

CHAPTER 34 - BOARD OF APPEALS OF THE CITY OF BREWER

The purpose of this chapter is to establish a Board of Appeals for the City of Brewer under the Maine Constitution; Title 30-A M.R.S.A., Section 3001, Title 30-A M.R.S.A., Section 2691, and the Brewer City Charter. (#5)

ARTICLE 1.

SECTION 100 BOARD OF APPEALS ESTABLISHED

A Board of Appeals is hereby established. the Board of Appeals shall consist of five (5) members, appointed by the City Council for the City of Brewer, and each member and alternate member shall serve for a term of three (3) years. The terms of each member and alternate member shall expire on March 31. (#3)

SECTION 101 PRESENT BOARD RE-ESTABLISHED

The present Zoning Board of Appeals for the City of Brewer as now constituted, shall constitute the Board of Appeals under this ordinance, and each member thereof shall serve the remainder of his present term.

SECTION 102 APPOINTMENT

The City Council, by a majority vote, shall, upon the expiration of each member's term or alternate member's term. Appoint a member or alternate member for a three (3) year term, which shall end on March 31st. Upon the resignation of a member or alternate member, the Council shall appoint a member or alternate member as the case may be to serve that person's un-expired term. Members and alternate member shall continue in office until a successor is appointed and qualified.

SECTION 103

Neither a municipal officer nor the spouse of a municipal officer may be a member or alternate member of the Board.

SECTION 104

The Board will each year at its first meeting after April 1st, elect a chairman, vice-chairman and a secretary from its members.

SECTION 105

The Board shall determine by a majority vote whether or not a conflict of interest sufficient to disqualify a member from voting thereon after a challenge based on conflict of interest is made by a party to the hearing or a member of the Board.

ARTICLE 2.

SECTION 200 PROCEDURE

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 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. (#4)

SECTION 200.2

The secretary shall maintain a permanent record of all board meetings and all correspondence of the Board. The secretary shall be responsible for maintaining those records which are required as part of the various proceedings which may be brought before the Board. All records to be maintained or prepared by the secretary are deemed public, shall be filed in the municipal clerk's office and may be inspected at reasonable times.

SECTION 200.3

The Board may provide by rule, which shall be recorded by the secretary, for any matter relating to the conduct of any hearing, provided that any rule may be waived by the chairman upon good cause shown.

SECTION 200.4

The Board may receive any oral or documentary evidence, but shall provide as a matter of policy for the exclusion of irrelevant, immaterial or unduly repetitious evidence. Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

SECTION 200.5

The Board shall make its decision while the members who sat at the hearing are assembled and the decision shall be made within eight (8) days of the hearing, or the application shall be considered denied. All members of the Board, including the chairman, present at any hearing or meeting shall vote on all matters which come before the Board unless: (a) the member has a conflict of interest, as provided by State law (b) the member is disqualified by a majority of the other board members present and voting for having a conflict of interest.

SECTION 200.6

The transcript of testimony, if any, and exhibits, together with all papers and requests filed in the proceeding, shall constitute the record. All decisions shall become a part of the record and shall include a statement of findings and conclusions, as well as the reasons or basis therefore, upon all the material issues of fact, law or discretion presented and the appropriate order, relief or denial thereof. Notice of any decision shall be mailed to every party within seven (7) days of each decision.

SECTION 200.7

An appeal may be taken by any party to Superior Court from any order, relief or denial in accordance with the Maine Rules of Civil Procedure, Rule 80-B. The hearing before the Superior Court shall be a trial de novo without a jury.

ARTICLE 3.

SECTION 300 GENERAL JURISDICTION, POWER, DUTIES AND OBLIGATIONS

SECTION 301

The Board shall have the power to hear any appeal by any person, affected directly or indirectly from any decision, order, rule or failure to act of the Code Enforcement Officer or any other official, person or Board having jurisdiction to issue an order in connection with the use and occupancy of land normally denominated zoning. The Board shall also have the power to hear appeals from a decision of the municipal officers from the denial, suspension or revocation of an Amusement License. The Board shall have the power to hear appeals from rulings or decisions of the Code Enforcement Officer relative to the Housing Code of the City. Finally, the Board shall also have the power to hear appeals as the fair hearing authority under Chapter 11, General Assistance Ordinance, of the Brewer, Maine Charter and Ordinances.

SECTION 302

The Board shall also have the power to exempt an owner from connecting to a public sewer as required by Chapter 31, Article 2, Section 204, of the City of Brewer Charter and Ordinances, as provided in this ordinance. Any person appealing from such order to the Board shall automatically be denominated a party. The Board upon finding that any other person, corporation or entity may be affected directly or indirectly by the decision to be made, shall allow such party upon proper application to become a party to the proceeding. Any party to a proceeding shall have the right to appeal as herein specified. The Board shall have the powers, duties and obligations given to it by the City Ordinances and State Statutes.

SECTION 303

The Board shall not have the power to hear complaints or disputes of any city employee regarding the application, meaning or interpretation of the City's personnel policies or agreements governing work activity and conditions of employment for city employees.

SECTION 304

Any appeal to the Board of Appeals must be filed in writing within thirty (30) days after notice of the decision, interpretation, or refusal to act has been received by the party wishing to appeal. Notice shall be deemed to have been given the earliest of the following:

- (a) when the person or entity receives verbal notice;
- (b) when the person or entity, acting through its agent, receives written notice in hand;
- (c) when the notice is sent to the person or entity by First Class United States Mail, postage prepaid. Notice shall be deemed to have been given three (3) days after the notice is deposited in the mail.

