

City Council Minutes
Tuesday, May 9, 2023

Regular Meeting
City Hall Council Chambers

Tuesday, May 9, 2023
6:00 p.m.

Councilor Ferris-present
Councilor Daniels-present
Mayor Phanthay-present

Councilor Goss-present
Councilor Morin-present

Mayor Phanthay declared that a quorum was present. Assistant City Manager James Smith and City Solicitor Johnathan Pottle were also present.

Mayor Phanthay led members of the council and others present in reciting the pledge of allegiance to the flag of the United States of America.

Mayor Phanthay read the notice for the regular meeting.

TO: Joseph Ferris, Jerry Goss, Michele Daniels, Jenn Morin, and Soubanh Phanthay; MEMBERS OF THE BREWER CITY COUNCIL. You are hereby notified that a regular meeting of the City Council of the City of Brewer will be held on Tuesday, May 9, 2023 at 6:00 p.m., at 80 North Main Street, to consider and act on the items on the attached agenda.

s/ Soubanh Phanthay
Mayor and Chairman of the City Council
Or _____
Majority of the City Council

a true copy, attest: s/Vincent P. Migliore
City Clerk

OFFICER'S RETURN

I have on the date(s) and time(s) indicated given notice of this meeting by giving in hand of by leaving at the usual dwelling place of the within named an attested copy of this notice of meeting:

Given/Delivered to:	by (person delivering)	Title	Date	Time
Joseph L. Ferris	Lutz	Off.	05/05/2023	18:30
Jerry Goss	Jones	Sgt.	05/05/2023	18:30
Michele Daniels	Jones	Sgt.	05/05/2023	17:30
Jenn Morin	Jones	Sgt.	05/05/2023	17:45
Soubanh Phanthay	Jones	Sgt.	05/05/2023	18:15

CITY COUNCIL REGULAR MEETING
Tuesday, May 9, 2023 6:00 P.M.
Brewer City Hall Council Chambers

I. Call to Order (Mayor Phanthay)

II. Roll Call (City Clerk)

III. Pledge of Allegiance to the Flag of the United States of America (Mayor Phanthay)

A. Minutes of the April 11, 2023 Regular Meeting (Councilor Ferris)

B. Awards, Petitions and Public Comments

1. Presentation: Presentation by the Maine Principals' Association.
2. (2023-B010) RESOLVE Recognize the Brewer High School Boys' Basketball Team for winning the 2023 State of Maine Class-A Boys High School Basketball Championship. (Councilor Goss)
3. (2023-B011) RESOLVE Recognize Brady Saunders for a 1,000-point career with the Brewer High School Boys' Basketball Team. (Councilor Goss)
4. (2023-B012) RESOLVE Recognize Brynn Lavigueur for winning two 2023 State of Maine Class-B Girls' Swim Titles. (Councilor Goss)
5. (2023-B013) RESOLVE Resolution of Respect for Dr. A.U. "Lib" Liberatore. (Councilor Daniels)
6. (2023-B014) RESOLVE Resolution of Respect for Thomas "Tom" McCrea. (Councilor Morin)
7. Public Comments

C. Consent Calendar

1. (2023-A056) ORDER Accept donation to the Brewer Public Library from First National Bank. (Councilor Ferris)
2. (2023-A057) ORDER Grant approval to Delano Merritt d/b/a Cap's Tavern to allow patrons to consume alcohol at a special outdoor event on the establishment's property. (Councilor Goss)
3. (2023-A058) ORDER Authorize purchase of a vacuum excavation vehicle for Water Department. (Councilor Morin)
4. (2023-A059) ORDER Authorize extension of audit services contract. (Councilor Ferris)
5. (2023-B015) RESOLVE Approve use of School capital reserve funds for library renovations. (Councilor Goss)
6. (2023-A060) ORDER Amend sludge hauling and disposal contract with Malcolm McGraw d/b/a Malcolm McGraw WFT. (Councilor Daniels)
7. (2023-A061) ORDER Authorize loans in the aggregate amount of up to \$3,301,000 from the Maine Municipal Bond Bank State Revolving Fund to finance water main replacements and Water Department equipment, and issuance of the City's General Obligation Bonds and a tax levy therefor. (Councilor Morin)

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8. (2023-A062) ORDER Authorize supplemental appropriation to support Public Safety operations. (Councilor Ferris)
9. (2023-A063) ORDER Award contract to landscape Phase 3 of Riverwalk Trail. (Councilor Goss)
10. (2023-A064) ORDER Award contract for engineering and administration services for Oak Grove sewer subsystem remediation project. (Councilor Daniels)
11. (2023-A065) ORDER Authorize City Manager to set hearing date and proceed with dangerous building notice to parties of interest in 361 North Main Street. (Councilor Morin)
12. (2023-A066) ORDER Authorize purchase of two replacement dump trucks/plows for Public Works. (Councilor Ferris)
13. (2023-A067) ORDER Authorize purchase of rock salt. (Councilor Goss)
14. (2023-A068) ORDER Authorize purchase of replacement community playground. (Councilor Daniels)
15. (2023-A069) ORDER Award construction demolition contract for remediation of dangerous building located at 77 South Main Street (Tax Map 29, Lot 111). (Councilor Morin and Councilor Daniels)
16. (2023-A070) ORDER Award construction demolition contract for remediation of dangerous building located at 978 Wilson Street (Tax Map 3, Lot 32). (Councilor Ferris and Councilor Goss)

D. Monthly Reports (Councilor Morin)

E. Nominations, Appointments, Elections (None)

F. Unfinished Business

Consent Calendar

1. (2023-C005) ORDER Amend Chapter 34 of the Charter, Codes and Ordinances of the City of Brewer, entitled “Board of Appeals of the City of Brewer”, Article 2, “Procedure”, Section 200.1. (Councilor Daniels)
2. (2023-C006) ORDER Amend Chapter 24 of the Charter, Codes and Ordinances of the City of Brewer, entitled “Land Use Code”, Article 8 “Floodplain Management”, and Article 14 “Definitions”. (Councilor Morin)
3. (2023-C007) ORDER Amend Chapter 22 of the Charter, Codes and Ordinances of the City of Brewer, entitled “Solid Waste Ordinance”, Article 4. (Councilor Ferris and Councilor Daniels)

G. New Business

1. (2023-C008) ORDER Enact and add Chapter 51 of the Charter, Codes and Ordinances of the City of Brewer, entitled “City of Brewer Moratorium Ordinance on Certain Housing Regulations”. (Councilor Goss and Mayor Phanthay)

H. New Items with Leave of Council

I. ADJOURN

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A. Minutes of the April 11, 2023 Regular Meeting

ACTION: Councilor Ferris moved that the minutes to the April 11, 2023 regular meeting be accepted and placed on file. Councilor Goss seconded the motion. The motion passed with a unanimous vote.

B. Awards, Petitions and Public Comments

1. Presentation: Presentation by the Maine Principals' Association.

On behalf of the Maine Principals' Association (MPA), MPA Executive Director Michael Burnham and MPA Assistant Executive Director Michael Bisson presented the Maine Principals' Association's Larry LaBree Award for service to the MPA's Interscholastic Division to Councilor Jerry Goss. Councilor Goss thanked the MPA and noted that that Larry LaBree had been one of his mentors. Councilor Goss said that the award was near and dear to him. Mayor Phanthay thanked the MPA and congratulated Councilor Goss. Councilor Morin, Councilor Daniels, and Councilor Ferris congratulated Councilor Goss on receiving the award.

2023-B010

May 9, 2023

TITLE: RESOLVE, RECOGNIZE THE BREWER HIGH SCHOOL BOYS' BASKETBALL TEAM FOR WINNING THE 2023 STATE OF MAINE CLASS-A HIGH SCHOOL BASKETBALL CHAMPIONSHIP.

Filed March 6, 2023
By Jerry Goss

WHEREAS, the 2022-2023 Brewer High School Boys' Basketball team completed their regular season with a record of 17-1 and was awarded the #1 seed for the State of Maine Class-A Boys' North Regional post-season playoff; and

WHEREAS, the team defeated the Camden Hills Windjammers 59-46 in the Class-A North quarterfinals; and

WHEREAS, the team defeated the Cony Rams in the Class-A North semifinals setting the Class-A Tournament single game 3-point shot record scoring fourteen 3-point shots; and

WHEREAS, the team defeated the Skowhegan River Hawks to become Class-A North Regional Champions for the first time since 1988; and

WHEREAS, the team defeated the Falmouth Navigators 42-41 to become 2023 Class-A Boys' High School State Champions, the first ever State Championship for the Brewer High School Boys.

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NOW, THEREFORE, BE IT RESOLVED, that the Brewer City Council on behalf of the Citizens of the City of Brewer, Maine, herewith recognizes and congratulates the Brewer Boys' Basketball team for earning the Class-A State Championship and carrying on the tradition of Brewer excellence; and

BE IT FURTHER RESOLVED, that the Brewer City Council congratulates the following athletes, coaches, and support staff on their outstanding achievement:

Seniors: Cam Hughes, Brady Saunders, Evan Nadeau, Aiden Davis, Ryder Goodwin, Brock Flagg, and Titus Philbrick

Juniors: Braden Carr and Cayen Philbrick

Sophomores: Charlie Brydges, Owen Fullerton, Cole Harriman, Jake Perry, and Steven Youngs

Head Coach: Ben Goodwin

Assistant Coaches: Phil Pushard, Tyler Smith, Scott Flagg, Mark Savage and Trevor Pearson

Team Doctor: Dr. Patrick Healy

Athletic Director: David Utterback

ACTION: Councilor Goss moved that the resolve be adopted. Councilor Ferris seconded the motion. Councilor Goss noted Coach Ben Goodwin was unable to attend the meeting as he had been fighting forest fires in Michigan. Councilor Goss said that Coach Goodwin was the best basketball coach in the state of Maine, and praised the team describing the players as quality young people that would go on to make an impact far beyond the basketball championship. The coaching staff expressed their gratitude for the support of the City and the community. Councilor Ferris congratulated the team and said that a lot of very good Brewer teams did not do what this team had done, and that he was proud of them. Councilor Daniels congratulated the team and said to let this be a highlight, but don't let it be the highest light, and challenged the team members to continue to excel. Mayor Phanthay praised the team and congratulated them on their achievement. The motion passed with a unanimous vote.

2023-B011

May 9, 2023

TITLE: RESOLVE, RECOGNIZE BRADY SAUNDERS FOR A 1,000-POINT CAREER WITH THE BREWER HIGH SCHOOL BOYS' BASKETBALL TEAM.

Filed May 2, 2023

By Jerry Goss

WHEREAS, it is the custom of the Brewer City Council to recognize the outstanding achievements and milestones of Brewer High School student athletes; and

WHEREAS, on February 18, 2023 Brewer High School Boys' Basketball player Brady Saunders scored the 1,000th point of his high school basketball career; and

WHEREAS, Brady went on to score a total of 1,067 points; and

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WHEREAS, Brady is one of only seven players in the history of Brewer High School to score 1,000 points; and

WHEREAS, in his Senior year, Brady was named the Kennebec Valley Athletic Conference Basketball Player of the Year and was a 1st Team All-Conference selection; and

WHEREAS, Brady was named First Team All-State by several publications including the Bangor Daily News and WMTW Channel 8, and was a finalist for the Maine Association of Basketball Coaches 2023 Mr. Basketball award; and

WHEREAS, Brady's high school basketball career culminated with the Brewer Witches becoming the 2023 Class-A Boys' High School State Champions, the first ever State Championship for the Brewer High School Boys.

NOW, THEREFORE, BE IT RESOLVED, that the Brewer City Council on behalf of the Citizens of the City of Brewer, Maine, herewith recognizes and congratulates Brady Saunders, Brewer High School student athlete for his hard work and dedication in completing a 1,000-point high school basketball career, and carrying on the tradition of Brewer excellence.

ACTION: Councilor Goss moved that the resolve be adopted. Councilor Ferris seconded the motion. Councilor Goss said that Brady was the best basketball player in the state of Maine and that he was proud of him. The motion passed with a unanimous vote.

2023-B012

May 9, 2023

TITLE: RESOLVE, RECOGNIZE BRYNN LAVIGUEUR FOR WINNING TWO 2023 STATE OF MAINE CLASS-B GIRLS' SWIM TITLES.

Filed March 6, 2023

By Jerry Goss

WHEREAS, Brynn Lavigueur has distinguished herself as an outstanding competitor for the Brewer High School Girls' Swim team; and

WHEREAS, as a freshman, Brynn has set Brewer High School Girls' Swim records in the 50-yard freestyle, the 100-yard freestyle, the 100-yard backstroke, the 200-yard freestyle, the 200-yard individual medley, and two relays; and

WHEREAS, at the State of Maine Class-B Girls' Championship Meet on February 21, Brynn won 2023 State of Maine Class-B Girls' Swim titles in the 50-yard freestyle and the 100-yard backstroke.

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NOW, THEREFORE, BE IT RESOLVED, that the Brewer City Council on behalf of the Citizens of the City of Brewer, Maine, herewith recognizes and congratulates Brynn Lavigueur, Brewer High School freshman student athlete for her hard work and dedication to earn State of Maine Class-B Girls' Championship awards in the 50-yard freestyle and the 100-yard backstroke and carrying on the tradition of Brewer excellence.

ACTION: Councilor Goss moved that the resolve be adopted. Councilor Daniels seconded the motion. Councilor Goss presented a copy of the resolution and a Brewer Challenge Coin to the father of Brynn Lavigueur who received them on Brynn's behalf. Councilor Goss praised Brynn and said it was the pleasure of the Council to recognize Brewer athletes that are a step above. Brynn's father expressed appreciation for the support of the City, the School, and Brynn's coaches. Councilor Daniels congratulated Brynn and said that the City would be keeping an eye on her achievements. Mayor Phanthay praised Brynn's dedication and congratulated her. The motion passed with a unanimous vote.

2023-B013

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TITLE: RESOLVE, RESOLUTION OF RESPECT FOR DR. A.U. "LIB" LIBERATORE.

Filed March 22, 2023

By Michele Daniels

WHEREAS, on the 8th day of March 2023 death brought to a close the full and active life of Dr. A.U. "Lib" Liberatore, DMD.; and

WHEREAS, Dr. Lib graduated from the University of Pennsylvania School of Dental Medicine and moved to Maine to practice Dentistry in 1973, starting from a small home office on School Street; and

WHEREAS, after earning his certificate in Orthodontics and Dentofacial Orthopedics from Boston University, Dr. Lib returned to Maine in 1983; and

WHEREAS, Dr. Lib practiced Dentistry and Orthodontics for 37 years, transforming people's smiles and lives; and

WHEREAS, Dr. Lib became involved with Brewer Youth Hockey in the early 1980's and remained very active with the program for 40 years, and for many years ran the "Learn to Skate" program; and

WHEREAS, Dr. Lib had a lifelong passion for piano, traveling all across the country to learn from some of the greatest blues musicians of his time, and composing and recording music; and

WHEREAS, Dr. Lib spear-headed the project to restore John Bapst High School's Steinway grand piano.

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NOW, THEREFORE, BE IT RESOLVED, that the Brewer City Council does by this resolution and public pronouncement, recognize the positive influence of Dr. A.U. “Lib” Liberatore to the well-being and development of the community in which he lived and earned the respect of all who knew him; and

BE IT FURTHER RESOLVED, that this resolution be spread upon the permanent records of the City of Brewer and that copies thereof be distributed to members of his family in testimony to the high esteem held for Dr. Liberatore by the citizens and officials of the City of Brewer, Maine.

