

CHAPTER 21 - STREET USE

ARTICLE 1. STREETS AND ABUSES THEREIN.

SECTION 101. STATEMENT OF PURPOSE. The following sections are enacted to preserve the individual rights of citizens in the use of streets, to protect them in their public use and enjoyment thereof, and to preserve ownership and public use of streets without private encroachments, not only for citizens of today but also for posterity.

SECTION 102. DEFINITION. Whenever the word "street" or "streets" is mentioned in this Ordinance, it shall be understood as including highways, alleys, lanes, public squares and public places; and it shall also be understood as including the sidewalks unless the contrary is expressed or such construction would be inconsistent with manifest intent of the City Council.

SECTION 103. ASSEMBLAGE. No person or persons shall hold or address any public meeting or assemblage of people in any street without a permit to do so granted by the City Clerk and approved by the City Manager, as the same may be permitted by law.

SECTION 104. BEGGING. No person shall beg in any street or public place.

SECTION 105. BURNING REFUSE. No person shall burn leaves or other materials on the paved or tarred surface of any street or sidewalk within the City.

SECTION 106. DEAD ANIMALS. No person or legal entity shall allow a dead animal in part thereof, in a street.

SECTION 107. DOORS. No person shall erect, construct, maintain or keep any cellar door, or passageway into any cellar, or basement, or excavation of any kind, extending into or occupying any part of the street, sidewalk or public passageway, unless such doorway, or excavation be kept covered with a suitable and substantial plank covering or grate, level with the sidewalk or street, and permission has been granted by the Brewer City Council.

SECTION 108. DRAIN AND SEWER OPERATIONS. Every person who shall have obtained a permit to open or make or repair a drain in any street or other public place shall keep a good and sufficient fence or railing around the same during the whole time of making or repairing thereof, except when the laborers are actually at work.

SECTION 109. ENCUMBRANCE; BY BUILDING MATERIALS. No person shall occupy any street for the purpose of placing wood, lumber, bricks or any other material intended to be used in erecting or repairing any building on any land abutting on any of the streets or public places within the City, except in accordance with the terms of a building permit previously obtained, and any authorization thereunder by the Building Inspector.

SECTION 110. GAMING. No person shall expose in any street or public place, any table or device for the playing of any game of chance or skill, and no person shall play at the same, or at any unlawful game, in any street, town way or public place.

SECTION 111. LOITERING; ON STREET. No person shall loiter in any street or public place, or in the doorway of any store, after being ordered to move on by a police officer.

SECTION 112. MONUMENTS. No person shall remove or conceal any monument set as a street boundary in the City; whoever violates this section shall pay a penalty of Twenty-Five (\$25.00) Dollars. In case it becomes necessary for the City official or employee to remove or cover any such monument, he shall first notify the City Engineer that he may make such measurements and notes of the position of said monument as may be necessary for its accurate replacement at any time.

SECTION 113. NOTICES. No person shall deface or tear down any public notice, ordinance or advertisement posted in a street or public place by any public official in the performance of his duties.

SECTION 114. OBSTRUCTIONS. No person or legal entity shall erect, set up or maintain any portico, platform or doorstep extending into any street. And all such obstructions shall be removed, or notice from any police officer or the Code Enforcement Officer. Provided, that this Section shall not

apply to any doorstep that shall extend not more than one foot from the buildings to which they belong, into such street. This prohibition shall not extend to any goods and articles or merchandise that may be exposed or exhibited for sale in front of any shop provided that: (1) the articles do not extend into or upon a public sidewalk to the extent that there is less than four (4) feet of the sidewalk available for pedestrian use; (2) the goods and articles and merchandise not remain on the sidewalk after the business is closed for the day; (3) that the owner of the business obtain a permit from the city clerk for such display and sale and that the permit be limited to a period of seven consecutive days in any one month; and (4) the owner of the business cease operating on the sidewalk upon demand of the Brewer Police Chief or his designee.