SECTION 305

All appeals must be in writing and upon a form approved by the Code Enforcement Officer of the City of Brewer.

SECTION 306

All applications for appeal must be delivered to the Code Enforcement Officer of the City of Brewer. Within five (5) days after the receipt of the application by the Code Enforcement Officer, the application shall be forwarded by the Code Enforcement Officer to the Chairman of the Board of Appeals.

ARTICLE 4.

**SECTION 400 POWERS IN DECIDING ANY APPEAL FROM THE ZONING
ORDINANCE OF THE CITY OF BREWER**

SECTION 400.1

The Board may interpret the provisions of the Ordinance which are called into question.

SECTION 400.2

The Board may grant a variance only when strict application of the Zoning Ordinance, or the provisions thereof, to the petition and his property would cause undue hardship.

SECTION 400.3

The Board shall have the powers, duties and obligations given to it under the Zoning Ordinance of the City of Brewer.

ARTICLE 5.

**SECTION 500 POWERS IN DECIDING ANY APPEAL FROM A DENIAL,
SUSPENSION OF REVOCATION OF AN AMUSEMENT LICENSE**

SECTION 500.1

The Board may grant or reinstate the license if it finds that the permitted activities would not constitute a detriment to the public health, safety and welfare, or that the denial, revocation or suspension was arbitrary and capricious.

ARTICLE 6.

**SECTION 600 POWERS IN DECIDING AN APPEAL FROM THE HOUSING CODE
OF THE CITY OF BREWER**

Any owner or person who is aggrieved with the ruling or decision of the Code Enforcement Officer in any matter relative to the interpretation or enforcement of any of the provisions of the Housing Code Ordinance may appeal the decision or interpretation to the Board of Appeals. The appeal must be filed within 30 days of the date of the rendition of the decision or interpretation. The appeal shall be filed with the Code Enforcement Officer in writing and shall be to the Board of Appeals. The Board may affirm or modify the decision of the Code Enforcement Officer in accordance with the terms of the Housing Code Ordinance. The Board may reverse the decision of the Code Enforcement Officer and permit exceptions to, or variations from, the specific terms of this ordinance in such cases where the enforcement of the provisions of this ordinance may result in undue hardship, subject always to the rule that the Board of Appeals shall give due consideration to the purposes of the Housing Code Ordinance in promoting health, safety and general welfare. An appeal may be taken from the decision of the Board to Superior Court, as provided by State Law.

ARTICLE 7.

SECTION 700

Powers in Exempting an Owner from Being Required to Connect into a Public Sewer in Accordance with Chapter 31 - Sewer Ordinance, Article 2 - Use of Public Sewers Required, Section 204 and Chapter 31 (Sewer Ordinance), Article 3 (Private Sewage Disposal), Section 304 of the City of Brewer Charter and Ordinances.

SECTION 700.1

The Board may exempt an owner from being required to connect to a public sewer as mandated in Chapter 31, Sewer Ordinance, Article 2 - Use of Public Sewers Required, Section 204 And Chapter 31 (Sewer Ordinance), Article 3 (Private Sewage Disposal)/ Section 304 of the City of Brewer Charter and Ordinances, if it finds any of the following elements present:

- (a) The owner has a state approved septic system which is functioning properly.
- (b) The owner cannot connect to public sewer without a pumping station and has a state approved properly functioning septic system.
- (c) The owner cannot connect to the public sewer without being put to a great deal of expense, due to the topography, soil conditions and use of the property, and has a state approved properly function septic system.

ARTICLE 7.

SECTION 700.2

In the event an owner is exempted by the Board in accordance with Section 700.1 of this ordinance, such exemption shall apply so long as the owner or his successor in title is able to operate a state approved properly functioning septic system in existence at the time the exemption is granted. In the event the said septic system becomes in need of repair or replacement or alterations must be made, the building shall be connected to the public sewer in accordance with Section 204 and Section 304 of Chapter 31 (Sewer Ordinance) of the Brewer Charter and Ordinances.

ARTICLE 8.

SECTION 801

The Board shall have the authority to hear appeals under Chapter 11, General Assistance Ordinance, as the fair hearing.

SECTION 802

The Board shall have such power, duty and authority as is given to it under Chapter 11, General Assistance Ordinance.

SECTION 803

The procedure set forth under Chapter 11, General Assistance Ordinance, shall control all hearings and actions of the Board of Appeals in hearing appeals under Chapter 11, General Assistance Ordinance.

ARTICLE 9.

SECTION 900 PARTIES

The Board shall reasonable notify of any hearing, the petitioner, any person who shall have asked to be made a party, and all abutting land owners and the municipal officers. Any person who demonstrates to the satisfaction of the Board that he has an interest in the matter shall be made a party to the action. All interested persons shall be given a reasonable opportunity to have their views expressed at any hearing.

ARTICLE 10.

SECTION 1000 APPEALS

Any person who was party to the action before the Board of Appeals may take his appeal from the decision of the Board of Appeals to the Superior Court for Penobscot County in accordance with the laws of the State of Maine.

ARTICLE 11.

SECTION 1100 RE-APPLICATION FOR APPEAL

No application for an appeal to the Board of Appeals shall be made upon the same subject matter within six (6) months from any denied application.

SECTION 1102 RECONSIDERATION

The Board of Appeals may reconsider any of its decisions within 45 days of its prior decision. A request to the board to reconsider a decision must be filed within 10 days of the decision that is to be reconsidered.

END OF CHAPTER NOTATIONS - CHAPTER 34

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