ACTION: Councilor Daniels moved that the resolve be adopted. Councilor Ferris seconded the motion. Councilor Daniels said that Dr. Lib had a strong passion for family and that he showed in every way how to support kids. Councilor Goss said that Dr. Lib was exemplary and that he had left a legacy to be proud of. Councilor Ferris said that Dr. Lib was a wonderful man and that he would be missed. Councilor Morin praised Dr. Lib. Mayor Phanthay reflected on the John Bapst High School’s Steinway grand piano, and how Dr. Lib’s project to restore the piano was a notable legacy. The motion passed with a unanimous vote.

2023-A014

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TITLE: RESOLVE, RESOLUTION OF RESPECT FOR THOMAS “TOM” MCCREA.

Filed May 1, 2023

By Jenn M. Morin

WHEREAS, Thomas O. McCrea was born on August 6th, 1930 in Fort Fairfield, Maine, the son of Bruce and Ruby McCrea; and

WHEREAS, Thomas served in the US Marine Corps from 1951 to 1954 and joined the Maine State Police in 1955; and

WHEREAS, Thomas lived many years with his family on South Main Street in Brewer and became a well-respected member of the law enforcement community; and

WHEREAS, Thomas was involved in a gun battle at the Brewer Police Department on February 1, 1965 and was awarded the Citation for Bravery award, the Citation for Wounds Received by the Maine State Police, and “New England’s Police Officer of the Year” in 1965; and

WHEREAS, Thomas retired from the State Police in 1977 and later served as the Jail Administrator at the Penobscot County Jail from 1985 to 1995.

WHEREAS, Thomas passed away in 1998, leaving an impressive legacy in the law enforcement community.

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NOW, THEREFORE, BE IT RESOLVED, that the Brewer City Council does by this resolution and public pronouncement, recognize the outstanding contributions made by Thomas O. McCrea to law enforcement in service of his community; and

BE IT FURTHER RESOLVED, that this resolution be spread upon the permanent records of the City of Brewer and that copies thereof be distributed to members of his family in testimony to the high esteem held for Thomas O. McCrea by the citizens and officials of the City of Brewer, Maine.

ACTION: Councilor Morin read the resolution into the record and presented Brewer Challenge Coins to the family of Thomas McCrea. Councilor Daniels said that Thomas' legacy would live on. Councilor Ferris reflected on having known Thomas, and marveled at the gun battle that Thomas had survived. Councilor Goss said Thomas was another example of how the Brewer area had the finest law enforcement officers in the State of Maine. Councilor Morin moved that the resolve be adopted. Councilor Goss seconded the motion. The motion passed with a unanimous vote.

Public Comments

Tanner Ames, a Bangor resident and a community organizer working for Food and Medicine on Ivers Street spoke in support of the Community Connector.

Brewer resident Bruce Fernald thanked the City for wintertime plowing of the Maple Street Park. Mr. Fernald then spoke in support of "No Mow May", a campaign that challenges residents to abstain from mowing lawns in the month of May for the benefit of pollinators and the environment. Mr. Fernald said that participating in the campaign would technically violate City of Brewer Ordinance on property maintenance, and that he would like an exemption, or for the ordinance to be changed. Mayor Phanthay and Councilor Daniels noted that there were a number of factors to consider, but that the matter might be taken under advisement. Councilor Goss asked if there was a policy requiring residents to mow their lawns in May. The City Solicitor noted that Brewer has a property maintenance ordinance and that the ordinance provides a tool for the City to respond to vacant properties and properties that are not being properly maintained. The Councilors said that they would take the matter under advisement.

Martin McCrea of Orrington, the son of Thomas McCrea, thanked the Council for recognizing his father, and reflected on Thomas' life. Martin said that following the gun battle where Thomas had been shot, the attacker was arrested and set to prison. After serving his term, Martin said the attacker was released, reconnected with his family, and opened his own electrical contracting business. While Thomas was serving as administrator for the jail, he hired the attacker's firm to do electrical work. Martin said that Thomas and the attacker reconciled and became friends. Martin also described an incident where a young man thanked Thomas for changing his life. Twenty years previous, Thomas had pulled this same young man aside following a disrespectful outburst, and the young man credited Thomas' intervention with getting him on the right track. Martin McCrea's wife thanked the Council for recognizing Thomas McCrea, and said it was important for communities to understand, defend, and support police. Martin McCrea also suggested that the site of the old Brewer Police station might be recognized with a commemorative stone. Councilor Goss asked the Public Safety Director to look in to the matter, and said it would be an appropriate recognition of the Brewer Police and Fire Departments.

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Jackson Peck, Brewer resident and a community organizer working for Food and Medicine on Ivers Street thanked law enforcement, and spoke in favor of “No Mow May”, and spoke in support of the Community Connector. Mr. Peck noted a recent event in Bangor where Food and Medicine thanked Community Connector bus drivers. Amanda Reynolds, a Brewer resident, spoke in support of the Community Connector and said that it was vital for residents without reliable transportation. Councilor Daniels asked, in light of the comments on the Community Connector, if there was an upcoming issue with the Community Connector. Councilor Daniels said that her only concern was that if the Community Connector implemented permanent bus stops rather than the “flag” system it would place an additional burden on residents with mobility issues. Councilor Goss said that the City of Brewer had supported the Community Connector over the years, and that the only concern Brewer had communicated was that the Community Connector should be fiscally responsible. Councilor Goss also noted that Brewer had expressed opposition to establishing permanent bus stops over the “flag” system.

C. Consent Calendar

2023-A056

May 9, 2023

TITLE: ORDER, ACCEPT DONATION TO THE BREWER PUBLIC LIBRARY FROM
FIRST NATIONAL BANK.

Filed April 19, 2023

By Joseph L. Ferris

WHEREAS, the Brewer Public Library has received a contribution of \$1000 from First National Bank; and

WHEREAS, it is the wish of First National Bank and the recommendation of the Library Director that these funds be used to help support the Brewer Public Library’s new Early Childhood Literacy Program.

NOW, THEREFORE, BE IT ORDERED, that the Brewer City Council accepts this contribution of \$1000 from First National Bank and authorizes its deposit in account 0600072-360000-72036 and expenditure from account 0600072-560000-72036.

Statement of Fact: This order accepts a donation from First National Bank to support the Early Childhood Literacy Program at the Brewer Public Library.

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2023-A057

May 9, 2023

TITLE: ORDER, GRANT APPROVAL TO DELANO MERRITT D/B/A CAP'S TAVERN TO ALLOW PATRONS TO CONSUME ALCOHOL AT A SPECIAL OUTDOOR EVENT ON THE ESTABLISHMENT'S PROPERTY.

Filed April 25, 2023
By Jerry Goss

WHEREAS, Delano Merritt d/b/a Cap's Tavern, is licensed by the State of Maine, Bureau of Alcoholic Beverages, to sell liquor within the confines of its establishment at 494 ½ South Main Street; and

WHEREAS, Cap's Tavern has submitted a request to the City Council for approval to allow consumption of alcohol in an outdoor area on its premises at 494 ½ South Main Street on Sunday, July 16, 2023 from 12:00 noon to 10:00 p.m. with a live band; and

WHEREAS, it is the understanding of the City Council that the Bureau of Alcoholic Beverages may permit patrons of Cap's Tavern to consume alcohol in an outdoor area if the City Council approves such activity; and

WHEREAS, it is the sense of the Brewer City Council that permitting patrons of Cap's Tavern to consume alcohol in an outdoor area at 494 ½ South Main Street under conditions established by the Bureau of Alcoholic Beverages will not be detrimental to the peace, health and safety of the citizens of the City of Brewer.

NOW, THEREFORE, BE IT ORDERED, that the Brewer City Council herewith approves Delano Merritt d/b/a Cap's Tavern's request for permission to sell and allow patrons to consume alcohol in an enclosed and designated area at 494 ½ South Main Street from 12:00 noon to 10:00 p.m. Sunday, July 16, 2023 with a live band; and

BE IT FURTHER, ORDERED, that the City Clerk inform the Bureau of Alcoholic Beverages of this approval of the Brewer City Council.

Statement of Fact: Requests from Brewer establishments to conduct an outdoor event require the approval of the City Council.

2023-A058

May 9, 2023

TITLE: ORDER, AUTHORIZE PURCHASE OF A VACUUM EXCAVATION VEHICLE FOR WATER DEPARTMENT.

Filed April 30, 2023
By Jenn M. Morin

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WHEREAS, revisions to federal lead and copper rules have added the requirement that the Brewer Water Department must have a full inventory of all service line materials no later than October 16, 2024; and

WHEREAS, many of the Water Department's older records do not contain service material types, and the rules require verification of materials for service shutoffs that are unknown both on the City side and on the customer side; and

WHEREAS, a vacuum excavation vehicle will assist in the hundreds of excavations that will be necessary as a result of these developments; and

WHEREAS, the Brewer Water Department has secured 55% grant funding and a 10-year Maine Drinking Water State Revolving Fund loan at 0% interest for the purchase of a vacuum excavation vehicle costing up to \$500,000; and

WHEREAS, the Water Department solicited competitive proposals for a vacuum excavation vehicle and received one bid.

NOW, THEREFORE, BE IT ORDERED, that the Brewer City Manager, or his designee, is authorized to sign a purchase order in the amount of \$492,518 to Vermeer All Roads for the purchase of a 2023, Vermeer VXT 300 vacuum excavation vehicle on a Kenworth Chassis; and

BE IT FURTHER ORDERED, that this purchase be charged to the Water Capital Improvement Program account #0571003-573043 titled "Unit 763-Vac Truck" and paid for with loan and grant funds from the Maine Drinking Water SRF Program.

Statement of Fact: Changes to lead and copper rules have added a federal mandate to create a full inventory of water service line materials no later than October 16th, 2024. Many Brewer Water Department service records do not include material type, making it necessary to excavate possibly thousands of services in the Brewer water system. Following the completion of the service line inventory, the vacuum excavator will serve the Water Department for years to come. Placing the order now will allow the Brewer Water Department to secure one of the last VXT 300s available this year.

2023-A059

May 9, 2023

TITLE: ORDER, AUTHORIZE EXTENSION OF AUDIT SERVICES CONTRACT.

Filed May 2, 2023
By Joseph L. Ferris

WHEREAS, the City of Brewer's contract with audit firm Runyon Kersteen Ouellette (RKO) of South Portland, Maine concluded with the completion of the Fiscal Year 2022 audit; and

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WHEREAS, the state of Maine is experiencing a significant contraction in availability of firms willing to bid on and conduct municipal audits, and it is the recommendation of the Brewer Finance Director to extend the contract with RKO for a multi-year term to secure access to these vital services; and

WHEREAS, Runyon Kersteen Ouellette has provided the City exemplary service since 2006 and has proposed acceptable terms for a three-year extension through the Fiscal Year 2025 audit.

NOW, THEREFORE, BE IT ORDERED, that the Brewer City Council hereby authorizes the extension of the audit services contract with Runyon Kersteen Ouellette to cover the Fiscal Year 2023 through Fiscal Year 2025 audits and authorizes the City Manager or his designee to execute any and all necessary documents to secure this extension; and

BE IT FURTHER ORDERED, that the Brewer City Council hereby approves the contract price of \$59,250 for the Fiscal Year 2023 audit, \$62,890 for the Fiscal Year 2024 audit, and \$66,700 for the Fiscal Year 2025 audit; and

BE IT FURTHER ORDERED, that the City Council of the City of Brewer herewith exercises its authority under Section 404 of the City's Purchasing Ordinance, Chapter 36 of the Charter, Codes and Ordinances of the City of Brewer in the purchase of these contractor services.

Statement of Fact: This order authorizes a three-year extension of the contract for audit services with Runyon Kersteen Ouellette of South Portland.

2023-B015

May 9, 2023

TITLE: RESOLVE, APPROVE USE OF SCHOOL CAPITAL RESERVE FUNDS FOR LIBRARY RENOVATIONS.

Filed May 2, 2023

By Jerry Goss

WHEREAS, in June 2021, the Brewer City Council adopted 2021-B006 approving the Brewer School Department's establishment of a capital reserve account for major maintenance and improvements to school facilities; and

WHEREAS, on July 12, 2022 and January 17, 2023, the Council approved the transfers of \$400,000 and \$500,000, respectively into the capital reserve account; and

WHEREAS, on May 1, 2023, the Brewer School Committee approved the use of \$250,000 of the capital reserve account balance to help pay for the \$285,250 cost of renovations to the Brewer High School library that will create five much needed office spaces, as well as upgrade the HVAC system in that area; and

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WHEREAS, expenditures from the School Capital Reserve fund are subject to final review and approval by the Brewer City Council.

NOW, THEREFORE, BE IT ORDERED, that the Brewer City Council hereby approves the School Department's use of \$250,000 from its capital reserve fund for the library renovation project.

Statement of Fact: This order approves the School Department's use of \$250,000 from its Capital Reserve fund for renovations to the Brewer High School Library.

2023-A060

May 9, 2023

TITLE: ORDER, AMEND SLUDGE HAULING AND DISPOSAL CONTRACT WITH MALCOLM MCGRAW D/B/A MALCOLM MCGRAW WFT.

Filed May 2, 2023

By Michele Daniels

WHEREAS, the City of Brewer approved a five-year contract with Malcolm McGraw d/b/a Malcolm McGraw WFT for transportation and disposal of dewatered sludge from the City of Brewer Water Pollution Control Facility (BWPCF) beginning on December 1, 2021; and

WHEREAS, two laws—Legislative Document 1639 and Legislative Document 1911--enacted by the 130th Maine State Legislature have both increased the amount of wastewater sludge going to landfill and decreased the amount of certain waste materials traditionally used by Casella at Juniper Ridge Landfill to stabilize the sludge they receive; and

WHEREAS, as a result of these changes, Casella made the decision to stop receiving municipal sludge from a number of sources, including the City of Brewer, at its Juniper Ridge Landfill; and

WHEREAS, City staff was able to negotiate an agreement with the Town of Hartland to allow our municipal sludge to be disposed of at their Landfill; and

WHEREAS, although the Hartland location saved the City of Brewer significantly over alternative disposal options, it did create an increase in the disposal costs for WFT, as well as increasing the time and distance costs; and

WHEREAS, City staff were able to reach the attached tentative agreement with WFT to amend the contract to reflect these increased costs.

NOW, THEREFORE, BE IT ORDERED, that the City Manager, or his designee, is hereby authorized to sign this contract amendment; and

BE IT FURTHERED ORDERED, that costs associated with the sludge transportation and disposal be charged to the Sludge Disposal account (0817702-501805) in the sewer budget.

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Statement of fact: Due to changes in law and changes in market conditions, through no fault of the contracted hauler, the City of Brewer recognizes financial hardships that would likely result if the contracted hauler defaulted on their contractual obligations. City Staff have thoroughly analyzed the cost of this service and have reached a mutual agreement with the current contractor to ensure that municipal solid waste continues to be properly handled and disposed of at a licensed facility.