SECTION 115. PAINT ON SIDEWALKS. No person shall paint or cause to be painted, any sign, advertising or any other matter upon the street or apply paint thereto for any purpose in any manner, except such paint as may be applied under the direction of a public official or employee for public purposes. This shall not apply to utilities required to locate and mark underground facilities pursuant to the Maine Dig State Law.

SECTION 116. PLAYING BALL ON STREET. No person shall, within the limits of any public street or highway in the City, play at any game of ball, snowball or any other game, amusement or exercise interfering with the convenient and free use of such street or highway by any persons traveling or passing along the same.

SECTION 117. REFUSE; PLACING ON STREET OR BRIDGE. No person shall throw or place, or cause to be thrown or placed upon any street or bridge, any tracks, nails, wire, scrap metal, glass, crockery or other substance injurious to the feet of persons or animals or to tires or wheels of vehicles. Whoever accidentally, or by reason of an accident, drops from his hand or vehicle any such substance upon any street or bridge shall forthwith make all reasonable efforts to clear such street or bridge of the same.

SECTION 118. ROCKS, STONES OR OTHER OBSTRUCTIONS Whoever places rocks, stones or other obstructions in a traveled road, and leaves them there shall, upon conviction thereof, be fined not less than fifty dollars (\$50.00) or more than one hundred dollars (\$100.00).

SECTION 119. REFUSE. Whoever deposits or dumps refuse or waste material of any kind within the limits of any public way, except upon written authority of the City Council shall, upon conviction thereof, be fined not less than fifty dollars (\$50.00) or more than one hundred dollars (\$100.00).

SECTION 120. PLACING SNOW OR ICE ON CITY STREET OR SIDEWALKS. No person shall place any snow or ice on any City street or sidewalk or upon any public way, square, park, lane or other city-owned area. Whoever violates this section shall, upon conviction, for each offense, be subject to a fine of not more than One Hundred (\$100.00) Dollars.

SECTION 121. SIGNS; STREET NAME. No person shall injure, damage, deface, break, take down or remove, or in any manner interfere with any street-name sign placed in a street under authority of the City Council, except a public official or employee for repair or replacement purposes. No person shall place any street-name signs on any street except by authority of the City Council.

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SECTION 122. SIGNS OF WARNING; NO INTERFERENCE WITH. No person shall damage, interfere or meddle with, remove, throw down, destroy or carry away from any street or public place, any lamp, or other light, barricade or danger signal, erected and placed therein for the purpose of guarding or enclosing unsafe or dangerous places or giving warning or notice thereof.

SECTION 123. WIRES. No person, company or corporation, either acting as principal agent or employer, shall attach to any tree within the limits of the streets, any wires or attachments for the purpose of securing wires, nor stringing any uncovered wires so as to rest upon or against any trees or limbs of trees, without first obtaining a permit from the City Manager.

ARTICLE 2. SIGNS AND OTHER STRUCTURES.

SECTION 201. No person shall erect, cause to be erected or maintain any monument, boundary stone, curb stone, stepping stone, tree, lamp post, post, hydrant, supporting poles for any awning, marquee, or other temporary or permanent structure over any street or sidewalk or any other object placed within the limits of any road, way or street, except by permission of the City Council.

SECTION 202. SAFETY REQUIREMENTS. Any awning, shade, marquee or other structure, other than signs as herein designated, extending over such sidewalk or street shall be of acceptable design, and shall be safely and securely constructed, erected, fastened, supported and maintained so as in no way to endanger, obstruct or incommode travel and all such awnings, shades or marquees shall, whenever practicable, extend to the outside edge of the sidewalk and no part thereof, except supports from the ground, shall be less than eight (8) feet above the level of such a sidewalk or street.

SECTION 203. LICENSE. Such awnings, shades, marquees or other permanently fixed structures, designated in the preceding Section 203 hereof, shall be permitted only when duly licensed by the City Council upon application, and the issuance of such license shall be conditional upon the licensee agreeing in writing to indemnify and save harmless the City against all loss, cost, damage or expense occurring by reason of the erection or maintenance of said structure and sureties may be required in the discretion of the City Council; and such license is revocable by said Council for cause at any time.

