall apply to this article:

**SECTION 501.1 "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.

**SECTION 501.2 "Adult Motion Picture Theater and On-Site Adult Video Screening".** 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.

**SECTION 501.3 "Adult Entertainment Nightclub, Bar or Cabaret"**. A public or private establishment which (i) features topless dances, strippers, male or female impersonators, or erotic dancers; (ii) not infrequently features entertainers who display "Specified anatomical areas"; (iii) features entertainers who by reason of their appearance or conduct perform in a manner which is designed primarily to appeal to the prurient interest of the patron or entertainers who engage in, or engage in explicit simulation of, "Specified sexual activities"; or (iv) offers Sadoomasochistic acts or Bondage and discipline to patrons.

**SECTION 501.4 "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.

**SECTION 501.5 "Adult Use Establishment"**. Adult Use Establishments include, but are not limited to, adult amusement stores, adult movie theaters and on-site adult video screening, adult entertainment nightclub, bar or cabarets, adult relaxation spas or adult spas.

**SECTION 501.6 "Erotic Dance"**. A form of dance which seeks, through one or more dancers, to arouse or excite the sexual desire of a patron or patrons.

**SECTION 501.7 "Sadoomasochistic Acts" or "Bondage and Discipline"**. Flagellation, torture, or punishment by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained while so clothed or by a person so clothed.

**SECTION 501.8 "Sexual Device"**. A device or object the primary purpose of which is to provide direct sexual stimulation to male or female genitals or anus.

**SECTION 501.9 "Specified Sexual Activities"** is defined as:

- a. Human genitals in a state of sexual stimulation or arousal;
- b. Acts of human masturbation, sexual intercourse, any sexual act or sexual contact as defined by Maine law, or sodomy;

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- c. Fondling or other touching of human genitals, pubic region, buttock or female breast;
- d. The display or depiction of sex organs during actual or simulated sexual intercourse or sexual acts as defined by 17 M.R.S.A. § 251.

**SECTION 501.10 "Specified Anatomical Areas"** is defined as:

- a. Less than completely and opaquely covered: (a) human genitals, pubic region, (b) buttocks, or (c) female breast below a point immediately above the top of the areola; and
- b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

**(#7) SECTION 501.11 "Specified Criminal Activities"** are defined to mean any of the following:

A. Prostitution; promotion of prostitution; dissemination of obscenity; indecency with a child; unlawful sexual contact; molestation of a child; sexual performance by a child; sales, distribution or display of harmful material to a child; possession or distribution of child pornography; public lewdness; indecent exposure; engaging in organized criminal activity; sexual assault; molestation of a child; domestic assault; gambling; the unlawful possession, use or distribution of a controlled substance; deceptive trade practice; stalking; terrorizing; assault; criminal threatening; any other sexual offense against a child; conviction of a felony; possession, sale or use of drug paraphernalia; and other similar offense to those described under other laws of the State of Maine or other states.

B. For Which:

(1) Less than two (2) years have elapsed since the date of conviction or release from confinement imposed for the conviction, whichever date is later, if the conviction were for a misdemeanor.

(2) Less than five (5) years have elapsed since the date of the conviction or the date of release from confinement for the conviction, whichever date is later, if the conviction were for a felony.

(3) Less than five (5) years have elapsed since the date of the conviction or the date of release form confinement for a second

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misdemeanor, whichever date is later, within a twenty-four (24) month period.

C. The fact an appeal was taken from a conviction shall have no effect upon the disqualification of the applicant.

**SECTION 502. License Required.** No person, corporation, partnership or other legal entity shall operate an Adult Use Establishment without a valid Adult Use Establishment License issued by the City, nor shall any property owner permit the use of his, her or its premises to be operated as an Adult Use Establishment without a valid Adult Use License issued by the City.

**SECTION 502.1 Licensing Fees.** The City Council shall establish licensing fees for Adult Use Establishments by City Council Order, which shall be incorporated into this Ordinance and made a part hereof.

**SECTION 503. Application; Investigation; and Issuance of License.**

**SECTION 503.1 Application.** An application for an Adult Use Establishment License shall:

- a. Complete and file an application prescribed by the City Clerk;
- b. Deposit the prescribed license fee and a \$15.00 processing fee in advance with the City Clerk;
- c. Submit the completed application to the City Clerk, together with attested copies of the articles of incorporation and bylaws, if the applicant is a corporation, evidence of partnership, if a partnership, or articles of association and bylaws, if the applicant is an association, the legal documents which have been used to create any other legal entity which is making application under this Article, as well as a list of all officers and directors;
- d. File an affidavit which will indemnify all owners, officers, managers or partners of the applicant and their places of residence at the time of the application and for the immediately preceding three (3) years;
- e. File the release authorized by 16 M.R.S.A. § 620(6) (Criminal History Record Information Act) with the application for each officer, owner, manager or partner of the applicant;
- f. Submit evidence of right, title or interest in the premises in which the Adult Use Establishment will be sited, along

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- with the written consent of the owner or owners of the premises for such use if applicant is not the owner; and
- g. State the date of initialization of the Adult Use and the nature of the Adult Use.

**SECTION 503.2 Investigation of Applicant, Officers.** Upon receipt of an application or notice of a change of the owners, officers, managers or partners of the applicant:

- a. The Code Enforcement Officer, or his or her designee, shall verify that the premises at which the establishment will be located comply with all applicable code ordinances of the City including, but not limited to, the building code, electrical code, plumbing code and land use code and shall report findings in writing to the City Clerk;
- b. The Health Officer shall inspect the location or proposed location to determine whether or not the applicable codes and ordinances relating to health and safety have been satisfied and shall report findings in writing to the City Clerk;
- c. The Fire Chief or his/her designee shall inspect the location or proposed location to determine if all City codes and ordinances concerning fire and safety have been satisfied and shall report findings in writing to the City Clerk;
- d. The Police Chief or his/her designee shall investigate the application, including the criminal history record information, and shall report findings in writing to the City Clerk; and
- e. The City Clerk shall arrange for public notice of the public hearing on the application in a newspaper of general circulation at least ten (10) days before the public hearing before the City Council, costs of which shall be paid by the applicant, and the City Clerk shall forward the application and other documents to the City Council for public hearing and action.

**SECTION 503.3 Issuance and License.** The City Council, after notice and public hearing, shall determine whether or not the application and documents submitted comply with all of the requirements of this Article. The license shall be issued upon determination by the Council, based upon the record, evidence, and testimony at the public hearing, that the application meets the requirements of this Article. The license may not be transferred or assigned.