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**First Amendment to
Sludge Hauling & Disposal Services Agreement**

WHEREAS, it is the mutual desire of the City and the Service Provider to amend the Sludge Hauling & Disposal Services Agreement entered into on November 19, 2021;

NOW, THEREFORE, effective retroactive to March 1, 2023, it is agreed by and between the City and Service Provider as follows:

1. The original schedule of fees in Attachment D is superseded by the following schedule:

	TRANSPORTATION & DISPOSAL FEE PER LOAD
YEAR 1	N/A
YEAR 2	\$2,200
YEAR 3	\$2,288
YEAR 4	\$2,379
YEAR 5	\$2,474

2. This revised fee schedule takes into account all transportation costs, including fuel, wait times, etc.
3. This revised fee schedule assumes sludge disposal at the Hartland, Maine facility at a cost of \$130.00 per ton. Any savings realized by Service Provider from changes in disposal location and/or disposal fees will be passed on to the City in the form of a lower per load rate.
4. The City has paid the March 2023 invoice at the original contracted rate of \$1,508 per load. Upon the execution and ratification of the Brewer City Council of this contract amendment, Service Provider shall have the right to bill, and the City agrees to pay, the \$692 difference per load for the March 2023 trips.
5. Parties acknowledge that in Year 1 of the contract, Service Provider over billed the City by \$1,689.55 and in the first three months of Year 2 of the contract (December 2022-February 2023), Service Provider under billed the City by \$1,408.01 for a net over billing in total of \$281.54. On or before the invoice for June 2023 services, Service Provider shall issue City a credit for **\$281.54**.
6. Before this amendment takes effect, Service Provider shall submit a performance and payment bond(s) acceptable to the City equal to at least \$340,000, which is the new one-year sludge transportation and disposal costs for the facility.

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IN WITNESS WHEREOF, the parties hereto have, on this ____ day of May, 2023, executed this Amendment to the Sludge Hauling & Disposal Services Agreement at Brewer, Maine.

CITY OF BREWER

Date: _____

Stephen M. Bost, City Manager

Malcolm McGraw, WFT

Date: _____

By: _____
Its: _____

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Tuesday, May 9, 2023

2023-A061

May 9, 2023

TITLE: ORDER, AUTHORIZE LOANS IN AGGREGATE AMOUNT UP TO \$3,301,000 FROM THE MAINE MUNICIPAL BOND BANK STATE REVOLVING FUND TO FINANCE WATER MAIN REPLACEMENTS AND WATER DEPARTMENT EQUIPMENT, AND ISSUANCE OF THE CITY'S GENERAL OBLIGATION BONDS AND A TAX LEVY THEREFOR.

Filed May 2, 2023
By Jenn M. Morin

BY THE CITY COUNCIL OF THE CITY OF BREWER, BE IT HEREBY ORDERED:

THAT the City Treasurer/ Finance Director be and hereby is authorized and empowered, in the name of and on behalf of the City of Brewer, to borrow at one time or from time-to-time, an amount not to exceed \$3,301,000 at any one time outstanding (of which a portion is anticipated to be forgiven) from the Maine Municipal Bond Bank (the "Bond Bank") pursuant to its Drinking Water Revolving Loan Fund program, or such other suitable lender as the City Treasurer/ Finance Director shall approve, in her sole discretion, to pay a portion of the costs (as herein defined) of the following Projects:

<u>Project Description</u>	<u>Loan Amounts</u>
• Vac Truck	\$500,000 (55% anticipated principal forgiveness)
• Wilson Street Water Main Replacement	\$1,021,000 (30% anticipated principal forgiveness) \$77,000 (55% anticipated principal forgiveness)
• Alan-A Dale Rd, Birchwood & Nottingham Boulevards Water Main Replacements	\$1,583,000 (30% anticipated principal forgiveness) \$120,000 (55% anticipated principal forgiveness)

THAT in furtherance of said loans and to evidence such borrowing, pursuant to 30-A M.R.S.A. §5772 and all other authority thereto enabling, the City Treasurer/ Finance Director be and hereby is authorized and empowered, in the name of and on behalf of the City, to issue and sell, at one time or from time-to-time, up to \$3,301,000 aggregate principal amount of the City's general obligation bonds.

THAT pursuant to Title 30-A, §5772 of the Maine Revised Statutes, Article VI, Section 7 of the City Charter and all other authority thereto enabling, the City Treasurer/ Finance Director be and hereby is authorized and empowered, in the name of and on behalf of the City, to issue the temporary notes in anticipation of the bonds.

THAT said bonds and notes shall be signed by the City Treasurer/ Finance Director, countersigned by the Chair of the City Council, sealed with the seal of the City, attested by its Clerk, and may be issued as physical certificates or in book-entry form pursuant to the Depository Trust Company Book-Entry Only System.

THAT the City Treasurer/ Finance Director be and hereby is authorized and empowered, in the

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name of and on behalf of the City, to determine the form, dates, maturities (not to exceed the maximum term permitted by law), denominations, interest rates, place of payment, provisions for redemption prior to the stated maturity date(s), with or without a premium, as provided in Title 30-A, §5772(6) of the Maine Revised Statutes, as amended, and all other details of said bonds and notes, including the timing and provision for their sale and award, which may be through a public offering or a private placement, or a combination thereof, on a competitive or negotiated basis, or a combination thereof, her determination and approval thereof to be conclusively evidenced by the execution thereof.

THAT in each year during which any of the bonds are outstanding, there shall be levied a tax in an amount that, with other revenues, if any, available for such purpose, shall be sufficient to pay the interest on said bonds payable in such year, and the principal of such bonds maturing in such year.

THAT the City Treasurer/ Finance Director be and hereby is authorized and empowered, in the name of and on behalf of the City, to do or cause to be done all such acts and things, including to approve, execute and deliver such contracts, agreements, loan agreements (including but not limited to one or more loan agreements between the City and the Maine Municipal Bond Bank (the “Bond Bank”), with such usual and customary terms and provisions, not contrary to the general tenor hereof, as the Bond Bank may require), investment agreements, bond purchase agreements, official statements, certificates, tax certificates, instruments, a Letter of Representation or other agreement required to qualify the bonds or notes for and participate in the Depository Trust Company Book-Entry Only System and such other documents (the “Bond Documents”), as may be necessary or advisable in order to accomplish the issuance of the bonds, which Bond Documents may be in such form and contain such terms and provisions including, without limitation, the waiving of the City’s sovereign or governmental immunity with respect to the enforceability of any of the forgoing, and such other details as she shall approve, her approval to be conclusively evidenced by her execution thereof.

THAT if the bonds or notes (or any portion thereof) are issued on a tax-exempt basis, the City Treasurer/ Finance Director be and hereby is authorized and empowered, in the name of and on behalf of the City, to covenant and certify that no part of the proceeds of the issue and sale of the bonds or notes shall be used directly or indirectly to acquire any securities or obligations, the acquisition of which would cause such bonds or notes to be "private activity bonds" or “arbitrage bonds” within the meaning of Sections 141 and 148 of the Internal Revenue Code of 1986, as amended (the “Code”).

THAT if the bonds or notes (or any portion thereof) are issued on a tax-exempt basis, the City Treasurer/ Finance Director be and hereby is authorized and empowered, in the name of and on behalf of the City, to covenant and agree for the benefit of the holders of such bonds or notes, that the City will file any required reports and take any other action that may be necessary to ensure that interest on the bonds or notes will remain exempt from federal income taxation and that the City will refrain from any action that would cause interest on the bonds or notes to be subject to federal income taxation.

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THAT if the bonds or notes (or any portion thereof) are issued on a tax-exempt basis, the City Treasurer/ Finance Director be and hereby is authorized and empowered to take all such action as may be necessary to designate such bonds or notes as qualified tax-exempt obligations for purposes of Section 265(b) of the Code; it being the City Council's intention that, to the extent permitted under the Code, the bonds or notes be Section 265(b) designated and that the City Treasurer/ Finance Director with advice of bond counsel, make the required Section 265(b) election with respect to such bonds to the extent that the election may be available and advisable as determined by the City Treasurer/ Finance Director.

THAT the City Treasurer/ Finance Director be and hereby is authorized and empowered, in the name of and on behalf of the City, to covenant, certify, and agree for the benefit of the holders of such bonds or notes, that the City will file any required reports, make any annual financial or material event disclosure, and take any other action that may be necessary to ensure that the disclosure requirements imposed by Rule 15c2 12 of the Securities and Exchange Commission, if applicable, are met.

THAT the term "cost" or "costs" as used herein and applied to Projects, or any portion thereof, includes, but is not limited to: (1) cost of feasibility studies, surveys, environmental studies and assessments, engineering, plans and specifications, legal and other professional services associated with the Projects; (2) the cost to design, construct, renovate, refurbish, improve, acquire, replace, furnish and equip the Projects; (3) the cost of land, easements and other real property interests, landscaping and site preparation, utility extensions, all appurtenances and other fixtures, facilities, buildings and structures either on, above, or under the ground which are used or usable in connection with the Projects; (4) issuance costs, including premiums for insurance, capitalized interest and other financing charges, fees and expenses relating to the financing transaction.

THAT the proceeds of the bonds and notes (including premium), if any, and the investment earnings thereon, if any, be and hereby are appropriated for the following purposes, to be selected by the City Treasurer/ Finance Director:

1. To the cost of the Projects;
2. If the bonds or notes are issued on a tax-exempt basis, in accordance with applicable terms and provisions of the Arbitrage and Use of Proceeds Certificate delivered in connection with the sale of the bonds or notes including, to the extent permitted thereunder, to the City's General Fund;
3. To pay debt service on the bonds or notes.

THAT if the actual cost of any Project differs from the estimated cost, whether due to completion, delay or abandonment of such Project, or for any other reason, the City Treasurer/ Finance Director is authorized, in her sole discretion, to reallocate proceeds of the bonds or notes to any other Project or to any other project or improvement that the City Council has approved or may in the future approve as part of the City's annual capital improvement plan.

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THAT if the City Treasurer/ Finance Director, Chair of the City Council, or Clerk are for any reason unavailable to approve and execute the bonds or notes or any related Bond Document, the person or persons then acting in any such capacity, whether on an interim or acting basis, as an assistant, a deputy, or otherwise, is authorized to act for such official with the same force and effect as if such official had himself or herself performed such act.

THAT if any of the officers or officials of the City who have signed or sealed the bonds or notes shall cease to be such officers or officials before the bonds or notes so signed and sealed shall have been actually authenticated or delivered by the City, such bonds or notes nevertheless may be authenticated, issued, and delivered with the same force and effect as though the person or persons who signed or sealed such bonds notes had not ceased to be such officer or official; and also any such bonds or notes may be signed and sealed in the name of and on behalf of the City by those persons who, at the actual date of the execution of such bonds or notes, shall be the proper officers and officials of the City, although at the nominal date of such bonds or notes any such person shall not have been such officer or official.

THAT during the term any of the bonds are outstanding, in order to obtain debt service savings, the City Treasurer/ Finance Director is hereby authorized, in the name of and on behalf of the City, to issue and deliver refunding bonds on either a current or advance refunding basis, to refund some or all of the bonds then outstanding, and to determine the date, form, interest rate, maturities (not to exceed 30 years from the date of issuance of the original bonds) and all other details of such refunding bonds, including the form and manner of their sale and award. The City Treasurer/ Finance Director is hereby further authorized to provide that any of such refunding bonds authorized hereby be made callable, with or without premium, prior to their stated date(s) of maturity, and each such refunding bond shall be signed by the City Treasurer/ Finance Director, countersigned by the Chair of the City Council, sealed with the seal of the City, attested by its Clerk.

THAT if, following issuance of some but less than all of the bonds authorized hereby, the City Treasurer/ Finance Director determines, in her sole discretion, that the remaining authorized but unissued bonds will not be issued in furtherance of the Projects, then the City Treasurer/ Finance Director is authorized and empowered, in the name of and on behalf of the City, to note on the financial books and records of the City, in the form and manner as she shall determine to be appropriate, that such authorized but unissued bonds will not be issued, following which notation the remaining unissued bonds shall not thereafter be issued and the authority established pursuant to this Order to issue such remaining unissued bonds shall be extinguished and of no further force and effect.

THAT the City may pay certain costs of the Projects prior to the issuance of the bonds and notes authorized hereby (referred to as “original expenditures”); to that end, the City hereby declares its official intent to reimburse itself for such original expenditures from the proceeds of such bonds and notes, and this Order shall constitute the City’s declaration of official intent pursuant to Treasury Regulation §1.150-2.

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Statement of fact: This order authorizes the City to obtain up to \$3,301,000 in loan financing to support two water line replacement projects and the purchase of a vacuum truck for the Water Department. The Maine Drinking Water Program has agreed to forgive \$1,164,550 of the loan principal and loan \$313,650 of the remaining amount at no interest.

2023-A062

May 9, 2023

TITLE: ORDER, AUTHORIZE SUPPLEMENTAL APPROPRIATION TO SUPPORT
PUBLIC SAFETY OPERATIONS.

Filed May 2, 2023
By Joseph L. Ferris

WHEREAS, due to a combination of staff vacancies, extended medical leaves, the hiring of new employees in need of training, and a 50% increase in electricity rates, among other factors, Brewer Public Safety related expenditures have been substantially higher than anticipated in several areas, including overtime, final pay expense, and energy costs, putting the Protections group of accounts on target to exceed the Fiscal Year 2023 (FY23) budget approved by the Brewer City Council in June of 2022; and

WHEREAS, to ensure that the City ends the fiscal year in compliance with the budget approved by the City Council, additional funds are needed to supplement the Public Safety budget; and

WHEREAS, to date, the City has received \$304,000 more in state revenue sharing than it had conservatively budgeted to receive in FY23.

NOW, THEREFORE, BE IT ORDERED, that the Brewer City Council hereby authorizes the appropriation and expenditure of \$175,000 in unanticipated state revenue sharing funds to cover unanticipated FY2023 expenses in the public safety and general protections group of accounts (Orgs 0115810, 0115910 and 0116100).

Statement of Fact: This order authorizes the use of \$175,000 in unanticipated state revenue sharing funds to supplement the FY2023 Police, Fire and General Protection budgets. A combination of factors has resulted in substantially higher expenditures than anticipated in several areas, including overtime, final pay expense, and energy costs. This appropriation helps the City stay in compliance with its approved budget.

2023-A063

May 9, 2023

TITLE: ORDER, AWARD CONTRACT TO LANDSCAPE PHASE 3 OF RIVERWALK
TRAIL.

Filed May 2, 2023
By Jerry Goss

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WHEREAS, construction of Phase 3 of the Riverwalk Trail was completed late last fall, but did not include landscaping; and

WHEREAS, the City of Brewer has received a proposal for the design, purchase and installation of plantings along this stretch of trail from Summersweet Landscaping of Brewer, the company that provides the City landscaping services on Phases 1 and 2 of the trail; and

WHEREAS, the City has \$35,000 in Tax Increment Financing (TIF) funds available to use on this TIF-eligible project.

NOW, THEREFORE, BE IT ORDERED, that the Brewer City Manager, or his designee, is hereby authorized to accept this landscaping proposal; and

BE IT FURTHERED ORDERED, that the Brewer City Council hereby authorizes the appropriation and expenditure of \$35,000 in TIF Special Project Funds from account 0510121-551102-57021 (Waterfront Trail – Phase III) to support this project (\$33,000 contract cost plus \$2,000 contingency).

Statement of fact: This order authorizes the City to contract with Summersweet Landscaping of Brewer to design and install plantings along Phase 3 of the Riverwalk Trail to be funded by up to \$35,000 in Tax Increment Financing funds.