SECTION 204. BANNERS OVER PUBLIC STREETS. Notwithstanding the provisions of sections 201, 202 and 203 of this Article, the City Manager may grant permission to any bona fide nonprofit charitable, educational, patriotic, religious, veterans' or fraternal organization to erect banners over public streets at such locations and affixed to such supports as the City Manager may designate.

No banner so erected shall be allowed to remain over public streets for longer than Thirty (30) consecutive days. The City Manager may extend the time allowance for an additional Thirty (30) consecutive days to the same group or organization.

SECTION 205. SIGNS OVER PUBLIC STREET. The provisions pertaining to signs over public streets and sidewalks as set forth in Chapter 28 of the City of Brewer Charter, Codes and Ordinances entitled "Sign Ordinance" shall govern the installation and maintenance of such signs.

SECTION 206. AWNINGS AND SHADES. No person shall place or affix any awning or shade before any house, shop or store in the City which shall project over any street, nor retain any awning or shade already so placed or affixed after twenty four hours notice to remove the same, given by the Chief of Police or any police officer or the Code Enforcement Officer, unless such awning or shade shall be safely affixed to the building above, and be, in the lowest part thereof as to metal work, not less than eight (8) feet above the street under it.

SECTION 207. HAND-BILLS. No person shall distribute handbills, dodgers, advertising cards, or paper of any kind, in any street, land, public square, or other public grounds, so that the same shall remain therein, nor shall the same be attached to trees, posts or utility poles within the City. Handbills, dodger advertising cards or paper is attached can be removed by a municipal employee at the direction of the City Manager.

ARTICLE 3. CONSTRUCTION OF ENTRANCES TO STREETS REGULATED.

SECTION 301. PERMIT REQUIRED. It shall be unlawful to construct or maintain any driveway, entrance or approach within the right of way of any street without a written permit from the Code Enforcement Officer, and the application for said permit shall be submitted in such form as the Code Enforcement Officer may prescribe.

SECTION 302. All construction or maintenance work on such driveway, entrance or approach within the street line shall be done by the property owner or occupants at his own expense in conformity with such rules and regulations as to design, location and construction as are promulgated by the City Engineer for the adequate protection and safety of the traveling public and the Public Works.

SECTION 303. No permit shall be required for any existing driveway, entrance or approach unless the use, grade or location of the same is changed. If a driveway, entrance or approach is changed in use, location, grade, or improved, a permit shall be required.

SECTION 304. PENALTY. Whoever builds, constructs or maintains any driveway, entrance or approach providing access to a street without first obtaining said permit, or who otherwise violates any provision of this Article shall be punished by a fine of not more than One Hundred (\$100.00) Dollars. Each day that such driveway, entrance or approach shall remain in violation of the provisions of this Article shall be a separate violation. The City shall also be entitled to recover its reasonable attorney fees to prosecute the violation under this Article.

Section 305. DESIGN STANDARDS. Entrances shall be designed and constructed in accordance with Sections 607.5 & 906.4 of the Brewer Land Use Code.

ARTICLE 4. DANGEROUS TREE/SHRUB ORDINANCE.

SECTION 401. PREAMBLE. This Article is designed to promote the general welfare of the citizens of the City of Brewer and to provide for the public safety of its citizens and others who use the streets, roads, and sidewalks of the City of Brewer.

SECTION 402. DEFINITIONS. The terms, phrases and words used herein shall have the meanings provided herein. The word "shall" is always mandatory. If a term, phrase, or word is not defined herein, it has been given the definition, which is promulgated in Webster's Seventh Collegiate Dictionary, copyright 1997, on file in the City Clerk's office. Terms, phrases and words not defined herein or in Webster's Seventh Collegiate Dictionary shall be given their customarily understood meaning, with due regard to the context in which they are used and this ordinance as a whole.