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**SECTION 504. Standards for Denial.** An application for an Adult Use Establishment License shall be denied by the City Council in the following circumstances:

- a. The applicant is a corporation, partnership or other entity which is not licensed to do business in the State of Maine;
- b. The applicant is an individual who has been convicted of specified criminal activities;  
(#7)
- c. The applicant is a corporation or other legal entity and any principal officers, any person having an ownership interest, or any person having a management authority has been convicted of specified criminal activities; (#7)
- d. The applicant is an individual who is less than eighteen (18) years of age;
- e. The applicant has submitted an incomplete application, knowingly made an incorrect statement of a material nature, or failed to supply additional information required by the City Clerk or City Council that is reasonably necessary to determine whether the license is issuable;
- f. The applicant, if an individual, or any person having an ownership or management interest, if a corporation or other entity, has been denied an Adult Business License for knowingly making an incorrect statement of a material nature within the immediately preceding five (5) years to any municipality;
- g. The applicant, if an individual, or any person having an ownership or management interest, if a corporation or other legal entity, has had a license granted pursuant to this Article or a similar ordinance provision in any other municipality revoked for any reason during the immediately preceding five (5) years;
- h. The applicant, if an individual, or any person having an ownership or management interest, if a corporation or other legal entity, has violated Chapter 20, Article 2, Sections 205.8 or 206 of the City of Brewer Charter, Codes and Ordinances, or a similar ordinance in any other municipality within the immediately preceding five (5) years; or
- i. The site on which the Adult Use Establishment is proposed is a prohibited site under this Article or any other Brewer Code or Ordinance, and/or State or Federal Law.

**SECTION 505. Standards for Suspension, Revocation.** Any Adult Use Establishment License may be suspended or revoked by the City Council in the following circumstances:

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- a. The licensee fails to notify the City Clerk of any change in material fact set forth in the application for such license;
- b. The licensee violates any provision of this Article;
- c. The licensee, a principal officer of the licensee if it is a corporation, or other legal entity; any person having an ownership interest in the licensee if it is a corporation or other legal entity; or any person having management authority is convicted of specified activities; (#7)
- d. The licensee violates this Chapter or any other Brewer Code or Ordinance; or
- e. Any officer or employee of the licensee provides sexual intercourse, a sexual act or sexual contact, as defined by Maine law, for any direct or indirect payment of money or any other object of value.

**SECTION 506. Age Restriction.** No Adult Use Establishment may permit any person under the age of eighteen (18) years on the premises in which the Adult Use Establishment is located.

**SECTION 507. License, Fees, and Names of Owners to be Prominently Displayed.** An Adult Use Establishment Licensee must display the Adult Use Establishment License at all times in an open and conspicuous place in the Adult Use Establishment for which the license has been issued. Adult Use Establishment licensees must also display at all times in an open and conspicuous place in the Adult Use Establishment, a complete list of the names of the owners and officers of the Adult Use Establishment and a complete list of fees, prices, and charges for all food, beverages, goods, wares, merchandise or services offered by the Adult Use Establishment. The list of owners and officers and the list of prices and charges must be written in clearly visible letters and figures of a size not less than 14 point.

**SECTION 508. Prohibited Activities.**

- a. All acts of Public indecency, as defined in this Article and by Title 17-A M.R.S.A. § 854 are prohibited in Adult Use Establishments;
- b. Dancers and performers, employees, owners or officers of an Adult Use Establishment shall not fondle or caress any patron or client and patrons and clients shall not fondle or caress dancers, performers, employees, owners or officers of the Adult Use Establishment;
- c. Dancers, performers, employees, owners or officers of an Adult Use Establishment shall not (1) perform, offer to perform, or agree to perform sexual intercourse with each

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other or any patron or client, or (2) commit, offer to commit, or agree to commit any sexual act with each other or any patron or client or (3) make, offer to make, or agree to make sexual contact with each other or any patron or client; and

- d. Patrons and clients of adult Use Establishments shall not (1) perform sexual intercourse with any dancers, performers, employees, owners or officers of the Adult Use Establishment, or (2) commit any sexual act with any dancers, performers, employees, owners or officers of the Adult Use Establishment or (3) make sexual contact with any dancers, performers, employees, owners or officers of the Adult Use Establishment.

**SECTION 509. Permitted Locations.** Adult Use Establishments other than adult motion picture theaters and on-site adult video screening, adult entertainment nightclubs, bars or cabarets, or adult relaxation spas or adult spas as only permitted in the General Business (GB) Zone as defined by the Brewer Land Use Codes (Chapter 24 of the City of Brewer Charter, Codes and Ordinances and the Zoning Map of the City of Brewer), Adult Use Establishments which, by definition, are adult motion picture theaters and on-site adult video screening, adult entertainment nightclubs, bars or cabarets, or adult relaxation spas or adult spas are permitted in the Industrial Zone (Ind.) as defined by the Brewer Land Use Code (Chapter 24 of the City of Brewer Charter, Codes and Ordinances and the Zoning Map of the City of Brewer), Adult Use Establishment shall not be permitted in any other zones as defined under the Brewer Land Use Code and the Zoning Map of the City of Brewer.

Within the General Business Zone (GB) as hereinbefore described, the following restrictions shall apply to permitted Adult Use Establishments:

- a. The structure in which the permitted Adult Use Establishment is located shall be:
- 1) One Hundred Fifty feet (150') from the lot line of any lot on which a residence or dwelling is located;
  - 2) One Hundred Fifty feet (150') from any residential zone as defined under the Brewer Land Use Code and Zoning Map;
  - 3) Five Hundred feet (500') from the lot line of any public or private elementary or secondary school;
  - 4) Five Hundred feet (500') from the lot line of any church, synagogue or other house of religious worship;
  - 5) Five Hundred feet (500') from the lot line of a public

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- park or municipal facility;
- 6) Five Hundred feet (500') from any structure in which another permitted Adult Use Establishment is located;
- 7) There shall be no on-site consumption of alcohol in any Adult Use Establishment.

Within the Industrial Zone (Ind.) as hereinbefore described, the following restrictions shall apply to permitted adult Use Establishments:

b. The structure in which the permitted Adult Use Establishment is located shall be:

- 1) One Hundred Fifty feet (150') from the lot line of any lot on which a residence or dwelling is located;
- 2) One Hundred Fifty feet (150') from any residential zone as defined under the Brewer Land Use Code and Zoning Map;
- 3) Five Hundred feet (500') from the lot line of any public or private elementary or secondary school;
- 4) Five Hundred feet (500') from the lot line of any church, synagogue or other house of religious worship;
- 5) Five Hundred feet (500') from the lot line of a public park or municipal facility;
- 6) Five Hundred feet (500') from any structure in which another permitted Adult Use Establishment is located.
- 7) There shall be no on-site consumption of alcohol in any Adult Use Establishment. (#3)

Distances shall be measured in straight lines without regard to intervening structures or objects. New lots can be created from existing lots which meet the separation requirements of this Section so long as the distance requirements from the newly created lot line are met.

### **510. Physical Layout of Adult Use Establishment.**

(a) Any Adult Use Establishment having available for customers, patrons, or members, any booth, room or cubicle for any private viewing of any adult entertainment shall comply with the following requirements:

- (1) Access. Each booth, room, or cubicle shall be totally accessible to and from aisles and public areas of the Adult Use Establishment, and shall be unobstructed by any door, lock, or other control-type devices.