2023-A064

May 9, 2023

TITLE: ORDER, AWARD CONTRACT FOR ENGINEERING AND ADMINISTRATION SERVICES FOR OAK GROVE SEWER SUBSYSTEM REMEDIATION PROJECT.

Filed May 2, 2023
By Michele Daniels

WHEREAS, the City of Brewer has been awarded \$1,103,000 in federal grant funding toward the estimated \$2,085,000 cost to complete remediation of the sewer subsystem in the Oak Grove area of Brewer, a project that the City must undertake as part of its Combined Sewer Overflow (CSO) abatement plan; and

WHEREAS, Olver Associates of Winterport, Maine, has provided the City a proposal totaling \$270,000 for design, contract administration, and project representative services for the Oak Grove remediation project; and

WHEREAS, Olver Associates has been an integral partner in the City's CSO Abatement Program since its beginning and they continue to provide expert technical assistance with the CSO program due to their extensive knowledge of the City's CSO system.

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NOW, THEREFORE, BE IT ORDERED, that the Brewer City Council hereby authorizes the City Manager, or his designee, to enter into a contract with Olver Associates for up to \$270,000 in design, contract administration and project representative services for the Oak Grove remediation project; and

BE IT FURTHER ORDERED, that costs associated with this project be charged to Sewer Capital Improvement Program account 0581001-581009 (Oak Grove Sewer Remediation) to be funded by a combination of grant and loan financing; and

BE IT FURTHER ORDERED, that the City Council of the City of Brewer herewith exercises its authority under Section 404 of the City's Purchasing Ordinance, Chapter 36 of the Charter, Codes and Ordinances of the City of Brewer in the purchase of contractor services for this project.

Statement of fact: The City of Brewer has a Maine DEP approved Combined Sewer Overflow (CSO) Abatement Program and a CSO Master Plan to control and steadily remove sources of CSO within the City's boundaries. The Oak Grove Sewer Subsystem is the largest remaining project to be completed in those plans. Work started on this project in 2021 with smoke testing, dye testing, and camera work. Several trouble spots were identified for replacement or remediation. This contract with Olver Associates for \$270,000 is for the design work, bidding, and construction management of the project.

2023-A065

May 9, 2023

TITLE: ORDER, AUTHORIZE CITY MANAGER TO SET HEARING DATE AND PROCEED WITH DANGEROUS BUILDING NOTICE TO PARTIES OF INTEREST IN 361 NORTH MAIN STREET.

Filed May 2, 2023

By Jenn M. Morin

WHEREAS, the City of Brewer has two sewer liens filed on the property located at 361 North Main Street (Tax Map 34, Lot 41) recorded in the Penobscot County Registry of Deeds in Book 15975, Page 38 and Book 15710, Page 264; and

WHEREAS, on March 25, 2022 the City of Brewer acquired the property situated at 361 North Main Street, Brewer, Maine (Tax Map 34, Lot 41) by virtue of automatic foreclosure of the first sewer lien; and

WHEREAS, again on October 12, 2022 the City of Brewer's second sewer lien on the property situated at 361 North Main Street, Brewer, Maine (Tax Map 34, Lot 41) also automatically foreclosed; and

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WHEREAS, the City of Brewer attempted to provide the previous owner an opportunity to repurchase this property in January 2023 and the previous owner failed to work out a closing date or pay the delinquent sewer liens; and

WHEREAS, City officials met with the previous owner on April 24, 2023 and again on April 25, 2023 to review the property and the scope of work that would be needed to rehabilitate the property; and

WHEREAS, the previous owner was unable to demonstrate the ability to satisfactorily rehabilitate the building; and

WHEREAS, the City's Code Enforcement Officer inspected the building and reports that it is structurally unstable and constitutes a hazard to health and safety because of inadequate maintenance and dilapidation; and

WHEREAS, the City Solicitor recommends proceeding under the dangerous building procedure in order to provide additional protections to the City; and

WHEREAS, in accordance with Title 17 M.R.S., Sections 2851 and 2857, the City Council wishes to hold a public hearing to determine whether this property is dangerous and any remedy needed thereto.

NOW, THEREFORE, BE IT ORDERED, that the Brewer City Council hereby authorizes a public hearing on this issue be held on June 13, 2023 at 6:00pm in Brewer City Hall Council Chambers; and

BE IT FURTHER ORDERED, that the City Council herewith authorizes the City Manager, or his designee, to provide notice of the hearing and planned action by the City Council to all parties of interest in accordance with Title 17 M.R.S., Sections 2851 and 2857.

Statement of Facts: This order authorizes the City to provide notice to parties of interest in 361 North Main Street that a public hearing will be held on June 13, 2023 at 6:00pm for the purpose of determining whether the building is dangerous and, if so, to prescribe a remedy.

2023-A066

May 9, 2023

TITLE: ORDER, AUTHORIZE PURCHASE OF TWO REPLACEMENT DUMP TRUCKS/PLOWS FOR PUBLIC WORKS.

Filed May 3, 2023
By Joseph L. Ferris

WHEREAS, funds were approved in the City of Brewer Fiscal Year 2023 (FY23) Capital Improvement Program (CIP) budget for the replacement of Unit #422, a 2014 Western Star wheeler plow truck, and Unit #434, a 2015 International plow truck; and

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WHEREAS, Freightliner of Maine provided the lowest bid to replace each vehicle of the two bids received for each vehicle; and

WHEREAS, although these bids exceed the available budget by \$156,044, the City of Brewer has unanticipated revenue it could apply toward this one-time use.

NOW, THEREFORE, BE IT ORDERED, that the Brewer City Council accepts and approves the bids of \$224,355 for Unit #422, and \$211,689 for Unit #434, both of which include two-year extended transmission warranties, and authorizes the City Manager, or his designee, to sign a purchase order and finalize these purchases with Freightliner of Maine; and

BE IT FURTHER ORDERED, that the cost of these purchases be charged to CIP accounts 0510133-551393 (#422 Wheeler Plow) and 0510133-551605 (#434 Plow w/ Sander); and

BE IT FURTHER ORDERED, that the Brewer City Council hereby authorizes the transfer, appropriation, and expenditure of \$156,044 in unanticipated state revenue sharing funds to the above CIP accounts (\$74,355 and \$81,689, respectively) to fully fund them; and

BE IT FURTHER ORDERED, that current Public Works Unit #422, the 2014 Western Star (VIN xL0893), and Public Works Unit #437, a 2007 L8500 Sterling (VIN x 69236), both with plow and wing, be declared surplus once the replacement trucks have been delivered; and

BE IT FURTHER ORDERED, that the Brewer City Council authorizes the City Manager, or his designee, to dispose of these surplus plow trucks by means that would be in the best interest of the City of Brewer; and

BE IT FURTHER ORDERED, that all funds received from the disposal of said plow trucks be deposited into the CIP Sale of Asset account 0500100-300410 to be used to support future City capital program needs.

6x4 DUMP TRUCK / SNOWPLOW FY22 BID CANVASS				
Vendor	FREIGHTLINER OF MAINE	FREIGHTLINER OF MAINE	DAIGLE & HOUGHTON	DAIGLE & HOUGHTON
Make	FREIGHTLINER	FREIGHTLINER	INTERNATIONAL	INTERNATIONAL
Model	108SD	108SD	HV507 SFA	HV507 SFA
Year	2025	2025	2025	2025
Engine	CUMMINS L9 360HP	CUMMINS L9 360HP	CUMMINS L9 370HP	CUMMINS L9 370HP
Plow Gear	VIKING	HP FAIRFIELD	VIKING	HP FAIRFIELD
1. Purchase Price	\$223,853.00	\$233,799.00	\$248,746.00	\$254,692.00
2. Trade-in allowance	\$40,000.00	\$40,000.00	\$20,000.00	\$20,000.00
3.Total Bid Price:	\$183,853.00	\$193,799.00	\$228,746.00	\$234,692.00
Add-ons:				
Extended Warranty	\$502.00	\$502.00		
Delivery time	1st Quarter 2024	1st Quarter 2024	Est. when 2024 orders go in	Est. when 2024 orders go in
Total cost w/warranty	\$184,355.00	\$194,301.00	\$228,746.00	\$234,692.00

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4x2 DUMP TRUCK / SNOWPLOW FY22 BID CANVASS				
Vendor	FREIGHTLINER OF MAINE	FREIGHTLINER OF MAINE	DAIGLE & HOUGHTON	DAIGLE & HOUGHTON
Make	FREIGHTLINER	FREIGHTLINER	INTERNATIONAL	INTERNATIONAL
Model	108SD	108SD	HV507SFA	HV507SFA
Year	2025	2025	2025	2025
Engine	CUMMINS L9 360HP	CUMMINS L9 360HP	CUMMINS L9 360HP	CUMMINS L9 360HP
Plow Gear	VIKING	HP FAIRFIELD	VIKING	HP FAIRFIELD
1. Purchase Price	\$211,187.00	\$220,323.00	\$230,888.00	\$236,024.00
2. Trade-in allowance	\$3,500.00	\$3,500.00	\$7,500.00	\$7,500.00
3. Total Bid Price:	\$207,687.00	\$216,823.00	\$223,388.00	\$228,524.00
Add-ons:				
Extended Warranty	\$502.00	\$502.00		
Delivery time	1st Quarter 2024	1st Quarter 2024	1st Quarter 2024	1st Quarter 2024
Total cost w/warranty	\$208,189.00	\$217,325.00	\$223,388.00	\$228,524.00

Statement of Fact: Both trucks are due for replacement, and it is in the best interest of the City to get this order completed in a timely manner as it will take a year or more to receive the trucks once ordered. Unit #434 will now serve as the only “spare” plow truck which will take the place of #437 which has been used a spare. The FY23 budget had anticipated an approximate 20% increase in prices, not the 50% actually seen.

2023-A067

May 9, 2023

TITLE: ORDER, AUTHORIZE PURCHASE OF ROCK SALT.

Filed May 3, 2023
By Jerry Goss

WHEREAS, in 2022, a joint bid was solicited, received and evaluated for the purchase and delivery of rock salt for the 2022-2023 winter to the Cities of Brewer and Bangor and the Town of Hampden; and

WHEREAS, New England Salt Company of Bangor, Maine offered the lowest price per ton on acceptable material of the bids received for the three communities; and

WHEREAS, New England Salt Company has offered to extend those contract terms and conditions for an additional year to the three communities.

NOW, THEREFORE, BE IT ORDERED, that the Brewer City Manager, or his designee, is authorized to sign a purchase order to New England Salt Company in the amount of \$151,000 for supplying and delivery of rock salt at \$75.85 per ton for the 2023-2024 winter season; and

BE IT FURTHER ORDERED, that funds for this purchase shall be charged to the Public Works account 0116671-502530, titled, “Rock Salt”; and

BE IT FURTHER ORDERED, that the Brewer City Council herewith exercises its authority under Section 404 of the City’s Purchasing Ordinance, Chapter 36 of the Charter, Codes and Ordinances

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of the City of Brewer in the purchase of these supplies.

Statement of Fact: Considering options for the purchase rock salt for the upcoming winter, it is in the best interest of the City to extend its the current contract as the market continues to be unstable. While a lower unit price bid is possible, it is more likely that there would be an increase of 4% or higher.

2023-A068

May 9, 2023

TITLE: ORDER, AUTHORIZE PURCHASE OF REPLACEMENT COMMUNITY PLAYGROUND.

Filed May 3, 2023
By Michele Daniels

WHEREAS, the Community Playground, located across from the parking lot of the Joseph Ferris Community Center, is twenty-two years old and has exceeded its expected useful life; and

WHEREAS, the Community Playground is a centerpiece of the City of Brewer with numerous users daily; and

WHEREAS, proposals were solicited, received, and evaluated for the replacement of the Community Playground and MRC Recreation, a Gametime Playground Distributor, of Spring Lake, New Jersey, provided the City with the only two proposals received; and

WHEREAS, it was determined that Option #2 will provide the maximum play value.

NOW, THEREFORE, BE IT ORDERED, that the Brewer City Manager, or his designee, is authorized to sign a purchase order to MRC Recreation in the amount of \$148,159 for the purchase, installation of a new playground, and engineered wood fiber safety surfacing; and

BE IT FURTHER ORDERED, that the funds for this purchase be charged to the Fiscal Year 2022 (FY22) Capital Improvement Program (CIP) account # 0510124 – 551451; approved in the FY22 CIP budget.

Statement of Fact: This order provides for the replacement of the Community Playground as approved in the FY22 CIP budget.

Request for Proposal Results:

MRC Recreation	Option 1	\$148,258.74
MRC Recreation	Option 2	\$148,158.93

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2023-A069

May 9, 2023

TITLE: ORDER, AWARD CONSTRUCTION DEMOLITION CONTRACT FOR
REMEDICATION OF DANGEROUS BUILDING LOCATED AT 77
SOUTH MAIN STREET (TAX MAP 29, LOT 111).

Filed May 5, 2023
By Jenn M. Morin and
Michele Daniels

WHEREAS, the Brewer Code Enforcement Officer, after numerous failed attempts to gain compliance from the property owner to remedy violations, forwarded to the Brewer City Council a request to hold a public hearing and determine if the building at 77 South Main Street, Brewer, Maine (Tax Map 29, Lot 111), would be declared a Dangerous building pursuant to Title 17 M.R.S. §2851; and

WHEREAS, the City of Brewer held a public hearing on this matter on October 11, 2022; and

WHEREAS, at the public hearing the owner of this property, Mr. Bruce Blackmer requested an opportunity to remedy the violations and abate the dangerous conditions; and

WHEREAS, the Brewer City Council found that the property located at 77 South Main Street (Map 29, Lot 111), did in fact meet the criteria and conditions necessary to declare it a Dangerous Building, and made such declaration and prescribed remedies to abate such conditions in a Dangerous Building Decision and Order duly adopted at their regularly scheduled Council Meeting held on November 15, 2022; and

WHEREAS, the above-mentioned Council Decision and Order was duly served on Mr. Blackmer on November 28, 2022; and

WHEREAS, the applicable appeals period for making an appeal of this Council Decision and Order has now long expired; and

WHEREAS, the Brewer City Council had authorized Mr. Blackmer 90 days from the October 11, 2022 public hearing to remedy the violations and abate the dangerous conditions setting a deadline of January 10, 2023, as stated in the Council Decision and Order; and

WHEREAS, the Brewer City Council had authorized Mr. Blackmer an opportunity prior to the expiration of the 90-day time period to request an extension to continue remediation of the violations if additional time were to be required; and

WHEREAS, no permits were requested or issued, no work had begun, and no violations were remediated during this time period; and

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WHEREAS, on or about January 26, 2023, the City of Brewer communicated in writing to Mr. Blackmer the necessary steps to implement the Dangerous Building Decision and Order, requesting reasonable cooperation from Mr. Blackmer to facilitate an efficient demolition of the building by the City; and

WHEREAS, to date, Mr. Blackmer has not expressed any willingness to cooperate with the City to facilitate an efficient demolition of the building; and

WHEREAS, seeing no efforts were made and no communications expressing a willingness to cooperate were made or forthcoming from Mr. Blackmer, the City of Brewer had followed all applicable procedures and requirements as set forth in Title 30-A M.R.S. §3106; and

WHEREAS, on or about February 10, 2023 the Brewer City Solicitor mailed a certified letter notifying Bruce Blackmer of the need to remove all covered property, as defined in Title 30-A M.R.S. §3106, which was refused by Mr. Blackmer; and

WHEREAS, on Tuesday February 14, 2023 & Wednesday February 15, 2023 the City of Brewer ran notices in the Bangor Daily News advising Bruce Blackmer and all persons of interest of the need to remove all covered property as defined in Title 30-A M.R.S. §3106; and

WHEREAS On April 14, 2023 the City of Brewer conducted a site visit to inventory and document all covered property in preparation for its removal; and

WHEREAS on April 14, 2023 the City of Brewer initiated an environmental assessment review to determine if asbestos, or other hazardous materials, needed to be abated; and

WHEREAS, on April 20, 2023 the City of Brewer received its inspection report showing no asbestos materials were present and the building was cleared for demolition; and

WHEREAS, on April 21, 2023 the City of Brewer posted to its website, and released, a formal Request for Proposals to have the building demolished in order to remediate the dangerous conditions; and

WHEREAS, on April 25, 2023 notice of the RFP was printed in the Bangor Daily News; and

WHEREAS, on April 28, 2023 the City met with nine (9) qualified contractors who attended a mandatory pre-bid inspection of the property; and

WHEREAS, on May 5, 2023 the City of Brewer received bids from seven (7) bidders qualified to bid on this proposal.