SECTION 403. REPORTING TO THE CITY MANAGER. If the Superintendent of Public Works, or his agent, determines that any tree or shrub, which is located within seventy-five (75) feet, as measured at right angles, from the nearest boundary of a right-of-way or property owned or occupied by the City of Brewer and which contains a street, road and/or sidewalk, is dead, diseased, dying, overgrown, or weakened to the degree that it creates a potential hazard to the public use of the street, road and/or sidewalk or interferes with the visibility of any traffic control device or otherwise impairs traffic sight distance within this area, he shall notify the City Manager in writing of the following:

- a. location of the tree or shrub;
- b. apparent owner of the property on which the tree or shrub is located;
- c. the condition of the tree or shrub;
- d. proposed action to correct the potential hazard.

SECTION 404. INFORMING THE OWNER(S). The City Manager shall ascertain the names of the owner(s) of the property upon which the tree or shrub is located and notify each owner, if possible, of the problem and provide each owner, if possible, with a copy of the notification received from the Superintendent of Public Works or his agent. The City Manager shall request the hazard be removed within thirty (30) days from receipt of the notice by the owner.

SECTION 405. OWNER WITH UNKNOWN ADDRESS. If the City Manager is unable to ascertain the address of an owner, he shall request the City Council call a hearing, in accordance with Section 406 of this Article.

SECTION 406. HEARING. If the owner(s) does not remove the hazard within thirty (30) days or the owner cannot be informed as provided in Sections 404 or 405 of this Article, the City Manager shall request that the City Council call a hearing on the matter. If the City Council calls a hearing, the owner shall be given at least five (5) days notice of the hearing, either by written notice to him, if his address is known, or by publishing a notice of the hearing in a newspaper at least five (5) days before the hearing. The City Manager shall provide to the City Council all of the information available to him. The City Council, by majority vote of those present and voting, shall establish the following:

- a. location of the tree or shrub
- b. apparent owner of the property upon which the tree or shrub is located;
- c. the condition of the tree or shrub;
- d. the action the Director of Public Works or his agent is to take to remove the potential hazard.

SECTION 407. NOTICE OF ACTION OF CITY COUNCIL. A written record of the finding and directive of the City Council shall be given to the owner, if his address is known, or by publishing said record in a newspaper at least five (5) days before the Superintendent of Public Works, or his agents, shall enter upon property of the owner.

SECTION 408. REMEDIAL ACTIONS BY THE SUPERINTENDENT OF PUBLIC WORKS. After notice has been given in accordance with Section 407, the Superintendent of Public Works, or his agents, shall have the right to immediately enter upon property with men and equipment to take the action directed by the City Council. The owner, lessee or occupant of the property shall have no cause of action against the City of Brewer, its agents or employees of the action taken to alleviate the danger.

SECTION 409. REIMBURSEMENT. The City of Brewer shall be entitled to recover from the owner(s) of the property the costs incurred by the City of Brewer in removing the potential hazard, in a civil suit, along with its reasonable attorney fees.

SECTION 410. EMERGENCIES. Notwithstanding any other provisions of this article, if the Superintendent of Public Works, or his or her agent, determines that a shrub or tree causes immediate danger to the public use of a street, road or sidewalk, he or she shall, with the written approval of the City Manager, have the right to enter on the property with City Employees and equipment to take all of the steps that are necessary to alleviate the immediate danger. The owner, lessee or occupant of the property shall have no cause of action against the City of Brewer, its agents or employees, of the action taken to alleviate the immediate danger.

SECTION 411. LIABILITY FOR INACTIONS. Nothing in this Article shall create or extend liability of the City of Brewer for not taking any action under this Article.

**ARTICLE 5. Naming of Streets, Roads, and Ways under the E-911
System (#4)**

The naming and signage of all streets, roads, and ways shall follow Chapter 50 of the City of Brewer Charter, Codes, and Ordinances.