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- (2) Construction. Each booth, room, or cubicle shall meet the following construction requirements:
- (a) Each booth, room, or cubicle shall be separated from adjacent booths, rooms, and cubicles and any non-public areas by a wall.
  - (b) Each booth, room, or cubicle must have at least one side totally open to a public lighted aisle so that there is an unobstructed view at all times of anyone occupying the booth, room, or cubicle.
  - (c) All walls shall be solid and without any openings, extended from the floor to a height of not less than six feet and be light-colored, non-absorbent, smooth textured, and easily cleanable.
  - (d) The floor must be light-colored, non-absorbent, smooth textured, and easily cleanable.
  - (e) The lighting level of each booth, room, or cubicle, when not in use shall be a minimum of ten-foot candles at all times, as measured from the floor.

(3) Occupants. No more than one individual shall occupy a booth, room, or cubicle at any time. No occupant of a booth, room, or cubicle shall engage in any type of sexual activity, cause any bodily discharge or litter while in the booth. No individual shall damage or deface any portion of the booth.

(b) Any Adult Motion Picture Theater shall comply with the following requirements:

- (1) Aisle lights and overhead lights in the theater shall be kept on during business hours and shall illuminate to a minimum of ten-foot candles except when motion pictures are being shown;
- (2) No standing shall be allowed in the theater;
- (3) Signs shall be posted warning patrons that sexual activity is prohibited in the theater and informing them of the presence of surveillance cameras; and
- (4) Theater employees shall regular patrol the theater during business hours and eject persons found to be engaged in sexual intercourse, a sexual act, sexual contact, or any criminal activity. Incidents of sexual intercourse, sexual acts, sexual contact, or

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criminal activity in the theater shall be immediately reported to the Brewer Police Department.

(c) Restrooms must be individual rooms and shall not contain facilities for more than one person at a time. No more than one person shall be in the rest room with the door closed at any time.

In the event the Adult Use Establishment licensee is a lessee of the premises on which the Adult Use Establishment is located, both the licensee and the owner shall be responsible for compliance with this section, and both the licensee and the owner shall be legally responsible for any violation.

All activity covered by this Article must be conducted within an enclosed structure.

**SECTION 511. Dancers and Other Performers.** No Adult Use Establishment must observe the following restrictions on dancers and other performers.

- (a) All dancing or other performances must occur on a platform intended for that purpose which is raised at least two feet from the level of the floor.
- (b) No dancing or other performance shall occur closer than ten feet from any patron, and no patron shall be allowed to be closer than ten feet from any dancer or other performer. Notwithstanding the foregoing, incidental touching between a dancer or other performer and a patron of a business or social nature, i.e. a handshake or the brief contact that occurs while a patron is giving a tip to a dancer or performer is permitted.

**SECTION 512. Amortization of Existing Adult Use Establishments.** Any Adult Use Establishment lawfully operating on the adoption of this chapter, that is in violation of this Article shall be deemed to be a nonconforming use. This nonconforming use shall be permitted to continue through October 31, 2004, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. Such nonconforming use may not be increased, enlarged, extended, or altered except that the use may be changed to a conforming use.

An Adult Use Establishment lawfully operating as a conforming use as of November 1, 2004, shall not be rendered a nonconforming use by the subsequent location of a residence or dwelling, church, synagogue, or other house of religious worship, public or private elementary or secondary school, public park, or municipal facility, or residential

zone or use within the distance limitations of Section 509 of this Article.

This provision applies only to the renewal of a valid license and does not apply when an application for a license is submitted after a license has expired or has been revoked.

**SECTION 513. Exterior Signage and Visibility.** No sexually explicit materials, entertainment, or activity shall be visible from the exterior of the premises.

**SECTION 514. Violations; Penalties.** In addition to revocation or suspension of an Adult Use Establishment License as provided in this Chapter, the violation of any provision of this Article shall be punished by a fine not less than one thousand dollars (\$1000) nor more than two thousand five hundred dollars (\$2500) for each offense. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense. In addition to such penalty, the City may enjoin or abate any violation of this Article by appropriate action, including but not limited to revocation of the license. If the City prevails in an enforcement action under this Article, it shall be entitled to its reasonable attorney fees and costs.

**SECTION 515. Enforcement.** This Article shall be enforced by the Brewer Code Enforcement Officer, or his/her designee, in conjunction with the City Solicitor or other authorized legal counsel for the City. Notice of violations by Adult Use Establishment licensees of other provisions of the Brewer Codes and Ordinances shall be provided to the Police Chief or City Solicitor.

**SECTION 516. Conflicts.** Notwithstanding the foregoing, if there is any conflict between this Article and Article 2 of this Chapter, the more stringent provisions shall apply to the activity described in said Article and Sections thereof.

**SECTION 517. Severability.** If any section, phrase, sentence, or portion of this Article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

**SECTION 518. Appeals.** An appeal from any final decision of the City Council may be taken by any party to Superior Court in accordance with the provisions of Rule 80B of the Maine Rules of Civil Procedure. Any denial, suspension, or revocation shall be in writing

and shall include notification of the right to and procedure for appeal.

**ARTICLE 6. PUBLIC INDECENCY ORDINANCE.**

**SECTION 601. PURPOSE.** The two purposes of this Article are (1) to prohibit certain acts of commercial exploitation of human sexuality in commercial or business establishments within the City of Brewer in order to reduce the likelihood of criminal activity, moral, degradation, sexually transmitted diseases and disturbances of the peace and good order of the community which may occur when such commercial exploitation is permitted in such places, and (2) to protect the health, safety, welfare and morals of the community by using the government's recognized and traditional police power to protect societal order, morality and physical and emotional health in public places without infringing on protected First Amendment rights.

**SECTION 602. DEFINITIONS.** For the purposes of this section, the following definitions apply:

- (a) "Sexual intercourse" means any penetration of the female sex organ by the male sex organ. Emission is not required.
- (b) "Sexual act" means any act of sexual gratification between Two (2) persons involving direct physical contact between the sex organs of and the mouth or anus of the other or direct physical contact between the sex organs of one and the sex organs of the other, or direct physical contact between the sex organs of one and the hand of another, or between the sex organs of one and an instrument or devise manipulated by the other. A sexual act may be proved without allegation or proof of penetration.
- (c) "Sexual contact" means any touching of the genitals, directly or through clothing, other than as would constitute a sexual act for the purpose of arousing or gratifying sexual desire.
- (d) "Nudity", other than nudity in a dressing room, locker room, shower, rest-room, or other changing or lavatory facility set off and marked as such, means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernible turgid state.
- (e) "Public place" means a place to which the public at large or a substantial group has access, including but not limited to

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commercial or business establishments, public ways, schools, government owned facilities, and the lobbies, hallways and basement portions of apartment houses, hotels, motels, public buildings and transportation terminals, as well as non-profit recreational facilities and clubs, including, but not limited to, health clubs, gymnasiums, spas, hot tub centers, relaxation clubs, swimming pools, open to the membership by members of the public.

- (f) "Public indecency" means the knowing or intentional commission of an act of sexual intercourse, a sexual act, sexual contact or nudity in a public place.
- (g) Commercial or business establishments include but are not limited to: companies, firms, corporations, stores, shops, malls, markets, clubs, bars, saloons, restaurants or dining facilities, recreational facilities, swimming pools, gymnasiums, health clubs, spas, hot tub centers, relaxation centers, etc.