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NOW, THEREFORE, BE IT ORDERED, that the Brewer City Council hereby authorizes the expenditure of up to \$45,000 for the demolition and disposal of the dangerous building located at 77 South Main Street (Tax Map 29, Lot 111); and

BE IT FURTHER ORDERED, that the City Manager, or his designee, is authorized to award the bid to the most responsive bidder and to enter into a contract agreement with said contractor for the approval of the work; and

BE IT FURTHER ORDERED, that the City Manager, or his designee may approve any Change Orders, and the associated cost, for any and all unforeseen issues that are related to the remediation efforts to ensure this violation is fully resolved; and

BE IT FURTHER ORDERED, that the City of Brewer continues to authorize all necessary and appropriate further actions to address all covered property consistent with Title 30-A M.R.S. §3106; and

BE IT FURTHER ORDERED, that the Brewer City Council hereby authorizes the appropriation and expenditure of up to \$45,000 plus any approved change orders from account 0116001-501040 (Code Contracted Services) to complete any and all work related to this property, which shall be paid for by the property owner or by revenue receipted to account 0100100-300001 (Property Taxes) as authorized below; and

BE IT FURTHER ORDERED, that the Tax Assessor is authorized to levy a special tax equal to the amount of all costs associated with process in accordance with Title 17 M.R.S. §2853; and

BE IT FURTHER ORDERED, that the City Manager, or his designee, is hereby authorized to take any and all actions and to sign any and all documents to carry out this order.

Statement of Fact: This order authorizes the City Manager, or his designee, to award the bid, enter into a contract for the work, and authorize the necessary expenditure of funds to remediate a dangerous building at 77 South Main Street and to ensure the City Manager, or his designee, are able to see this issue fully resolved.

2023-A070

May 9, 2023

TITLE: ORDER, AWARD CONSTRUCTION DEMOLITION CONTRACT FOR REMEDIATION OF DANGEROUS BUILDING LOCATED AT 978 WILSON STREET (TAX MAP 3, LOT 32).

Filed May 5, 2023
By Joseph L. Ferris and
Jerry Goss

WHEREAS, the Brewer Code Enforcement Officer, after numerous failed attempts to gain compliance from the property owner to remedy violations, forwarded to the Brewer City Council a

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request to hold a public hearing and determine if the building at 978 Wilson Street, Brewer, Maine (Tax Map 3, Lot 32), would be declared a Dangerous building pursuant to Title 17 M.R.S. §2851; and

WHEREAS, the City of Brewer held a public hearing on this matter on October 11, 2022; and

WHEREAS, at the public hearing the owner of this property, Mr. Bruce Blackmer requested an opportunity to remedy the violations and abate the dangerous conditions; and

WHEREAS, the Brewer City Council found that the property located at 978 Wilson Street (Map 3, Lot 32), did in fact meet the criteria and conditions necessary to declare it a Dangerous Building, and made such declaration and prescribed remedies to abate such conditions in a Dangerous Building Decision and Order duly adopted at their regularly scheduled Council Meeting held on November 15, 2022; and

WHEREAS, the above-mentioned Council Decision and Order was duly served on Mr. Blackmer on November 28, 2022; and

WHEREAS, the applicable appeals period for making an appeal of this Council Decision and Order has now long expired; and

WHEREAS, the Brewer City Council had authorized Mr. Blackmer 90 days from the October 11, 2022 public hearing to remedy the violations and abate the dangerous conditions setting a deadline of January 10, 2023, as stated in the Council Decision and Order; and

WHEREAS, the Brewer City Council also had authorized Mr. Blackmer an opportunity prior to the expiration of the 90-day time period to request an extension to continue remediation of the violations if additional time were to be required; and

WHEREAS, no permits were requested or issued, no work had begun, and no violations were remediated during this time period; and

WHEREAS, on or about January 26, 2023, the City of Brewer communicated in writing to Mr. Blackmer the necessary steps to implement the Dangerous Building Decision and Order, requesting reasonable cooperation from Mr. Blackmer to facilitate an efficient demolition of the building by the City; and

WHEREAS, to date, Mr. Blackmer has not expressed any willingness to cooperate with the City to facilitate an efficient demolition of the building; and

WHEREAS, seeing no efforts were made and no communications expressing a willingness to cooperate were made or forthcoming from Mr. Blackmer, the City of Brewer had followed all applicable procedures and requirements as set forth in Title 30-A M.R.S. §3106; and

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WHEREAS, on or about February 10, 2023 the Brewer City Solicitor mailed a certified letter notifying Bruce Blackmer of the need to remove all covered property, as defined in Title 30-A M.R.S. §3106, which was refused by Mr. Blackmer; and

WHEREAS, on Tuesday February 14, 2023 & Wednesday February 15, 2023 the City of Brewer ran notices in the Bangor Daily News advising Bruce Blackmer and all persons of interest of the need to remove all covered property as defined in Title 30-A M.R.S. §3106; and

WHEREAS On April 14, 2023 the City of Brewer conducted a site visit to inventory and document all covered property in preparation for its removal; and

WHEREAS on April 14, 2023 the City of Brewer initiated an environmental assessment review to determine if asbestos, or other hazardous materials, needed to be abated; and

WHEREAS, on April 20, 2023 the City of Brewer received its inspection report showing no asbestos materials were present and the building was cleared for demolition; and

WHEREAS, on April 21, 2023 the City of Brewer posted to its website, and released, a formal Request for Proposals to have the building demolished in order to remediate the dangerous conditions; and

WHEREAS, on April 25, 2023 notice of the RFP was printed in the Bangor Daily News; and

WHEREAS, on April 28, 2023 the City met with nine (9) qualified contractors who attended a mandatory pre-bid inspection of the property; and

WHEREAS, on May 5, 2023 the City of Brewer received bids from seven (7) bidders qualified to bid on this proposal.

NOW, THEREFORE, BE IT ORDERED, that the Brewer City Council hereby authorizes the expenditure of up to \$25,000 for the demolition and disposal of the dangerous building; and

BE IT FURTHER ORDERED, that the City Manager, or his designee, is authorized to award the bid to the most responsive bidder and to enter into a contract agreement with said contractor for the approval of the work; and

BE IT FURTHER ORDERED, that the City Manager, or his designee may approve any Change Orders, and the associated cost, for any and all unforeseen issues that are related to the remediation efforts to ensure this violation is fully resolved; and

BE IT FURTHER ORDERED, that the City of Brewer continues to authorize all necessary and appropriate further actions to address all covered property consistent with Title 30-A M.R.S. §3106; and

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BE IT FURTHER ORDERED, that the Brewer City Council hereby authorizes the appropriation and expenditure of up to \$25,000 plus any approved change orders from account 0116001-501040 (Code Contracted Services) to complete any and all work related to this property, which shall be paid for by the property owner or by revenue received to account 0100100-300001 (Property Taxes) as authorized below; and

BE IT FURTHER ORDERED, that the Tax Assessor is authorized to levy a special tax equal to the amount of all costs associated with process in accordance with Title 17 M.R.S. §2853; and

BE IT FURTHER ORDERED, that the City Manager, or his designee, is hereby authorized to take any and all actions and to sign any and all documents to carry out this order.

Statement of Fact: This order authorizes the City Manager, or his designee, to award the bid, enter into a contract for the work, and authorize the necessary expenditure of funds to remediate a dangerous building at 978 Wilson Street and to ensure the City Manager, or his designee, are able to see this issue fully resolved.

ACTION: Councilor Ferris moved that the orders on the consent calendar have passage and that the resolve be adopted. Councilor Goss seconded the motion. The motion passed with a unanimous vote.

D. Monthly Reports

ACTION: Councilor Morin moved that the monthly reports from department heads be accepted and placed on file. Councilor Daniels seconded the motion. The motion passed with a unanimous vote.

E. Nominations, Appointments, Elections

There were no nominations, appointments, or elections.

F. Unfinished Business Consent Calendar

2023-C005

April 11, 2023

TITLE: ORDER, AMEND CHAPTER 34 OF THE CHARTER, CODES AND ORDINANCES OF THE CITY OF BREWER, ENTITLED "BOARD OF APPEALS OF THE CITY OF BREWER", ARTICLE 2, "PROCEDURE", SECTION 200.1.

Filed April 3, 2023
By Michele Daniels

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BE IT ORDAINED, by the Brewer City Council that Chapter 34 of the Charter, Codes and Ordinances of the City of Brewer entitled “Board of Appeals of the City of Brewer”, Article 2, “Procedure”, Section 200.1 shall be amended as follows:

SECTION 200.1

The Chairman shall call meetings of the Board as required. The Chairman shall also call meetings of the Board when requested to do so by majority of the members or by the municipal officers. A quorum of the Board necessary to conduct an official Board meeting shall consist of at least ~~four (4)~~ three (3) members. The Chairman shall preside at all meetings of the Board and be the official spokesman of the Board. In the absence of the Chairman, the Vice Chairman shall preside.

Statement of Fact: Amendment 2023-B004 enacted on March 22 reduced the number of seats on the Board of Appeals from seven (7) to five (5). This amendment reduces the number of members required for quorum from four (4) to three (3).

2023-C006

April 11, 2023

TITLE: ORDER, AMEND CHAPTER 24 OF THE CHARTER, CODES AND ORDINANCES OF THE CITY OF BREWER, ENTITLED “LAND USE CODE”, ARTICLE 8 “FLOODPLAIN MANAGEMENT”, AND ARTICLE 14 “DEFINITIONS”.

Filed April 5, 2023
By Jenn M. Morin

WHEREAS, the Federal Emergency Management Agency (FEMA) has recently updated their floodplain management information which will go into effect on July 19, 2023; and

WHEREAS, in order for Brewer residents and landowners to continue to participate in the National Flood Insurance Program (NFIP), local ordinances must also be updated to correspond with the new FEMA regulations and in effect by the July 19, 2023 date.

NOW, THEREFORE, BE IT ORDAINED, by the City of Brewer in City Council assembled that Chapter 24, of the Charter, Codes and Ordinances of the City of Brewer, entitled “Land Use Code” shall be amended by revising the following subsections to Article 8, and Article 14; and

BE IT FUTHER ORDAINED, that these ordinance amendments shall go into effect on July 19, 2023 to correspond with the new FEMA regulations:

ARTICLE 8 – FLOODPLAIN MANAGEMENT

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801 FLOOD HAZARD DEVELOPMENT PERMIT

801.1 PURPOSE AND ESTABLISHMENT (#4)

Certain areas of the City of Brewer, Maine are subject to periodic flooding, causing serious damages to properties within these areas. Relief is available in the form of flood insurance as authorized by the National Flood Insurance Act of 1968.

Therefore, the City of Brewer, Maine has chosen to become a participating community in the National Flood Insurance Program and agrees to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as delineated in this Article of the Land Use Code.

It is the intent of the City of Brewer, Maine to require the recognition and evaluation of flood hazards in all official actions relating to land use in the floodplain areas having special flood hazards.

The City of Brewer has the legal authority to adopt land use and control measures to reduce future flood losses pursuant to Title 30-A MRSA, Sections 3001-3007, 4352, 4401-4407, and Title 38 MRSA, Section 440.

The National Flood Insurance Program, established in the aforesaid Act, provides that areas of the City of Brewer having a special flood hazard be identified by the Federal Emergency Management Agency and that floodplain management measures be applied in such flood hazard areas. This Article establishes a Flood Hazard Development Permit system and review procedure for development activities in the designated flood hazard areas of the City of Brewer, Maine.

The areas of special flood hazard, Zones A and AE, for the City of Brewer, Penobscot County, Maine, identified by the Federal Emergency Management Agency in a report entitled “Flood Insurance Study – Penobscot County, Maine,” dated July 19, 2023, with accompanying “Flood Insurance Rate Maps, Penobscot County, Maine” dated July 19, 2023, are hereby adopted by reference and declared to be a part of this Article.

~~The City of Brewer, Maine elects to comply with the requirements of the National Flood Insurance Act of 1968 (P. L. 90 488, as amended). The National Flood Insurance Program, established in the aforesaid Act, provides that areas of the City having a special flood hazard be identified by the Federal Emergency Management Agency and that floodplain management measures be applied in such flood hazard areas. This Article establishes a Flood Hazard Development Permit system and review procedure for development, activities in the designated flood hazard area of the City of Brewer, Maine.~~

~~The areas of special flood hazard, Zones A, and A1-A30 identified by the Federal Emergency Management Agency in a report entitled “Flood Insurance Study—City of Brewer, Maine, Penobscot County,” dated December 1977 with accompanying “Flood Insurance Rate Map” and “Flood Boundary and Floodway Map” dated June 1978, is hereby adopted by reference and declared to be a part of this Article. [Any and all references made to sections 801-810 herein refer to this Article.]~~

801.2 PERMIT REQUIRED

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The Code Enforcement Officer shall be designated as the local Floodplain Administrator. The Floodplain Administrator shall have the authority to implement the commitment made to administer and enforce the requirements for participation in the National Flood Insurance Program.

Before any construction or other development (as defined in 809), including the placement of manufactured homes, begins within any areas of special flood hazard established in 801.1, a Flood Hazard Development Permit shall be obtained from the Code Enforcement Officer. This permit shall be in addition to any other building permits which may be required pursuant to the codes and ordinances of the City of Brewer, Maine.

801.3 APPLICATION FOR PERMIT (#4)

The application for a Flood Hazard Development Permit shall be submitted to the Code Enforcement Officer and shall include:

- A. The name, address and phone number of the applicant, owner and contractor;
- B. An address and a map indicating the location of the construction site;
- C. A site plan showing location of existing and/or proposed development, including but not limited to structures, sewage disposal facilities, water supply facilities, areas to be cut and/or filled, and the dimensions of the lot;)
- D. A statement of the intended use of the structure and/or development;
- E. A statement of the cost of the development including all materials and labor:
- F. ~~E.~~ A statement as to the type of sewage system proposed;
- G. ~~F.~~ Specification of dimensions of the proposed structure and/or development; ~~(items G—K.5 apply only to new construction and substantial improvement).~~

[Items H – K.2 apply only to new construction and substantial improvements.]