ARTICLE 6. RESTRICTING VEHICLE WEIGHT ON POSTED WAYS

Section 601. Purpose and Authority

The purpose of this "Article Restricting Vehicle Weight on Posted Ways" (hereinafter, the "Article ") is to prevent damage to city ways and bridges in the City of Brewer which may be caused by vehicles of excessive weight, to lessen safety hazards and the risk of injury to the traveling public, to extend the life expectancy of city ways and bridges, and to reduce the public expense of their maintenance and repair. This Article is adopted pursuant to 30-A M.R.S.A. § 3009 and 29-A M.R.S.A. §§ 2395 and 2388.

Section 602. Definitions

The definitions contained in Title 29-A M.R.S.A. shall govern the construction of words contained in the Article. Any words not defined therein shall be given their common and ordinary meaning.

Section 603. Restrictions and Notices (#2)

The City Engineer is authorized by the City Council, either permanently or seasonally, to impose such restrictions on the gross registered weight of vehicles as may, in the City Engineer's judgment, be necessary to protect the traveling public and prevent abuse of the highways, and designate the city ways and bridges to which the restrictions shall apply.

Whenever notice has been posted as provided herein, no person may thereafter operate any vehicle with a gross registered weight in excess of the restriction during any applicable time period on any way or bridge so posted unless otherwise exempt as provided herein.

For temporary or seasonal postings the notice shall contain, at a minimum, the following information: the name of the way or bridge, the gross registered weight limit, the time period during which the restriction applies, the date on which the

notice was posted, and the signature of the City Engineer. The notice shall be conspicuously posted at each end of the

restricted portion of the way or bridge in a location clearly visible from the traveled way.

Permanently posted roadways as described in Article 6, Section 603.1 of this Chapter of the Brewer City Ordinances shall be clearly, and in a permanent manner, posted at both ends of the roadway or section of roadway as described herein. The permanent postings shall read as follows "THRU TRUCKS LIMITED TO 34,000 LBS REG GVW". The actual weight limit in LBS posted on the signs may vary at the discretion of the City Engineer.

Whenever a restriction expires or is lifted, the notices shall be removed wherever posted. Whenever a restriction is revised or extended, existing notices shall be removed and replaced with new notices. No person may remove, obscure or otherwise tamper with any notice so posted except as provided herein.

Section 603.1 Permanent Postings (#2)

The following roadways, or defined sections of roadways, shall have a permanently posted weight limit in excess of 34,000 pounds:

Day Road - all (North Main Street to Lambert Road)
Lambert Road - all (Eastern Avenue to the Brewer/Eddington town line)
Wiswell Road - all (Green Point Road to the Brewer/Holden town line)
Eastern Avenue - from Pierce road intersection to the Brewer/Holden town line

Roadways, or sections of roadways, permanently posted in accordance with this section may also be temporarily or seasonally posted with more restrictive conditions, at the discretion of the City Engineer, in accordance with Section 603 of this Ordinance.

Section 604. Exemptions (#2)

Vehicles and conditions that are exempt from the Maine Department of Transportation's (MDOT) "Rules and Regulations Restricting Heavy Loads on Closed Ways" dated December 31, 1996 and amended on March 4, 1998, a copy of which is hereby incorporated as part of this ordinance, are exempt from this ordinance with the following exceptions:

A. The exemption for operation on solidly frozen highways as defined by MDOT's rules and regulations restricting heavy loads on closed ways, shall **not** apply in the City of Brewer.

B. It shall be a violation of this ordinance to operated any vehicle with a registered GVW in excess of the posted roadway, without a permit, regardless of the outside air temperature or the surface condition of the roadway.

C. The exemption, as defined by MDOT's rules and regulations restricting heavy loads on closed ways, for any vehicle or combination of vehicles operation at an actual weight of less than the posted limit, as determined by weighing the vehicle, shall not apply in the City of Brewer.

Compliance or violation of this ordinance shall be specifically and solely determined by the registered Gross Vehicle Weight (GVW) of the vehicle. Operating a vehicle at a weight less than the posted maximum registered GVW shall **not** be a defense to a violation of this ordinance when the registered GVW of the vehicle being operated on the roadway exceeds the posted limit.