### **SECTION 603. PUBLIC INDECENCY PROHIBITED.**

- (a) Engaging in public indecency is prohibited.
- (b) Encouraging or permitting another person or persons to engage in an act or acts of public indecency by the person who or entity which owns, leases or otherwise controls a premise on which the act or acts of public indecency occur(s) is prohibited.

**SECTION 604. PENALTIES.** The violation of any provision of this Article shall be punished by a fine not less than Five Hundred (\$500.00) Dollars nor more than One Thousand (\$1,000.00) Dollars for each offense. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense. In addition to such penalty, the City may enjoin or abate any violation of this Article by appropriate action, including but not limited to revocation of any City license for a premise or commercial or business establishment in which the violation occurs. The City shall also be entitled to its reasonable attorney fees and costs for successfully prosecuting a violation of this Article.

**SECTION 605. SEVERABILITY.** If any Section, phrase, sentence or portion of this Article is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

**SECTION 606. NURSING WOMEN.** Notwithstanding any City Code or Ordinance to the contrary, no City Code or Ordinance shall prohibit, or be interpreted or construed to prohibit or regulate, women from nursing or breast-feeding in public or private.

**SECTION 607. CONFLICT.** If there are any conflicts between this Ordinance and any other City of Brewer Code and Ordinances, the more stringent Code or Ordinance shall govern.

**ARTICLE 7. PAID SEXUAL CONTACT ORDINANCE**

**SECTION 701. DEFINITIONS.** For the purposes of this Article, the following definitions apply:

- (a) "Sexual contact" means any touching of the genitals, directly or through clothing, for the purpose of arousing or gratifying sexual desire.
- (b) "Pecuniary benefit" means any direct or indirect payment of money or any other object of value.

**SECTION 702. SEXUAL CONTACT FOR PECUNIARY BENEFIT PROHIBITED.**

- (a) Engaging in, or agreeing to engage in, or offering to engage in sexual contact in return for a pecuniary benefit to be received by the person engaging in the sexual contact or by a third person is prohibited.
- (b) Providing or agreeing to provide a person for purposes of engaging in sexual contact in return for a pecuniary benefit to be received by the person engaging in the sexual contact or by a third person is prohibited.
- (c) Causing or aiding another person to engage in sexual contact in return for a pecuniary benefit to be received by the person engaging in the sexual contact or by a third person is prohibited.
- (d) Leasing or otherwise permitting a place controlled by the defendant in any action to enforce this article, alone or in association with other, to be used as a site for sexual contact for pecuniary benefit to any person is prohibited.

**SECTION 703. PENALTIES.** The violation of any provision of this Article shall be punished by a fine not less than Five Hundred (\$500.00) Dollars nor more than One Thousand (\$1,000.00) Dollars for each offense. Each act of violation and every day upon which any

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such violation shall occur shall constitute a separate offense. In addition to such penalty, the City may enjoin or abate any violation of this Article by appropriate action, including but not limited to revocation of any city license for a premises or business in which sexual contract for pecuniary benefit is transacted. The City shall also be entitled to its reasonable attorney fees and costs for successfully prosecuting a violation of this Article.

**SECTION 704. SEVERABILITY.** If any section, phrase, sentence or portion of the Article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

**SECTION 705. CONFLICT.** If there are any conflicts between this Ordinance and any other City of Brewer Code and Ordinances, the more stringent Code or Ordinance shall govern.

### **ARTICLE 8. MASS GATHERING**

#### **SECTION 800. TITLE, AUTHORITY, AND PURPOSE**

**Section 800.1 Title.** This Article shall be known as and may be cited as the Mass Gathering Ordinance of the City of Brewer, Maine.

**Section 800.2 Authority.** This Article is enacted pursuant to the authority granted in Title 22 M.R.S.A Section 1601, et. seq., and the Home Rule Power conferred by Article VIII, part Second of the Maine Constitution and Title 30-A M.R.S.A Sections 2101, 2109, and 3001.

**Section 800.3 Purpose.** It is recognized that a mass gathering attended by three (300) hundred or more persons, whatever its duration, may create a hazard to public health and safety. Accordingly, it is deemed necessary in the interests of public welfare to regulate the conduct of such gatherings in order to protect the public health and safety.

#### **SECTION 801. DEFINITIONS**

Any term not specifically defined herein shall be given its customary and ordinary meaning. For the purpose of this Chapter, the following terms shall be defined as hereinafter set forth:

(a) "Council" means the Brewer City Council and its authorized representatives.

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(b) "Mass gathering area" means any place maintained, operated, or used for a mass gathering or assemblage, except where the mass gathering is to occur within an established permanent stadium, arena, auditorium or other similar permanent building that is fully enclosed by a roof, walls and floor and has sufficient existing permanent sanitary facilities and parking to handle the expected number of persons.

(c) "Mass gathering" means a group of three hundred (300) or more persons assembled together for a meeting, festival, social gathering, entertainment, scheduled event or other similar purpose.

(d) "Operator" means the person responsible for the managing of the mass gathering area. In the event that no Operator exists, the owner or, in the event of his non-availability, the lessee of the ground encompassing the group gathering area, shall be deemed to be the Operator under those regulations.

(e) "Person" means an individual, group of individuals, association, partnership or corporation, or other legal entity, but shall not include the City of Brewer.

(f) "Refuse" means all combustible or non-combustible putrescible or non-putrescible solid or liquid wastes.

(g) "Sanitary facilities" means toilet, privies, lavatories, urinals, drinking fountains, and any service building or room provided for installation and use of these units.

(h) "Nuisance" means and includes the following:

- (1) Any public nuisance known at common law or in equity jurisprudence;
- (2) An attractive nuisance known at common law or in equity jurisprudence;
- (3) Any condition which violates federal, state or local health or environmental laws or regulations.

### **SECTION 802. PERMIT REQUIRED**

#### **Section 802.1 Prohibitions.**

No person, partnership, corporation or other legal entity shall sponsor, promote, sell tickets to, permit on his property, or otherwise conduct, a mass gathering which may, will or is intended



to attract a continued attendance at such gathering of three hundred (300) or more persons until a permit therefore has been obtained from the City Council.

**Section 802.2 Issuance.**

The City Council shall issue a permit for a mass gathering only if it finds the standards in this Chapter are met. When considering the issuance of a permit, the City Council may seek advice from the Police Chief, Fire Chief, Code Enforcement Officer, Health Officer, and such other officials or persons as it deems appropriate, and shall seek from them relevant information, including but not limited to any safety problems that arose at any mass gathering within the previous two (2) years (a) held at the same mass gathering area or (b) managed or promoted by the applicant or a related entity. The City Council shall deny a permit for a mass gathering if it finds that any of the standards set forth in this Chapter are or would not be met by the proposed mass gathering.