- H. ~~G.~~ The elevation in relation to National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD), or to a locally established datum in Zone A only, of the:
 - 1. base flood at the proposed site of all new or substantially improved structures, which is determined:

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- a. in Zone ~~AE A1-30~~, from data contained in the “Flood Insurance Study – Penobscot County City of Brewer, Maine,” as described in 801.1; or
- b. in Zone A
 - 1) from any base flood elevation data from federal, state, or other technical courses (such as FEMA Quick-2 model, FEMA 265/~~July 1995~~), including information contained pursuant to 802.~~K M~~ and 804.D.
 - 2) ~~in the absence of all data described in 801.3.H.1.b.1, information to demonstrate that the structure shall meet the elevation requirement in 802.H.2.b , 802.I.2.a or b, 802.J.2.b,—from the contour elevation extrapolated from a best fit analysis of the floodplain boundary when overlain onto a USGS Quadrangle Map or other topographic map prepared by a Professional Land Surveyor or registered professional engineer, if the floodplain boundary has a significant correlation to the elevation contour line(s), or in the absence of all other data.~~
 - 3) ~~to be the elevation of the ground at the intersection of the floodplain boundary and a line perpendicular to the shoreline which passes along the ground through the site of the proposed building.~~
2. highest and lowest grades at the site adjacent to the walls of the proposed building;
3. lowest floor, including basement; and whether or not such structures contain a basement; ~~and,~~
4. lowest machinery and equipment servicing the building, and,
5. ~~4.~~ level, in the case of non-residential structures only, to which the structure will be flood proofed.
- I. ~~H.~~ A description of an elevation reference point established on the site of all developments for which elevation standards apply as required in 802;
- J. ~~I.~~ A written certification by a Professional Land Surveyor, registered professional Maine engineer, ~~professional land surveyor~~ or architect that the base flood elevation and grade elevations shown on the application are accurate;

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K. ~~J~~. The following certifications as required in 802 by a registered professional engineer or architect:

1. A flood proofing certificate (FEMA Form 81-65, ~~08/99~~ as amended) to verify that the flood proofing methods for any non-residential structures will meet the flood proofing criteria of 801.3.G.4, 802.~~I~~ ~~G~~ and other applicable standards in 802.~~L~~.
2. A hydraulic openings certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of 802.~~N.2.a~~.
3. A certified statement that bridges will meet the standards of 802.~~O~~ ~~M~~.
4. A certificate that containment walls will meet the standards of 802.~~P~~ ~~N~~.

L. ~~K~~. A description of the extent to which any water course will be altered or relocated as a result of the proposed development;

M. ~~L~~. A statement of construction plans describing in detail how each applicable development standard in 802 will be met.

801.4 APPLICATION FEE AND EXPERT'S FEE (#4)

A non-refundable application fee, as set forth by the City Council and amended from time to time, shall be paid to the City Clerk and a copy of a receipt for the same shall accompany the application.

An additional fee may be charged if the Code Enforcement Officer and/or Board of Appeals need the assistance of a professional engineer or other expert. The expert's fee shall be paid in full by the applicant within 10 days after the City submits a bill to the applicant. Failure to pay the bill shall constitute a violation of the ordinance and be grounds for the issuance of a stop work order. An expert shall not be hired by the municipality at the expense of an applicant until the applicant has either consented to such hiring in writing or been given an opportunity to be heard on the subject. An applicant who is dissatisfied with a decision of the Code Enforcement Officer may appeal that decision to the Board of Appeals.

801.5 REVIEW STANDARDS FOR FLOOD HAZARD DEVELOPMENT PERMIT

APPLICATIONS (#4)

The Code Enforcement Officer shall:

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- A. Review all applications for the Flood Hazard Development Permit to assure that proposed developments are reasonably safe from flooding and to determine that all pertinent requirements of 802 (Development Standards) have been or will be met;
- B. Utilize, in the review of all Flood Hazard Development Permit applications:;
1. the base flood data contained in the “Flood Insurance Study – Penobscot County City of Brewer, Maine,” as described in 801.1.
 2. in special flood hazard areas where base flood elevation and floodway data are not provided, the Code Enforcement Officer shall obtain, review and reasonably utilize any base flood elevation and floodway data from federal, state or other technical sources, including information obtained pursuant to 801.3.H.1.b.1, paragraph G.1.b.; 802.M, paragraph K; and 804.paragraph D, in order to administer 802 of this Article; and
 3. ~~(3)~~ when the community establishes a base flood elevation in Zone A by methods outlined in 801.3.H.1.b.1 G.1.b., the community will submit the data to the Maine Floodplain Management Program e/o State Planning Office.
- C. Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in 801.1 of this Article;
- D. In the review of Flood Hazard Development Permit application, determine that all necessary permits have been obtained from those federal, state, and local government agencies from which prior approval is required by federal or state law, including but not limited to Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334;
- E. Notify adjacent municipalities, the Department of Environmental Protection, and the Maine Floodplain Management Program State Planning Office prior to any alteration or relocation of a water course and submit copies of such notifications to the Federal Emergency Management Agency;
- F. If the application satisfies the requirements of this ordinance, approve the issuance of one of the following Flood Hazard Development Permits, based on the type of development:
- 1) A two part Flood Hazard Development Permit for elevated structures. Part I shall authorize the applicant to build a structure to and including the first horizontal floor only above the base flood level. At that time the applicant shall provide the Code Enforcement Officer with an “under construction” application for Part II of the Flood

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~~Hazard Development Permit and shall include an~~ Elevation Certificate completed by a ~~surveyor registered Maine Professional Land Surveyor, registered professional engineer or architect based on the Part I permit construction~~ for verifying compliance with the elevation requirements of 802, paragraphs H, I, or J, ~~F, G, or H~~. Following review of the Elevation Certificate data application, which review shall take place within 72 hours of receipt of the application, the Code Enforcement Officer shall issue Part II of the Flood Hazard Development Permit, if elevation requirements are met. Part II shall authorize the applicant to complete the construction project; or,

- 2) A Flood Hazard Development Permit for Flood proofing of Non Residential Structures that are new construction or substantially improved non-residential structures that are not being elevated but that meet the Flood proofing standards of 802.I, G.1.a.b. and e. Their application for this permit shall include a flood proofing certificate signed by a registered professional engineer or architect; or,
 - 3) A Flood Hazard Development Permit for minor development for all development that is not new construction of substantial improvement, such as repairs maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. Minor development also includes, but is not limited to: accessory structures as provided for in 802.L, J., mining dredging, filling, grading paving, excavation, drilling operations, storage of equipment or materials, disposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures, and any structural, non-habitational projects including but not limited to: bridges, dams, towers, fencing, pipelines, wharves and piers.
- G. Maintain, as a permanent record, copies of all Flood Hazard Development Permit Applications, corresponding Permits issued and data relevant thereto, including reports of the Board of Appeals on variances granted under the provisions of 805 of this Article, and copies of Elevation Certificates, Certificates of Compliance, Flood proofing Certificates and certification of design standards required under the provisions of 801.3, 802 and 803 of this Article.

802 DEVELOPMENT STANDARDS (#4)

All developments in areas of special flood hazard shall meet the following applicable standards:

- A. All developments - All developments shall:

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1. be designed or modified and adequately anchored to prevent flotation, (excluding docks and piers) collapse or lateral movement of the development resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
 2. use construction materials that are resistant to flood damage;
 3. use construction methods and practices that will minimize flood damage; and,
 4. use electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- B. **Water Supply** - All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.
- C. **Sanitary Sewage Systems** - All new and replacement sanitary sewage systems shall be designed and located to minimize or eliminate infiltration of flood waters into the system and discharges from the systems into flood waters.
- D. **On Site Waste Disposal Systems** - On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during ~~floods~~ **flooding**.
- E. **Watercourse Carrying Capacity** - All development associated with altered or relocated portions of a watercourse shall be constructed and maintained in such a manner that no reduction occurs in the flood carrying capacity of the water course.
- F. **Utilities** - New construction or substantial improvement of any residential structure ~~(including manufactured homes) located within Zones A and AE, shall have the bottom of all electrical, heating, plumbing, ventilation and air conditioning equipment, permanent fixtures and components, HVAC ductwork and duct systems, and any other utility service equipment, facilities, machinery, or connections servicing a structure, elevated to at least one foot above the base flood elevation. located within:~~
- ~~1. Zones A1-30 shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation.~~
 - ~~2. Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to 801.3 paragraph G.1.b.; 801.5, paragraph B; or 804 paragraph D.~~

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- G. **Physical Changes to the Natural Landscape.** Certain development projects, including but not limited to, retaining walls, sea wall, levees, berms, and rip rap, can cause physical changes that affect flooding conditions.
1. All development projects in Zones AE and VE that cause physical changes to the natural landscape shall be reviewed by a Professional Engineer to determine whether or not the project changes the base flood elevation, zone, and/or the flood hazared boundary line.
 - a. If the Professional Engineer determines, through the use of engineering judgement, that the project would not necessitate a Letter of Map Revision (LOMR), a certified statement shall be provided.
 - b. If the Professional Engineer determines that the project may cause a change, a hydrologic and hydraulic analysis that meets current FEMA standards shall be performed.
 2. If the hydrologic and hydraulic analysis performed indicates a change to the base flood elevation, zone, and/or the flood hazard boundary line, the applicant may submit a Conditional Letter of Map Revision (C-LOMR) request to the Federal Emergency Management Agency for assurance that the as-built project will result in a change to the Flood Insurance Rate Map. Once the development is completed, a request for a Letter of Map Revision (LOMR) shall be initiated.
 3. If the hydrologic and hydraulic analysis performed show a change to the base flood elevation, zone, and/or the flood hazard boundary line, as soon as practicable, but no later than 6 months after the completion of the project, the applicant shall submit the technical data to FEMA in the form of a Letter of Map Revision request.
- H. **Residential.** New construction or substantial improvement of any residential structure located within:
1. Zone AE shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation.
 2. Zone A shall have the lowest floor including basement) elevated:
 - a. To at least one foot above the base flood elevation utilizing information obtained pursuant to 801.3.H.1.b.1, 801.5.B, or 804.D: or,
 - b. In the absence of all data described in 802.H.2.a, to at least two feet above the highest adjacent grade to the structure.
- I. **G. Non-Residential.** New construction or substantial improvement of any non-residential structure located within:

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1. ~~Zone AE-Zones A1-30~~ shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation, or together with attendant utility and sanitary facilities shall:
 - a. be flood proofed to at least one foot above the base flood level so that below that elevation the structure is watertight with walls substantially impermeable to passage of water;
 - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
 - c. be certified by a registered professional engineer or architect that the flood proofing design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by 801.3.K ~~paragraph J.~~ and shall include a record of the elevation above mean sea level to which the structure is flood proofed.

2. Zone A shall have the lowest floor (including basement) elevated:
 - a. to at least one foot above the base flood elevation utilizing information obtained pursuant to 801.3.H.1.b.1 ~~paragraph G-1.b.~~; 801.5.B, ~~paragraph B.~~ or 804.D, ~~paragraph D.~~
 - b. In the absence of all data described in 802.I.2.a, to at least two feet above the highest adjacent grade to the structure; or,
 - c. Together with attendant utility and sanitary facilities meet the flood proofing standards of 802.I.1.a,b, and c.

J.-H. Manufactured Homes - New or substantially improved manufactured homes located within:

1. Zones ~~A1-30~~ AE shall:
 - a. be elevated such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation; ~~and~~
 - b. be on a permanent foundation, which may be poured masonry slab or foundation walls with hydraulic openings, or may be reinforced piers or block supports, any of which support the manufactured home so that no weight is supported by its wheels and axles, and;

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- c. be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to:
 1. ~~d.~~ over-the-top ties anchored to the ground at the four corners of the manufactured home, plus two additional ties per side at intermediate points (manufactured homes less than 50 feet long require one additional tie per side); or by,
 2. ~~e.~~ frame ties at each corner of the home, plus five additional ties along each side at intermediate points (manufactured homes less than 50 feet long require four additional ties per side).
 3. ~~f.~~ all components of the anchoring system described in 802, paragraph ~~JH.1.c.~~ (1) (2) shall be capable of carrying a force of 4800 pounds.

2. Zone A shall:
 - a. ~~have to be erected elevated~~ on a permanent foundation as described in 802.~~J.1.b~~ ~~H.b~~ such that the lowest floor (including basement) ~~of the manufactured home elevated to is~~ at least one foot above the base flood elevation utilizing information obtained pursuant to 801.3.~~H.1.b.1~~ , ~~paragraph G.1.b.~~; 801.5.B, ~~paragraph B~~; or 804.~~D~~, ~~paragraph D~~.
 - b. ~~in the absence of all data as described in 802.J.2.a, to at least two feet above the highest adjacent grade to the structure; and,~~
 - c. ~~meet the anchoring requirements of 802.J.1.c.~~

~~K.-I. Recreational Vehicles~~ – ~~Recreational Rec.~~ Vehicles located within Zones ~~A and AE A1-A30~~ shall either:

1. Be on the site less than 180 consecutive days ~~in any calendar year; and~~
2. Be fully licensed and ready for highway use. ~~A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions;~~ or
3. Be permitted in accordance with the elevation and anchoring requirements for manufactured homes in 802.~~J~~ ~~H.1.~~

~~L.-J. Accessory Structures~~. ~~New construction or substantial improvement of~~ Accessory structures as defined in 809, ~~located within Zones A1-A30 and A~~ shall be exempt from the elevation criteria required

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in 802 ~~H F~~ and ~~I G~~ above if all other requirements of 802 and the following requirements are met. Accessory structures located in Zones A and AE shall:

1. ~~Meet the requirements of 802.A.1 through 4 , as applicable. Be 500 square feet or less and have a value of less than \$3000.~~
2. Have unfinished interiors and not be used for human habitation.
3. Have hydraulic openings, as specified in 802.~~N L~~.2. in at least two different walls of the structure.
4. Be located outside the floodway.
5. When possible, located and placed on the site so as to offer the minimum resistance to the flow of floodwaters and be placed no further from the source of flooding than is the primary structure.
6. Have only ground fault interrupt outlets. The electric service disconnect shall be located above the base flood elevation and when possible outside the Special Flood Hazard Area.
7. Be limited in size to a one-story two car garage.

~~M.-K~~ Floodways.:

1. In Zone AE Zones A1-30, riverine areas, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted within a regulatory floodway which is designed on the community's Flood Insurance Rate Map, "Flood Boundary" and "Floodway Map" unless a technical evaluation certified by a registered professional engineer is provided demonstrating that such encroachments will not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
2. In Zones ~~A1-A30 and A A~~ and AE, riverine areas for which no regulatory floodway is designated, encroachments including fill, new construction substantial improvement and other development shall not be permitted in the floodway as determined in 802.~~M K~~.3 unless a technical evaluation by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development when combined with all other existing development and anticipated development:

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- a. will not increase the water surface elevation of the base flood more than one foot at any point within the community; and
 - b. is consistent with the technical criteria contained in FEMA's guidelines and standards for flood risk analysis and mapping Chapter 5 entitled "Hydraulic Analyses" (sic) Flood Insurance Study—Guidelines for Study Contractors (FEMA 37/Jan 1995, as amended).
3. In Zone ~~A1-A30 and A~~ A and AE riverine areas, for which no regulatory floodway is designated, the regulatory floodway is determined to be the channel of the river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain as measured from the normal high water mark to the upland limit of the floodplain.