Section 605. Permits (#2)

The owner or operator of any vehicle not otherwise exempt as provided herein may apply in writing to the City Engineer for a permit to operate on a posted way or bridge notwithstanding the restriction. The City Engineer, or his or her designee, may issue a permit only upon all of the following findings:

No other route is reasonably available to the applicant;
it is a matter of economic necessity and not mere convenience that the applicant use the way or bridge; and
the applicant has tendered cash, a bond or other suitable

security running to the city in an amount sufficient, in the judgment of the City Engineer, or his or her designee, to repair any damage to the way or bridge which may reasonably result from the applicant's use of same.

Even if the City Engineer, or his or her designee, makes the foregoing findings, he or she need not issue a permit if he or she determines the applicant's use of the way or bridge could reasonably be expected to create or aggravate a safety hazard or cause substantial damage to a way or bridge maintained by the city. The City Engineer may also limit the number of permits issued or outstanding as may, in his or her judgment, be necessary to preserve and protect the highways and bridges.

In determining whether to issue a permit, the City Engineer, or his or her designee, shall consider the following factors:

the gross registered weight of the vehicle;
the current and anticipated condition of the way or bridge;
the number and frequency of vehicle trips proposed;

the costs and availability of materials and equipment for repairs;
the extent of use by other exempt vehicles; and
such other circumstances as may, in his/her judgment, be relevant.

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The City Engineer, or his or her designee, may issue permits subject to reasonable conditions, including but not limited to restrictions on the actual load weight and the number or frequency of vehicle trips, which shall be clearly noted on the permit.

A nonrefundable fee of \$50.00 per permit shall be paid to the City of Brewer, Maine for the issuance of a permit to travel over posted roads within the City of Brewer.

Once issued, the permit or a copy of the permit, must be kept in the vehicle or vehicles for which the permit was issued. Failure to promptly produce the permit or a copy of the permit upon request will be considered a violation of this section of this ordinance whereas the vehicle owner would be subject to penalties as outlined in Section 607 of this ordinance.

Section 606. Administration and Enforcement (#2)

This Article shall be administered and may be enforced by the City Engineer, or his or her designee, or a City of Brewer Police Officer acting as agent of the City Council.

Section 607. Penalties (#2)

Any violation of this ordinance shall be a civil infraction subject to a fine in the amount of Two Hundred Fifty (\$250.00) Dollars for the first offense; Five Hundred (\$500.00) Dollars for the second offense occurring within a Twelve (12) month period of the second offense. Each violation shall be deemed a separate offense. In addition to any fine, the city may seek restitution for the cost of repairs to any damaged way or bridge and reasonable attorney fees and costs. Prosecution shall be in the name of the city and shall be brought in the Maine District Court.

Section 608. Amendments

This Article may be amended by the City Council at any properly noticed meeting.

Section 609. Severability; Effective Date

In the event any portion of this Ordinance is declared invalid by a court of competent jurisdiction, the remaining portions shall continue in full force and effect.

ARTICLE 7 ENFORCEMENT

Section 701 Administration and Enforcement

Unless otherwise provided, this Chapter shall be enforced by the Code Enforcement Officer as agent of the City Council

Section 702 Penalty.

Unless there is a penalty previously provided for a civil penalty of up to One Hundred (\$100.00) Dollars per day! With each day being a separate violation, may be assessed by the Maine District Court or a violation of this Chapter. The City of Brewer shall also be entitled to its reasonable attorney fees and costs from the person or entity learned to have violated this Chapter.

END OF CHAPTER NOTATIONS

1. enacted 02/10/04, effective 02/15/04 (2004-C003)
2. enacted 01/08/08, effective 01/13/08 (2007-C010)
3. enacted 08/11/15, effective 08/16/15 (2015-C010)
4. enacted 05/10/22, effective 05/15/22 (2022-C006)