**Section 802.3 Permit Procedures.**

**Section 802.3.1 Application.**

An application to hold one (1) or more [(but no more than five(5))] mass gatherings shall be submitted to the City Clerk at least sixty (60) days prior to the first outdoor gathering contemplated. The application shall identify (a) the Operator; (b) the mass gathering area; (c) the maximum number of patrons anticipated or tickets to be sold for each anticipated gathering; (d) the range of dates and time of day being considered for each anticipated mass gathering; (e) information pertaining to previous mass gatherings in the same mass gathering area or sponsored by the Operator or a related entity at other locations, within the previous two (2) years, including but not limited to safety problems or violations of this Chapter or other Ordinances or Regulations occurring at such previous gatherings and how such problems are to be avoided at the requested mass gathering or gatherings; and (f) shall set forth the information needed to determine compliance with each of the standards set forth in Section 304 of this Chapter.

Additionally, the Application shall be accompanied by a non-refundable permit fee as specified in Article 4 of this Chapter.

**Section 802.3.2 City Council Action.**

Upon the filing of an application City staff shall review the application and notify the applicant by letter issued no later than

five (5) business days after the filing of the application as to whether the application is deemed complete, or if not, the specific provisions of this Chapter for which additional information must be provided. If the applicant objects to the determination that its application is not complete, then the completeness of the application may be reviewed by the City Council at its next regularly scheduled meeting for which adequate time for notice is available. Once the application has been deemed completed either by City staff or by the City Council, the application shall be considered as an agenda item at the next regularly scheduled City Council meeting for which adequate time for notice is available.

**Section 802.3.3 Decision and Notification.**

- A. Within thirty (30) days after the City Council first substantively considers the application (or longer with the agreement of the Operator) the City Council shall either issue a permit, with or without conditions, to the Operator or deny a permit to the Operator. Any decision of the City Council shall be in writing and shall set forth with specificity the reasons for the action taken, and in the case of denial, shall include a list of steps which, if followed by the Operator, would result in a permit being issued, if in the judgment of the Council, the problems that resulted in denial can be cured. If the City Council fails to either issue the permit or send a notice of denial within the time allowed, the permit shall be deemed to have been denied. A party aggrieved by the decision of the City Council may appeal to the Superior Court pursuant to Rule 80-B of the Maine Rules of Civil Procedure.
- B. Upon approval of the "general" permit application, the permit holder shall file a notification at least forty-five (45) days prior to each gathering contemplated identifying, for each gathering, (1) the specific date and time (start and finish) of the event; (2) the anticipated number of attending patrons or tickets to be sold; (3) the identity(ies) of the performer(s) at the event; and (4) information pertaining to the last three (3) performances of each performer, including date, location, and any safety problems that arose at each such performance.

**Section 802.3.4 Public Costs Escrow.**

The Operator shall deposit with the City Clerk at least two (2) weeks prior to the first contemplated gathering an amount of money equal to one hundred twenty (120%) percent of the estimated public costs of each contemplated mass gathering as set by the Council when issuing the permit pursuant to this Article. Public costs shall be those costs incurred by the City in connection with the contemplated mass

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gatherings which related to the mass gathering and which would not be incurred by the City if such mass gathering was not held. Promptly each mass gathering, the public costs shall be calculated, and the deposit shall be refunded to the Operator to the extent it exceeds the actual public costs. If the actual public costs exceed the amount deposited, the Operator shall pay the excess to the City within ten (10) days after being so notified in writing.

### **Section 802.3.5 Permit Applications and Approval Criteria.**

The permit application submitted pursuant to this Article shall be in the form prescribed by the City Council and shall demonstrate compliance with the following approval criteria:

### **Section 802.3.6 Access.**

- A. Convenient and safe access for the ingress and egress of pedestrians and vehicular traffic shall be provided.
- B. Sufficient traffic control personnel to insure safety to all members of the traveling public, including pedestrians, along all public roadways in the proximity of the mass gathering and/or along which the public is likely to travel to reach the mass gathering areas shall be provided.
- C. Information submitted by the applicant requested in Subsections A and B above are to be reviewed by the City Police Chief, Fire Chief, Code Enforcement Officer and City Planner to determine whether these standards have been demonstrated.

### **Section 802.3.7 Grounds.**

- A. Each mass gathering area shall be well drained and so arranged to provide sufficient space for persons assembled, vehicles, sanitary facilities, and appurtenant equipment.
- B. Trees, underbrush, large rocks and other natural features shall be left intact and undisturbed whenever possible, and natural vegetative cover will be retained, protected and maintained so far as possible to facilitate the drainage, will prevent erosion, and preserve scenic attributes.
- C. Grounds shall be maintained free from accumulations of refuse and any health and safety hazards constituting a nuisance.
- D. Illumination will be provided at night to protect the safety of the persons assembled. The mass gathering area shall be

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adequately lighted, but the lighting shall not unreasonably reflect beyond the assembly area boundaries unless adjacent properties are uninhabited.

- E. Adequate parking areas, including handicapped parking spaces, shall be provided for persons arriving by vehicular means, which shall mean one parking space at least nine (9) inches x eighteen (18) inches in area for each 3.5 persons expected to attend. Service road(s) and parking spaces shall be located and developed to permit convenient and safe movement of vehicular and pedestrian traffic and free passage of emergency vehicles and shall be sufficiently well-lit to provide for pedestrian safety. The width of any service road(s) may not be less than the following: two (2) traffic lanes - twenty-four (24) feet; parallel parking lane nine (9) feet for each lane. The density shall not exceed one hundred fifty (150) passenger cars or thirty (30) buses per usable acre available for supervised parking. If the Operator proposes to utilize temporary off-site parking, then the Operator must demonstrate 1) that the off-site parking location is in a commercial or industrial zone, and 2) during the mass gathering event the off-site temporary parking area will not be utilized for purposes other than the mass gathering event. The City Police Chief, Fire Chief, Code Enforcement Officer and City Planner shall review any proposed temporary off-site parking to determine whether the standards contained in this Section have been demonstrated.
- F. The mass gathering area shall contain at least ten (10) square feet per person expected to attend. No overnight assemblage shall be permitted. Areas used for parking and roads may not be counted towards the calculation of area per person.

### **Section 802.3.8 Water Supply.**

- A. An adequate, safe supply of potable water, meeting requirements of the State Department of Human Services, Division of Health Engineering, shall be provided and common cups will not be used.
- B. Transported water, if used, shall be obtained from an approved source, stored and dispensed in an approved manner. Approval as used in this paragraph means in compliance with standards adopted by the State Department of Human Services, Division of Health Engineering.