N.-L. Hydraulic Openings/Flood Vents. New construction or substantial improvement of any structure in Zones ~~A1-30 and A~~ A and AE that meets the development standards of 802, including the elevation requirements of 802, paragraphs H, I, or J F, G or H and is elevated on posts, columns, piers, piles, "stilts," or crawl spaces may be enclosed below the base flood elevation provided all the following criteria are met or exceeded:

1. Enclosed areas are not "basements" as defined in 809; and,
2. Enclosed areas shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either:
 - a. be certified by a registered professional engineer or architect; or,
 - b. meet or exceed the following minimum criteria:
 - 1) a minimum of two openings of approximately equal size having a total net area of not less than one square inch for every square foot of the enclosed area;
 - 2) the bottom of all openings shall be below the base flood elevation and no higher than one foot above the lowest grade; and,
 - 3) openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the entry and exit of flood waters automatically without any external influence or control such as human intervention, including the use of electrical and other non-automatic mechanical means; and,
3. The enclosed area shall not be used for human habitation; and,

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4. The enclosed area may only be used for building access, parking vehicles, or storage.

~~O.-M.~~ Bridges -- new construction or substantial alteration of any bridge in ~~Zone A1-A30 and A~~ Zones A and AE shall be designed such that:

1. when possible, the lowest horizontal member (excluding pilings or columns) is elevated at least one foot above the base flood elevation, and
2. a registered professional engineer shall certify that:
 - a. ~~3.~~ the structural design and methods of construction shall meet the elevation requirements of this section and the floodway standards of 802 ~~M K~~ and
 - b. ~~4.~~ the foundation and superstructure attached thereto are designed to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all structure components. Water loading values shall be those associated with the base flood.

~~P.-N.~~ Containment Walls – new construction or substantial improvement of any containment wall located within Zones ~~A1-A30 and A~~ and AE shall:

- a. have containment wall elevated to at least one foot above the base flood elevation;
- b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
- c. be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit as required by 801.3.~~K J~~.

~~Q.-O.~~ Wharves, Piers, and Dock – new construction or substantial alteration of wharves, piers and docks are permitted in Zones A and ~~A1-A30 AE~~ in and over water and shall comply with all applicable local, state, and federal regulations. ~~–seaward of mean high tide if the following requirements are met:~~

- ~~1. wharves, piers and docks shall comply with all applicable local, state and federal regulations; and~~
- ~~2. for commercial wharves, piers and docks, a registered professional engineer shall develop or review the structural design, specifications and plans for the construction.~~

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803 CERTIFICATION OF COMPLIANCE (#4)

No land in a special flood hazard area shall be occupied or used and no structure which is constructed or substantially improved shall be occupied until a Certificate of Compliance is issued by the Code Enforcement Officer subject to the following provisions:

A. For new construction or substantial improvement of any elevated structure the applicant shall submit to the Code Enforcement Officer: ~~B.~~ an Elevation Certificate completed by a Professional Land Surveyor, registered engineer or architect for compliance with 802 H, I, or J F., ~~G.~~ or ~~H.~~

~~B.-C.~~ The applicant shall submit written notification to the Code Enforcement Officer that the development is complete and complies with the provisions of this ordinance.

~~C.-D.~~ The Code Enforcement Officer shall review the application within 10 working days of receipt of the application and shall issue a Certificate of Compliance, provided the building conforms with the provisions of this Article and other pertinent provisions of the City of Brewer Ordinances.

804 REVIEW OF SUBDIVISION AND DEVELOPMENT PROPOSALS

The Planning Board shall, when reviewing subdivisions and other proposed developments that require review under other federal law, state law or local ordinances or regulations and all projects on 5 or more acres, or in the case of manufactured home parks divided into two or more lots, assure that:

- A. All such proposals are consistent with the need to minimize flood damage.
- B. All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damages.
- C. Adequate drainage is provided so as to reduce exposure to flood hazards.
- D. All proposals include base flood elevation, flood boundaries, and in a riverine floodplain, floodway data. These determinations shall be based on engineering practices recognized by the Federal Emergency Management Agency.
- E. Any proposed development plan must include a condition that structures on any lots in the development having any portion of its land within a Special Flood Hazard Area are to be constructed in accordance with 802 of this Article. Such requirement will be included in any deed, lease, purchase and sale agreement, or document transferring or expressing intent to transfer any interest in real estate or structure, including but not limited to a time share interest. The statement shall clearly articulate that the municipality may enforce any violation of the construction requirement and that fact shall also be included in the deed on any other document

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previously described. The construction requirement shall also be clearly stated on any map, plat, or plan to be signed by the Planning Board or local reviewing authority as part of the approval process.

805 APPEALS AND VARIANCES (#4)

The Board of Appeals of the City of Brewer may, upon written application of an aggrieved party, hear and decide appeals from determinations of the Code Enforcement Officer or the Planning Board in the administration of the provision of this Article. The Board of Appeals may grant a variance from the requirements of this Article consistent with state law and the following criteria:

- A. Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.

- B. Variances shall be granted only upon:
 1. a showing of good and sufficient cause; and,

 2. a determination that should be a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public or conflict with existing local laws and ordinances; and,

 3. a showing that the existence of the variance will not cause a conflict with other state, federal or local laws or ordinances; and,

 4. a determination that failure to grant the variance would result in “undue hardship,” which in this subsection means:
 - a. that the land in question cannot yield a reasonable return unless a variance is granted; and,

 - b. that the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and,

 - c. that the granting of a variance will not alter the essential character or the locality; and

 - d. that the hardship is not the result of action taken by the applicant or a prior owner.

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- C. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and the Board of Appeals may impose such conditions to a variance as it deems necessary.
- D. Variances may be issued for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that:
1. other criteria of 805 a through c and 802. ~~M K~~ are met; and,
 2. the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- E. Variances may be issued for the repair, reconstruction, rehabilitation, or restoration of Historic Structures upon the determination that:
1. the development meets the criteria of 805 a through c, ~~paragraphs A. thru D.~~ above; and,
 2. the proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as a Historic Structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- F. Variances may be issued for new construction and substantial improvement of Agricultural Structures being used for the conduct of agricultural uses provided that:
1. the development meets the criteria of 805 A. through C; and,
 2. the development meets the criteria of 802.M and 802.N.
- G. ~~F.~~ Any applicant who meets the criteria of 805 ~~paragraphs A through C E~~ and 805 D, E, or F shall be notified by the Board of Appeals in writing over the signature of the Chairman of the Board of Appeals that:
1. The issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage;
 2. Such construction below the base flood level increase risks to life and property; and,
 3. The applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the municipality

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from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.

- H. ~~G. Appeal Procedure for Administrative and Variance Appeals. The Board of Appeals shall submit to the Code Enforcement Officer a report of all variance actions, including justification for the granting of the variance and an authorization for the Code Enforcement Officer to issue a Flood Hazard Development Permit, which includes any conditions to be attached to said permit.~~
1. An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party within thirty days after receipt of a written decision of the Code Enforcement Officer or Planning Board.
 2. Upon being notified of an appeal, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the documents constituting the record of the decision appealed from.
 3. The Board of Appeals shall hold a public hearing on the appeal within thirty-five days of its receipt of an appeal request.
 4. The person filing the appeal shall have the burden of proof.
 5. The Board of Appeals shall decide all appeals within thirty-five days after the close of the hearing and shall issue a written decision on all appeals.
 6. The Board of Appeals shall submit to the Code Enforcement Officer a report of all variance actions, including justification for the granting of the variance and an authorization for the Code Enforcement Officer to issue a Flood Hazard Development Permit, which includes any conditions to be attached to said permit.
 7. Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty-five days from the date of any decision of the Board of Appeals.

806 ENFORCEMENT AND PENALTIES

- A. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Article pursuant to 30-A MRSA sec. 4452. (#4)
- B. The penalties contained in 30-A MRSA sec. 4452 shall apply to any violation of this Article.
- C. In addition to any other actions, the Code Enforcement Officer, upon determination that a violation exists, shall submit a declaration to the Administrator of the Federal Insurance Administration requesting a denial of flood insurance. the valid declaration shall consist of:
 1. the name of the property owner and address or legal description of the property sufficient to confirm its identity or location;

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2. a clear and unequivocal declaration that the property is in violation of a cited state or local law, regulation, or ordinance;
3. a clear statement that the public body making the declaration has authority to do so and a citation to that authority;
4. evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and,
5. a clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

807 VALIDITY AND SEVERABILITY

If any section or provision of this Article is declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Article.

808 CONFLICT WITH OTHER ORDINANCES

This Article shall not in any way impair or remove the necessity of compliance with any other applicable rule, ordinance, regulation, bylaw, permit, or provision of law. Where this Article imposes a greater restriction upon the use of land, buildings, or structures, the provisions of this Article shall control.

809 DEFINITIONS (#4)

Unless specifically defined below, words and phrases used in this Article shall have the same meaning as they have at common law and to give this Article its most reasonable application. Words used in the present tense include the future, the singular number includes the plural, and the plural number includes the singular. The word "may" is permissive; "shall" is mandatory and not discretionary.

[Note: Amendment will renumber current numbering of definitions.]

1. "Accessory Structure" – means a small detached structure that is incidental and subordinate to the principal structure.
2. "Adjacent Grade" - means the natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
3. "Agricultural Structure" – means structures that are used exclusively for agricultural purposes or uses in connection with the production, harvesting, storage, raising, or drying of agricultural commodities and livestock. Structures that house tools or equipment used in connection with these purposes or uses are also considered to have agricultural purposes or uses.

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4. "Area of Special Flood Hazard" - means the land in the floodplain having a one percent or greater chance of flooding in any given year, as specifically identified in the Flood Insurance Study cited in 801 of this Article.
5. "Base Flood" - means the flood having a one percent ~~chance~~ ~~change~~ of being equaled or exceeded in any given year, commonly called the 100-year flood.
6. "Basement" - means any area of the building having its floor subgrade (below ground level) on all sides.
7. "Building" - see "structure."
8. "Certificate of Compliance" - A document signed by the Code Enforcement Officer stating that a structure is in compliance with all of the provisions of this Article.
9. "Code Enforcement Officer" - is the person who is appointed as an Executive Officer of the Department of Inspections pursuant to the Brewer, ME, Building Code, Article 16, Section 109.
10. "Containment Wall" – means a wall surrounding all sides of an above ground tank to contain any spills or leaks.
11. "Development" - means any change caused by individuals or entities to improved or unimproved real estate, including but not limited to ~~the construction of~~ buildings or other structures; ~~the construction of additions or substantial improvements to buildings or other structures;~~ mining, dredging, filling, grading, paving, excavation, ~~or~~ drilling operations or the storage of equipment or materials; and the storage, deposition, or extraction of materials, ~~public or private sewage disposal systems or water supply facilities.~~
12. Digital Flood Insurance Rate Map (DFIRM). An official digital map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.
13. "Elevated Building" - means a non-basement building (i) built, in the case of a building in Zones A or AE A1-A30, and A, to have the top of the elevated floor, elevated above the ground level by means of pilings, columns, posts, piers, or shear walls ~~"stilts;"~~ and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood of up to one foot above the magnitude of the base flood. In the case of Zones A or AE A1-A30, or A, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with

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hydraulic openings sufficient to facilitate the unimpeded movement of flood waters as required in 802.N L.

14. "Elevation Certificate" - An official form (FEMA Form 81-31, ~~08/99~~, as amended) that (i) is used to verify compliance with the floodplain management regulations of the National Flood Insurance Program; and, (ii) is required for purchasing flood insurance.

15. Existing Manufactured Home Park or Subdivision. A manufactured home park or subdivision that was recorded in the deed registry prior to the adoption date of the community's first floodplain management regulations.

16. "Flood" or "Flooding" - means:
 - a) A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - 1) The overflow of inland or tidal waters.
 - 2) The unusual and rapid accumulation or runoff of surface waters from any source.
 - b) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (a)(1) of this definition.

17. "Flood Elevation Study" - means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

18. "Flood Insurance Rate Map" (FIRM) - means an official map of a community, on which the Administrator of the Federal Insurance Administration has delineated both the special hazard areas and the risk premium zones applicable to the community.

19. "Flood Insurance Study" see "Flood Elevation Study."

20. "Floodplain" or "Flood-prone Area" - means any land area susceptible to being inundated by water from any source (see definition of "flooding").

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21. "Floodplain Management" - means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.
22. "Floodplain Management Regulations" - means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance, and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.
23. "Flood Proofing" - means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.
24. "Floodway" - "see Regulatory Floodway."
25. "Floodway Encroachment Lines" - mean the lines marking the limits of floodways on federal, state, and local floodplain maps.
26. "Freeboard" - means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions.
27. "Functionally Dependent Use" - means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.
28. "Historic Structure – means any structure that is:
 - a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
 - b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;

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- c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
 - d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - 1. By an approved state program as determined by the Secretary of the Interior; or
 - 2. Directly by the Secretary of the Interior in states without approved programs.
29. "Locally Established Datum" - means, for purposes of this ordinance, an elevation established for a specific site to which all other elevations at the site are referenced. This elevation is generally not referenced to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD), or any other established datum and is used in areas where Mean Sea Level data is too far from a specific site to be practically used.
30. "Lowest Floor" - means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements 802.N of this ordinance.
31. "Manufactured Home" - means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.
32. "Manufactured Home Park or Subdivision" - means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
33. "Mean Sea Level" - means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD), other datum, to which base flood elevations shown on a community's Flood Insurance Rate map are referenced.
34. Minor Development – means all development that is not new construction or substantial improvements such as repairs, maintenance renovations or additions, whose value is less than 50% of the market value of the structure. It also includes, but is not limited to: accessory structures as provided for in 802.L J., mining, dredging, filling, grading, paving, excavation,

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drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves and piers.

35. National Geodetic Vertical Datum (NGVD) – means the national vertical datum, whose standard was established in 1929, which is used by the National Flood Insurance Program (NFIP). NGVD was based upon mean sea level in 1929 and also has been called “1929 Mean Sea Level (MSL)”.
36. "New Construction" - means structures for which the "start of construction" commenced on or after the effective date of floodplain management regulations adopted by a community and includes any subsequent improvements to such structures. (1978)
37. North American Vertical Datum (NAVD) – means the national datum whose standard was established in 1988, which is the new vertical datum used by the National Flood Insurance Program (NFIP) for all new Flood Insurance Rate Maps. NAVD is based upon the vertical datum used by other North American countries such as Canada and Mexico and was established to replace NGVD because of constant movement of the earth’s crust, glacial rebound and subsidence, and the increasing use of satellite technology.
38. "100-year flood" see "Base Flood."
39. Recreational Vehicle – means a vehicle which is:
 - a. built on a single chassis
 - b. 400 square feet or less when measured at the largest horizontal projection not including slide outs
 - c. designed to be self-propelled or permanently towable by a vehicle
 - d. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.
40. "Regulatory Floodway" - (i) means the channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height ~~one foot~~, and (ii) when not designated on the community’s Flood Insurance Rate Map, it ~~is Zone A~~ is considered to be the channel of a river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain as measured from the normal high water mark to the upland limit of the floodplain.