### **Section 802.3.9 Sanitation.**

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- A. When water is distributed under pressure and flush toilets are used, the water system shall deliver water at normal operating pressure [twenty (20) lbs. per square inch minimum to all fixtures at the rate of at least thirty (30) gallons per person per day].
- B. When water under pressure is not available, and nonwater carriage toilets are used, at least three (3) gallons of water per person per day shall be provided for drinking and lavatory purposes.
- C. When water under pressure is not available, equivalent facilities shall be provided and installed in accordance with the requirements of the Department of Human Services, Division of Health Engineering.
- D. Toilets shall be provided at the rate of one (1) for each one hundred fifty (150) persons. Urinals (Men's) and Sanistands (Women's) or Porta Johns may be substituted for the required number of toilets [(twenty-four (24) inches of trough urinals in a men's room will be considered the equivalent of one urinal or toilet).]
- E. Service buildings or rooms housing required plumbing fixtures will be constructed of easily cleanable, non-absorbent materials. The buildings, service room, and required plumbing fixtures located therein will be maintained in good repair and in a clean and sanitary condition throughout the mass gathering.
- F. Separate service buildings or rooms containing sanitary facilities, clearly marked, shall be provided for each sex, and each toilet room will be provided with door that closes and locks to insure privacy. Required sanitary facilities must be conveniently accessible and clearly identified and must be handicapped accessible.
- G. Wastewater shall be discharged in a manner consistent with the requirements of the State Department of Human Services, Division of Health Engineering and the City of Brewer.
- H. Disposal and/or treatment of any excretion or liquid waste will be in a manner consistent with the requirements of the State Department of Human Services, Division of Health Engineering and the City of Brewer.

### **Section 802.3.10 Refuse Disposal.**

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- A. Refuse shall be collected, stored, and transported in a manner that allows recycling of those materials which may be recycled and protects against odor, infestation of insects and/or rodents and any other nuisance condition, or conditions which are inconsistent with the health, safety, and welfare of the patrons of the mass gathering or the public. The Operator shall contract with a licensed waste hauler(s) for disposal of all refuse and recyclables at an approved recycling or waste disposal facility, which shall mean facilities that have been licensed or approved by the State of Maine, or if refuse or recyclables are disposed of in another state, at facilities licensed or approved by that state. Records pertaining to waste disposal shall be maintained and copies provided to the City.
- B. Refuse and recycling containers shall be clearly marked and readily accessible and the equivalent of one (1) fifty (50) gallon refuse container shall be provided for each one hundred (100) persons anticipated or that one (1) sixteen (16) cubic yard trash container should be provided for every five thousand (5,000) persons anticipated in addition to an appropriate number of recycling containers.
- C. The area where motor vehicles are parked shall have one (1) fifty (50) gallon refuse container or its equivalent for every twenty-five (25) such motor vehicles or one (1) sixteen (16) cubic yard trash container for every two thousand (2,000) motor vehicles and an appropriate number of recycling containers.
- D. All refuse will be collected from the assembly area at least twice each twelve (12) hour period of the assembly, with a minimum of two (2) such collections per gatherings exceeding six (6) hours, or more often if necessary, and disposed of at a lawful disposal site.
- E. The grounds and immediate surrounding property shall be cleared of refuse within twenty-four (24) hours following a mass gathering.
- F. In lieu of the above-mentioned requirements in this Section, the Operator may submit a detailed alternative plan for refuse disposal to be reviewed and, if reasonable and appropriate, approved by the City Council.

### **Section 802.3.11 Vermin Control.**

Insect, rodents, and other vermin shall be controlled by proper, sanitary practices, extermination, or other safe and effective

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control methods, where necessary, and animal parasites and other disease-transmitting nuisances shall be controlled.

### **Section 802.3.12 Safety.**

- A. Electrical system shall be installed and maintained in accordance with the provisions of the applicable State standards and local standards and regulations and shall be approved by the City electrical inspector.
- B. Grounds, buildings, and related facilities shall be constructed, maintained and used in a manner as to prevent fire and in accordance with the applicable State and local fire prevention regulations.
- C. The Brewer Fire Department shall be informed of the date and time of the mass gathering in writing at least fifteen (15) days from the date of notification given by the permit holder pursuant to this Article above in order to insure that adequate fire prevention equipment and personnel, as determined by the Fire Chief, are available.
- D. Internal and external traffic and security control shall meet requirements of the applicable State and local law enforcement agencies.
- E. At least one (1) law enforcement officer for each three hundred (300) persons expected to attend the mass gathering [(but not fewer than a total of three (3) officers)] shall be on site to assist in crowd and traffic control. The City Police Chief and Fire Chief may recommend additional or fewer officers, depending upon the information provided. If the Operator intends to use private security officers, then the identity and number of such officers shall be described in the permit application.
- F. The Operator shall present a plan describing all measures and procedures designed to address safety concerns, including provisions for protecting the safety of those attendees at a general admission event, particularly in the area immediately in front of the stage. This plan must be reviewed and either approved or disapproved by the Brewer Police Department within fifteen (15) days from the date that the permit holder gives notice of an event in accordance with Section 3003.3(B). Tickets may not go on sale or be distributed prior to approval of the safety plan. If the proposed safety plan is disapproved, then no tickets may be distributed or sold unless and until an amended plan is approved.

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- G. The Operator shall ensure that adequate communication between local law enforcement, fire prevention, and emergency personnel and any private security personnel, including emergency response protocols, is provided for each mass gathering. An on-site communications center may be required by City Officials.
- H. The Operator shall notify the Council at least three (3) days in advance of each mass gathering if the particular event or gathering is sold out. When the Operator learns that a particular event is likely to be sold out, the Operator shall exercise due diligence to promptly inform the general public that tickets will not be available for sale at the time of the event. At a minimum, the Operator shall broadcast announcements in the communications media serving the entire marketing area for the facility regarding the substance of the preceding sentence.

### **Section 802.3.13 Medical.**

- A. Emergency medical services shall be provided under the supervision of a licensed physician; all other personnel must be licensed by the State of Maine, as either a Physician Assistant, R.N., or Emergency Medical Technician. The Chief of the Brewer Fire Department shall determine the number and the license level of emergency medical service personnel and ambulances needed and the times during which they shall be available.
- B. Any and all medical buildings or tents with adequate medical supplies shall be available in a convenient location and shall be clearly identified as such.
- C. An adequate number of emergency vehicles duly licensed by the State of Maine as ambulance shall be available on the site beginning one half (1/2) hour before the mass gathering begins and until all patrons have left the scene.
- D. Telephone and radio communications, including a communications link with the police and fire departments, shall be provided and kept available for emergency purposes.
- E. The Operator of the mass gathering shall contact area [(within twenty-five (25) miles)] hospitals prior to the date of the mass gathering and advise them that a mass gathering shall be held and the approximate number of people expected to attend.