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41. "Riverine" - means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.
42. Special Flood Hazard Area – see Area of Special Flood Hazard
43. "Start of Construction" - means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, substantial improvement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, or modification of any construction element, whether or not that alteration affects the external dimensions of the building.
44. "Structure" - means, for floodplain management purposes, a walled and roofed building. A gas or liquid storage tank that is principally above ground is also a structure.
45. Substantial Damage – means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed 50% of the market value of the structure before the damage occurred.
46. "Substantial Improvement" - means any ~~repair~~, reconstruction, rehabilitation, addition, or improvement of a structure, the ~~cost value~~ of which equals, or exceeds 50% of the market value of the structure ~~either~~ before the start of construction of the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred. For purposes of this definition "substantial improvement" is considered to occur at the time of the first alteration of any wall, ceiling, floor, or structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. This term does not, however, include either (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local Code Enforcement Official and which are the minimum necessary to assure safe living conditions or (2) any alteration of a Historic Structure, structure listed on the National Register of Historic Places or a State Inventory of Historic Places provided that such

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alteration would not preclude the structure's continued designation as a historic structure and a variance is obtained by the community's Board of Appeals.

47. "Variance" - means a grant of relief by a community from the terms of a floodplain management regulation.
48. "Violation" - means the failure of a structure or other development to fully comply with a community's floodplain management regulations or ordinance.

810 ABROGATION

This article repeals and replaces any municipal Article previously enacted to comply with the National Flood Insurance Act of 1968 (P.L. 90-488, as amended).

811 DISCLAIMER OF LIABILITY

The degree of flood protection required by this Article is considered reasonable but does not imply total flood protection.

ARTICLE 14 DEFINITIONS

For the purpose of this Ordinance, the following terms, phrases, words and their definitions shall have the meaning given herein. When non-inconsistent with the context, words used in the present tense include the future, words in the plural include the singular and words in the singular include the plural. The word "shall" is always mandatory and not discretionary in sense.

Further, any terms, phrases, words and their derivation not defined herein shall be given that definition which is promulgated in Webster's New World College Dictionary, Fifth Edition, Copyright 2014, on file in the City Clerk's Office. (#39)

Floodplain Definitions – see Article 8 Floodplain Management, section 809 Definitions

~~**Adjacent Grade:** The natural elevation of the ground surface prior to construction next to the proposed walls of a structure.~~

~~**Area of Shallow Flooding:** A designated AO and AH zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.~~

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~~———— **Area of Special Flood Hazard:** The land in the floodplain having a one percent or greater chance of flooding in any given year, as specifically identified in the Flood Insurance Study cited in Article 8 of this Land Use Code.~~

~~———— **Base Flood:** The flood having a one percent chance of being equaled or exceeded in any given year, commonly called the 100-year flood.~~

~~**Basement:** Any area of the building having its floor subgrade (below ground level) on all sides.~~

~~———— **Breakaway Wall:** A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.~~

~~———— **Building:** See "Structure."~~

~~———— **Certificate of Compliance:** A document signed by the Code Enforcement Officer stating that a structure is in compliance with all of the provisions of this Article.~~

~~———— **Development:** Any change caused by individuals or entities to improved or unimproved real estate, including but not limited to the construction of buildings or other structures; the construction of additions or substantial improvements to buildings or other structures; mining, dredging, filling, grading, paving, excavation, or drilling operations; and the storage, deposition, or extraction of materials, public or private sewage disposal systems or water supply facilities.~~

~~———— **Elevated Building:** A non-basement building (i) built, in the case of a building in Zones A2, A5 and/or A8, to have the top of the elevated floor, elevated above the ground level by means of pilings, columns, posts, piers, or "stilts;" and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood of up to one foot above the magnitude of the base flood. In the case of Zones A2, A5 and/or A8, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls less than three feet in height with openings sufficient to facilitate the unimpeded movement of flood waters.~~

~~———— **Elevation Certificate:** An official form (FEMA Form 81-31, May, 1993, as amended) that (i) is used to verify compliance with the floodplain management regulations of the National Flood Insurance Program; and, (ii) is required as a condition for purchasing flood insurance.~~

Flood or Flooding:

~~(a) — A general and temporary condition of partial or complete inundation of normally dry land areas from:~~

~~(1) — The overflow of inland or tidal waters.~~

~~(2) — The unusual and rapid accumulation or runoff of surface waters from any source.~~

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~~b) — The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (a)(1) of this definition.~~

~~—— **Flood Elevation Study:** An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.~~

~~—— **Flood Insurance Rate Map (FIRM):** An official map of a community, on which the Administrator of the Federal Insurance Administration has delineated both the special hazard areas and the risk premium zones applicable to the community.~~

~~—— **Flood Insurance Study:** see "Flood Elevation Study."~~

~~—— **Floodplain or Flood-prone Area:** Any land area susceptible to being inundated by water from any source (see definition of "flooding").~~

~~—— **Floodplain Management:** The operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.~~

~~**Floodplain Management Regulations:** Zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance, and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.~~

~~—— **Flood Proofing:** Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.~~

~~**Floodway:** See "Regulatory Floodway."~~

~~—— **Floodway Encroachment Lines:** The lines marking the limits of floodways on federal, state, and local floodplain maps.~~

~~—— **Freeboard:** A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed, that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions.~~

~~**Functionally Dependent Use:** A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are~~

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necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long term storage or related manufacturing facilities.

~~**Locally Established Datum:** For purposes of this ordinance, an elevation established for a specific site to which all other elevations at the site are referenced. This elevation is generally not referenced to the National Geodetic Vertical Datum (NGVD) or any other established datum and is used in areas where Mean Sea Level data is too far from a specific site to be practically used.~~

~~———— **Lowest Floor:** The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements 20A-VI of this ordinance.~~

~~———— **Mean Sea Level:** For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, other datum, to which base flood elevations shown on a community's Flood Insurance Rate map are referenced.~~

~~———— **New Construction:** Structures for which the "start of construction" commenced on or after the effective date of floodplain management regulations adopted by a community. (1978)~~

~~———— **100-year flood:** See "Base Flood."~~

~~———— **Regulatory Floodway:** (i) The channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot, and (ii) in Zone A is considered to be the channel of a river or other water course and the adjacent land areas to a distance of one half the width of the floodplain as measured from the normal high water mark to the upland limit of the floodplain.~~

~~———— **Riverine:** Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.~~

~~———— **Start of Construction:** The date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, substantial improvement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.~~

~~———— **Structure:** For floodplain management purposes, a walled and roofed building. A gas or liquid storage tank that is principally above ground is also a structure.~~

~~———— **Substantial Improvement:** Any repair, reconstruction, or improvement of a structure, the value of which equals, or exceeds 50% of the market value of the structure either before the improvement or~~

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~~repair is started or, if the structure has been damaged and is being restored, before the damage occurred. For purposes of this definition "substantial improvement" is considered to occur at the time of the first alteration of any wall, ceiling, floor, or structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either (1) any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or (2) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places provided that such alteration would not preclude the structure's continued designation as a historic structure.~~

~~———— **Variance:** A grant of relief by a community from the terms of a floodplain management regulation.~~

~~———— **Violation:** The failure of a structure or other development to fully comply with a community's floodplain management regulations or ordinance.~~

Statement of Fact: These ordinance amendments are proposed to correspond with new FEMA regulations and clarify the Land Use Code by removing duplicate definitions within the ordinance. The Brewer Planning Board held a public hearing on April 3, 2023 and voted unanimously to recommend adopting these amendments to Chapter 24 "Land Use Code" as written.

2023-C007

April 11, 2023

TITLE: ORDER, AMEND CHAPTER 22 OF THE CHARTER, CODES AND ORDINANCES OF THE CITY OF BREWER, ENTITLED "SOLID WASTE ORDINANCE", ARTICLE 4.

Filed April 6, 2023
By Joseph L. Ferris and
Michele Daniels

BE IT ORDAINED, by the Brewer City Council that Chapter 22 of the Charter, Codes and Ordinances of the City of Brewer entitled "Solid Waste Ordinance", Article 4, shall be amended as follows:

Section 4.4 Non-Municipal Collections

The owners or authorized agents of every property that has more than four (4) units and every commercial property shall place such suitable containers in a place convenient for the removal of the contents by the persons authorized to collect the same. Such owners or authorized agents shall place such containers only on the premises occupied or owned by them. No other person except the owner or authorized agent of the premises or an authorized collector shall remove, take or otherwise disturb the waste matter, or any waste matter, or any portion thereof so placed for the removal.

Section 4.4.1 Collection Time

No commercial collections shall be done at a time of day between 7:00 pm and 7:00 am, if such collections create a disturbance for residential properties.

Section 4.7 Penalties

Any Person, firm, corporation, or other legal entity found to be in violation of any of the provisions of Subsection 4.3.3 or 4.3.4 of this Chapter shall be subject to a civil penalty of Five Hundred Dollars

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(\$500.00) for each initial violation. Additional violations of Subsection 4.3.3 or 4.3.4 of this Chapter within a one (1) year period from the initial violation shall be subject to an additional civil penalty of Two-Hundred Fifty-Dollars (\$250.00) for each additional violation thereafter.

Section 4.7.1 Commercial Penalties

Any person, firm, corporation, or other legal entity found to be in violation of any of the provisions of Article 4, Section 4.4 & 4.4.1 after having been duly notified by the Code Enforcement Officer who continues act in violation of these sections shall be subject to a civil penalty of One-Thousand Dollars (\$1,000.00) for each initial violation. Additional violations of this Article of this Chapter within a one (1) year period from the initial violation shall be subject to an additional civil penalty of Five-Hundred Dollars (\$500.00) for each additional violation thereafter.

Statement of Fact: This amendment is being offered due to ongoing residential complaints regarding commercial trash haulers creating noise disturbances as early as 4:00 am while picking up trash for a commercial property that abuts a residential neighborhood. City staff spoke with the hauler and commercial property owner to request a change in the pickup schedule and they refused to make any accommodations since the ordinance was silent on this issue.

ACTION: Councilor Daniels moved that the amendments on the consent calendar be enacted. Councilor Ferris seconded the motion. The motion passed with a unanimous vote.

G. New Business

2023-C008

May 9, 2023

TITLE: ORDER, ENACT AND ADD CHAPTER 51 OF THE CHARTER, CODES AND ORDINANCES OF THE CITY OF BREWER, ENTITLED “CITY OF BREWER MORATORIUM ORDINANCE ON CERTAIN HOUSING REGULATIONS”.

Filed May 5, 2023
By Jerry Goss and
Soubanh Phanthay

WHEREAS, the 130th Legislature of the State of Maine enacted LD 2003, “An Act To Implement the Recommendations of the Commission To Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions” (P.L. 2022, Ch. 672, “LD 2003”); and

WHEREAS, the State-mandated changes to local zoning contained within LD 2003 currently have an implementation date of July 1, 2023; and

WHEREAS, in the current session of the Maine Legislature, there are numerous bills pending that may or may not amend the substantive provisions of LD 2003 and/or postpone its implementation date of July 1, 2023; and

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WHEREAS, the Maine Department of Economic and Community Development (“DECD”) was tasked with preparing rules for municipalities to assist with understanding LD 2003 and amending local ordinances; and

WHEREAS, DECD has not yet completed said rules, and

WHEREAS, once said rules are completed, the City needs time to review said DECD rules; and

WHEREAS, the City of Brewer desires to revise ordinances to meet the State law and implementing regulations, meet the City of Brewer Comprehensive Plan, and provide the best regulations for the residents of the City of Brewer for orderly and responsible development; and

WHEREAS, the afordescribed uncertainties and incomplete actions by the State present significant challenges for the City of Brewer to meaningfully prepare, review, and adopt ordinances and/or regulations consistent with LD 2003 and, further, without such enactments by the City of Brewer the current City ordinances are insufficient to prevent serious public harm or overburdening of public facilities given the potential for significantly more dense development in the City of Brewer contemplated by LD 2003; and

WHEREAS, a moratorium is necessary for the City to review its Land Use Code and other applicable Codes and Ordinance to determine the implications of LD 2003 and prepare, review, and adopt ordinance/code provisions to prevent serious public harm or overburdening of public facilities; and

WHEREAS, the process for amending local ordinances takes several months for public hearing, Planning Board review and recommendation, and City Council posting and action; and

WHEREAS, this ordinance amendment procedure cannot be completed prior to the current State implementation date of July 1, 2023 for LD 2003; and

WHEREAS, it is anticipated that said review and development of recommended ordinance changes will take at least one hundred and eighty (180) days from the date the City enacts this Moratorium Ordinance on Certain Housing Regulations.

NOW, THEREFORE, BE IT ENACTED by the City Council of the City of Brewer that the following Chapter 51 entitled “Moratorium Ordinance on Certain Housing Regulations” be, and hereby is, enacted, and, in furtherance thereof, the City Council does hereby declare a moratorium on the acceptance and processing of any applications in the City not currently authorized by existing Ordinances and Codes but have the potential to be authorized through implementation of LD 2003.

This Moratorium Ordinance shall remain in effect for one hundred and eighty (180) days from the date of applicability of this Ordinance, unless extended, repealed, or modified by the City Council, for express purpose of drafting an amendment or amendments to the City’s current Land Use Code and

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other applicable Codes and Ordinances to adequately address the requirements of LD 2003, as may be amended.

BE IT FURTHER ENACTED, that notwithstanding the provisions of 1 M.R.S.A. § 302 or any other law to the contrary, this Ordinance, when enacted, shall govern any zoning regulations for which an application for a building permit, Certificate of Occupancy, site plan, subdivision, or any other required approval has not been submitted to and granted final approval by the Code Enforcement Officer, Planning Board, or other City officials or boards prior to the applicability date of this Ordinance.

BE IT FURTHER ENACTED, that during the time this Moratorium Ordinance is in effect, no officer, official, employee, office, administrative board or agency of the City shall accept, process, approve deny, or in any other way act upon any application for a license, building permit, Certificate of Occupancy, special exception review, site plan review, subdivision review, and/or any other permits or licenses related to the regulation created by LD 2003 unless existing City ordinances and regulations authorize such activity(ies).

BE IT FURTHER ENACTED, that those provisions of the City's current Land Use Code and other applicable Codes and Ordinances that are inconsistent or conflicting with the provisions of this Ordinance, are hereby repealed to the extent that they are applicable for the duration of the moratorium hereby ordained and as it may be extended as permitted by law, but not otherwise.

BE IT FURTHER ENACTED, that if an entity is in violation of this Ordinance, each day of any continuing violation shall constitute a separate violation of this Ordinance, and the City shall be entitled to all rights available to it in law and equity, including, but not limited to, fines and penalties, injunctive relief, and its reasonable attorney's fees and costs in prosecuting any such violations; and

BE IT FURTHER ENACTED, that should any section or provision of this Ordinance be declared by any court of competent jurisdiction to be invalid, such a declaration shall not invalidate any other section or provision.

Statement of Fact: This Moratorium Ordinance is to prevent certain housing and development activities that are contemplated from legislation of LD 2003 that are not currently authorized by existing City ordinances and regulations for a period of one hundred eighty (180) days from the date of enactment of this Moratorium Ordinance.

ACTION: Councilor Goss moved that the amendment be certified and filed with the City Clerk for posting. Councilor Daniels seconded the motion. The motion passed with a unanimous vote.

H. New Items with Leave of Council

There were no new items with leave of council.

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I. ADJOURN

ACTION: Councilor Daniels moved that the meeting be adjourned. Councilor Morin seconded the motion. The motion passed with a unanimous vote. The meeting was adjourned at 7:15 P.M.

ADJOURNED, ATTEST: _____ Vincent P. Migliore
City Clerk

A TRUE COPY, ATTEST: _____ Brewer, Maine