### **Section 802.3.14 Sound.**



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The Operator shall control the level of sound emanating from the mass gathering area established by the City Council so as to avoid the creation of a nuisance and adverse impacts on adjoining areas and on the Brewer community. The Operator shall control sound generated by each event as follows:

- A. Operator shall establish sound measurement locations at or near the property boundary of the mass gathering area, in such locations as are determined appropriate by the City Council. For each measuring location, Operator shall install, either at the measuring location or within the mass gathering area, an integrating sound level meter meeting the measurement instrumentation requirements set forth in subparagraph (D) below. The installation of sound level monitors as well as the work required to take and record all such measurements, shall be at the expense of the Operator. Operator shall control sound emanating from the mass gathering area so as to avoid the creation of a nuisance and an adverse impact upon adjoining areas and the Brewer Community. The sound level measurements shall be taken continuously from one-half (1/2) hour before the scheduled commencement of the event until one-half (1/2) hour after the conclusion of the event. The limits of this subparagraph (A) shall not apply to periods of set-up, warm-up or equipment testing occurring before an event, provided that the total of such periods does not exceed one (1) hour in any calendar day. Operator shall maintain a written record of all sound measurements at the three sound measuring locations and submit a sound measurement data report to the Brewer City Council within forty-eight (48) hours after each mass gathering, together with the affidavit of the person or persons taking such measurements stating affirmatively that such measurements are true and accurate and were taken in compliance with the procedures of subparagraph (D) below.
- B. The Operator shall permit up to three (3) representatives of the City designated in advance by the City Council to be present at each mass gathering for the purpose of observing and verifying the sound level measurements. If at any time during a mass gathering, after the Council has set specific sound level limits pursuant to subparagraph (A) above, those limits are exceeded, the designated municipal representative shall promptly issue a warning to the Operator. If any of the limits is exceeded during the second successive ten (10) minute LEQ period after the warning or during any ten (10) minute LEQ period thereafter, each such incident exceeding a limit after the initial warning shall constitute a violation of this Chapter and the Operator

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shall pay to the City of Brewer liquidated penalties as follows:

- First Violation:  
\$1,000
- Next Violation: (Same Mass Gathering)  
\$2,000
- Each Subsequent Violation: (Same Mass Gathering)  
\$5,000

In the event the City is required to go to Court to collect liquidated damages, it shall be entitled to its reasonable attorney fees and costs to collect the damages.

C. The Operator may appeal liquidated penalties to the Brewer City Council by filing a written notice of appeal within forty-eight (48) hours after the conclusion of the event. Within seven (7) days after receipt of such appeal, the City Council shall hear the appeal and may reduce or rescind the liquidated penalties if the Council finds that the Operator made a good faith attempt to avoid violating the limits, and despite the Operator's efforts, the violation occurred, or if the Council finds that the violation was unavoidable. "Unavoidable" means that the sound level could not be adjusted at the control console without altering the content of the performance because the concert was not employing electronic amplification and that the violation was not anticipated by the Operator in advance of the concert, or that the sound level could not reasonably be controlled by the Operator in a non-concert setting, and the violation was not reasonably foreseeable by the Operator in advance of the mass gathering.

D. The procedures for determining the compliance with subparagraph (A) above shall be as follows:

1. Measurements shall be supervised by personnel who are well qualified by training and experience in measurement and evaluation of environmental sound.
2. An integrating sound level meter shall meet all of the Type 1 or 2 performance requirements of American National Standard Specifications for Sound Level Meters, ANSI S1.4-1983 and the Type 1 or 2 Performance Requirements for integrating/averaging in the International Electrotechnical Commission Standard on
3. Integrating-Averaging Sound Level Meters, IEC Publication 804 (1985).
4. An acoustical calibrator of a type recommended by the

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manufacturer of the sound level meter and that meets the requirement of the American National Standard Specification for Acoustical Calibrators, ANSI S1.40-1984 shall be used for sound measurement.

5. A microphone windscreen shall be used of a type recommended by the manufacturer of the sound level meter.
6. The sound level meter shall have been calibrated by a laboratory within twelve (12) months of the measurement, and the microphone's response shall be traceable to the National Bureau of Standards (or its successor agency).
7. Field calibrations shall be recorded before and after each event and not less than once every two (2) hours during each event or at shorter intervals if recommended by the manufacturer.
8. The microphone shall be positioned at a height of approximately Four (4) to Five (5) feet above the ground, and oriented in accordance with the manufacturer's recommendations.
9. Measurement locations shall be selected so that no vertical reflective surface exceeding the microphone height is located within Thirty (30) feet.
10. The sound measurement data shall include the following:
  - i. The dates, days of the week and hours of the day when measurements were made.
  - ii. The wind direction and speed, temperature, humidity and sky condition.
  - iii. Identification of all measurement equipment by make, model and serial number.
  - iv. The most recent dates of laboratory calibration of sound level measuring equipment.
  - v. The dates, time and results of all field calibrations during the measurements.
- E. The Operator will at its own expense provide reasonable training and education for its employees, contract staff, and its public safety and security personnel in order to preserve the public safety, health and order, and will provide the Brewer City Council with written certification of the training and education

of such personnel.

F. Nothing in this Article in any way limits the ability of police, fire and other public safety personnel to enter the mass gathering area during events for the purpose of protecting the public safety.

**Section 802.3.15 Alcoholic Beverages.**

If the Operator intends to sell or permit the sale of alcoholic beverages within the mass gathering area during a mass gathering, the Operator shall restrict the time and location of such sale so that alcoholic beverages are sold only during the particular event and so that public safety and order will not be impaired. The Operator shall comply fully with the laws of the State of Maine regulating the sale and consumption of alcoholic beverages, as well as with the City's Special Amusement Ordinance. No alcoholic beverages shall be sold at a mass gathering after 10:00 p.m. Alcoholic beverages may be sold and consumed only within a restricted area of the Facility, which does not include the parking lot. The Operator shall identify, in its permit application, the specific restricted areas where it proposes to sell alcoholic beverages, and the means by which it anticipates to limit the consumption of alcohol to such restricted portions of the mass gathering area. Additionally, the Operator shall exercise all due diligence and exert its best efforts to prevent the unauthorized consumption of alcoholic beverages on any part of the mass gathering area outside of the restricted areas, and to prevent patrons of the mass gathering area from using, consuming, bringing in, or otherwise obtaining alcoholic beverages in any manner not authorized by this Article of the Special Amusement Ordinance. Nothing in this Article shall preclude the Operator from implementing more restrictive rules for the sale and consumption of alcoholic beverages. In lieu of the above-mentioned requirements in this Section, the Operator may submit a detailed alternative management plan for the sale of alcoholic beverages subject to the approval of the City Council and the Maine Bureau of Liquor Enforcement.

**Section 802.3.16 Dates and Hours of Mass Gatherings.**

The Operator shall schedule events at the mass gathering area so that they do not have an adverse impact on the areas adjoining the mass gathering area and upon the Brewer community. For purposes of this Section, any mass gathering event that occurs in whole or in part prior to 9:00 a.m. or after 11:00 p.m. will be presumed to create an adverse impact, unless the Operator can demonstrate to the contrary. Each event must conclude no later than the hours set forth herein,

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but in cases of unavoidable delays because of weather or transportation problems, events may be extended, provided the Operator promptly notifies the Brewer Police Chief or the police officer in charge of security at that event that a delay will occur.

### **Section 802.3.17 Permit Fee.**

The permit fee for each mass gathering event applied for shall be established in accordance with Article 4 of this Chapter.

## **SECTION 803. BOND AND PUBLIC CODES**

### **Section 803.1 Bond.**

The Operator shall carry public liability insurance in at least the following amounts: Three Hundred Thousand (\$300,000.00) Dollars Bodily Injury (per person); Five Hundred Thousand (\$500,000.00) Dollars Bodily Injury (per occurrence); and One Hundred (\$100,000.00) Dollars property damage, which insurance policy shall name the Brewer as an additional insured and shall contain a clause providing that the policy may not be canceled by either party except upon not less than thirty (30) days written notice to the Brewer. A copy of the insurance policy shall be provided to the Brewer at the time of the filing of the application. Additionally, if the Operator carries public liability insurance in an amount greater than the figures set forth in this Section, then the Brewer shall be named as an additional insured.

## **SECTION 804. PENALTIES AND REVOCATION**

### **Section 804.1 Penalties.**

Any person, partnership, corporation or other legal entity including the Operator, violating this Article shall be punished by a civil penalty of at least One Hundred (\$100.00) Dollars but not more than Five Hundred (\$500.00) Dollars. The failure to comply with conditions imposed upon the issuance of a mass gathering permit shall be a violation of this Article. Each violation shall be considered a separate offense, and each day a violation is allowed to exist shall be considered a separate offense. The civil penalty provided for in this Article shall be in addition to any other penalty or damages provisions provided within this Article, and shall be in addition to all other remedies to the City of Brewer at law and in equity. The provisions of this Article shall be enforced by the City Manager or such other municipal official or employee as the City Manager shall designate in writing. The City shall also be entitled to its reasonable attorney fees and costs for successfully prosecuting a violation of this Article.

**Section 804.2 Revocation.**

The Council may revoke a mass gathering permit issued pursuant to this Article upon finding that the Operator has violated one (1) or more of the provisions of its mass gathering permit, if the Council finds that the violations are likely to occur again in future mass gathering events sponsored by the Operator at the same mass gathering area subject to the permit and where the previous violations occurred. The Council may revoke a permit only after the Operator has been given notice and an opportunity to be heard. In the case of a revocation, the Operator must receive notice of the proposed revocation at least fourteen (14) days prior to the revocation hearing. A decision by the Council to revoke an application shall not take effect until fourteen (14) days after the Operator has actual notice of the decision. The Council may, however, shorten any of the time periods prescribed in this Article if the Council finds that an emergency posing an imminent threat to the public health, safety or welfare exists and requires immediate action. The decision of the Council to revoke a permit is not appealable to any other board or agency within the City of Brewer.

**ARTICLE 8-A. NARCOTIC TREATMENT FACILITY LICENSES (#10)**

**Section 801-A.**

All Narcotic Treatment Facilities shall obtain an annual license on or before January 1 of each year.

**Section 802-A.**

In applying for the annual license the applicant shall provide the following information:

1. Copies of all state and federal licenses necessary to operate a Narcotic Treatment Facility.
2. Evidence the facility complies with all requirements of the Life Safety Code.
3. Evidence on on-site security.
4. Evidence of adequate interior capacity to provide for its patients without queuing on sidewalks and parking areas.

**Section 803-A.**

No mobile Narcotic Treatment Facilities shall be licensed or permitted within the City of Brewer.

**Section 804-A.**

All Narcotic Treatment Facilities shall be inspected by City Departments to determine if the facilities are in compliance with all applicable City Codes and Ordinances.

**Section 805-A.**

The cost for the annual license shall be \$50.00.

**ARTICLE 8-B MEDICAL MARIJUANA AND ADULT-USE MARIJUANA LICENSES**

**Section 801-B.** (#23)

All medical marijuana and/or adult-use marijuana businesses/uses (except for Medical Marijuana Home Production) shall obtain an annual license on or before January 1 of each year.

**Section 802-B.** (#23)

In applying for the annual license the applicant shall file an application on a form provided by the City Clerk and provide the following information:

1. Copies of all state licenses or other governmental approvals and their supporting documentation necessary to operate a marijuana business/use.
2. Evidence the marijuana business/use complies with all requirements of the Life Safety Code and all land use approvals including, but not limited to, site plan approval, building permit, and certificate of occupancy.
3. Evidence of the on-site security which meets or exceeds that required by local ordinances and other laws and regulations.
4. Evidence of adequate interior capacity to provide for its Patients and/or customers without queuing on sidewalks and parking areas or similar areas.

**Section 803-B.** (#23)

No mobile and/or internet-sales medical marijuana or adult-use marijuana business/use shall be licensed or permitted within the City of Brewer.

**Section 804-B.** (#23)

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A medical marijuana or adult-use marijuana business/use shall be inspected by City Departments to determine if the facilities is or are in compliance with all applicable City Codes and Ordinances.

Without limiting any other provision of this Chapter, a condition of any annual license for marijuana business/use shall be compliance with all applicable permits, licenses, or other governmental approvals as well as all applicable laws and regulations.

### **Section 805-B** (#23)

The cost for the annual license is listed in the City of Brewer Schedule of Fees.

## **ARTICLE 9. SEVERABILITY AND EFFECTIVE DATE**

### **Section 901. Severability.**

The invalidity of any provision of this Chapter shall not invalidate any other part thereof.

### **Section 902. Effective Date.**

This Chapter shall take effect immediately upon adoption of the same by the City Council of the City of Brewer.

### **SECTION 903. CONFLICTS.**

Notwithstanding the foregoing, if there is any conflict between this Chapter and any other City Chapter, the more stringent provisions shall apply to the activity described in said Chapter and Sections thereof.



**END OF CHAPTER NOTATIONS**

1. Enacted 10/20/2003, Effective 10/25/2003 (2003-C018)  
(Complete Substitution of Article 5)
2. Enacted 02/10/2004, Effective 02/15/2004 (2004-C002)
3. Enacted 03/22/2004, Effective 03/22/2004 (2004-C008)
4. Enacted 06/15/2004, Effective 06/20/2004 (2004-C013)
5. Enacted 09/20/2004, Effective 09/25/2004 (2004-C014)
6. Enacted 09/20/2004, Effective 09/25/2004 (2004-C020)
7. Enacted 12/14/2004, Effective 12/19/2004 (2004-C029)
8. Enacted 10/11/2005, Effective 10/16/2005 (2005-C020)
9. Enacted 05/16/2006, Effective 05/21/2006 (2006-C006)
10. Enacted 07/14/2009, Effective 07/19/2009 (2009-C006)
11. Enacted 11/15/2010, Effective 11/20/2010 (2010-C020)
12. Enacted 11/14/2011, Effective 11/19/2011 (2011-C012)
13. Enacted 03/18/2013, Effective 03/23/2013 (2013-C002)
14. Enacted 04/02/2013, Effective 04/07/2013 (2013-C004)
15. Enacted 11/17/2014, Effective 11/22/2014 (2014-C019)
16. Enacted 03/31/2015, Effective 04/05/2015 (2015-C004)
17. Enacted 05/31/2016, Effective 06/05/2016 (2016-C004)
18. Enacted 09/19/2016, Effective 09/24/2016 (2016-C010)
19. Enacted 09/19/2016, Effective 09/24/2016 (2016-C008)
20. Enacted 03/28/2017, Effective 04/02/2017 (2017-C003)
21. Enacted 05/08/2018, Effective 05/13/2018 (2018-C005)
22. Enacted 09/08/2020, Effective 09/13/2020 (2020-C005)
23. Enacted 09/14/2021, Effective 09/19/2021 (2020-C010)
24. Enacted 09/14/2021, Effective 09/19/2021 (2020-C011)