

City Council Minutes
Tuesday, October 10, 2023

Regular Meeting
City Hall Council Chambers

Tuesday, October 10, 2023
6:00 p.m.

The regular meeting was called to order by Mayor Soubanh Phanthay. The city clerk called the roll:

- | | |
|---------------------------|-------------------------|
| Councilor Ferris-present | Councilor Goss-present |
| Councilor Daniels-present | Councilor Morin-present |
| Mayor Phanthay-present | |

Mayor Phanthay declared that a quorum was present. City Manager Stephen Bost 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, October 10, 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.	10/06/2023	17:12
Jerry Goss	Jones	Sgt.	10/06/2023	17:45
Michele Daniels	Jones	Sgt.	10/06/2023	17:35
Jenn Morin	Jones	Sgt.	10/06/2023	17:51
Soubanh Phanthay	Jones	Sgt.	10/06/2023	17:47

CITY COUNCIL REGULAR MEETING
Tuesday, October 10, 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 September 12, 2023 Regular Meeting (Councilor Daniels)

B. Awards, Petitions and Public Comments

1. Public Comments

C. Consent Calendar

1. (2023-A129) ORDER Accept \$1,000 donation from Bruce Moore to Brewer Public Library. (Councilor Morin)
2. (2023-A130) ORDER Accept sub recipient grant funds from 2020 Edward Byrne Memorial Justice Assistance Grant Program. (Councilor Ferris)
3. (2023-A131) ORDER Amend sludge hauling and disposal contract with Malcolm McGraw d/b/a Malcolm McGraw WFT. (Councilor Goss)
4. (2023-A132) ORDER Declare City property surplus and authorize disposal of surplus property. (Councilor Daniels)
5. (2023-B030) RESOLVE, Approve use of School Capital Reserve funds for Coffin Field lights. (Councilor Morin)
6. (2023-A133) ORDER Accept funds from Maine Municipal Association's Edward MacDonald Safety Enhancement Grant Program. (Councilor Ferris)
7. (2023-A134) ORDER Accept funds from the Maine Department of Economic and Community Development reimbursing the City of Brewer for costs incurred to implement Legislative Document 2003. (Councilor Goss)
8. (2023-A135) ORDER Declare City property surplus and authorize disposal of surplus property. (Councilor Daniels)
9. (2023-A136) ORDER Authorize purchase of replacement zero-turn mower. (Councilor Morin and Councilor Ferris)

D. Monthly Reports (Councilor Ferris)

E. Nominations, Appointments, Elections

Consent Calendar

1. (2023-A137) ORDER, Issue warrant for November 7, 2023 City of Brewer Annual Municipal Election and set polling hours for the November 7, 2023 City of Brewer Annual Municipal Election and State of Maine Referendum Election. (Councilor Goss)
2. (2023-B031) RESOLVE, Prescribe Registrar of Voters Hourly Schedule for the November 7, 2023 City of Brewer Annual Municipal

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Election and the State of Maine Referendum Election.
(Councilor Daniels)

3. (2023-B032) RESOLVE, Accept resignation of Paul Mills from the City of Brewer Planning Board and the City of Brewer Conservation Commission. (Councilor Morin)
4. (2023-B033) RESOLVE, Accept resignation of Mark Call from the City of Brewer Planning Board. (Councilor Ferris)

F. Unfinished Business

1. (2023-C017) ORDER Amend Chapter 24 of the Charter, Codes and Ordinances of the City of Brewer, entitled “Land Use Code”, Article 4, “Performance Standards”, Section 439, Article 7, “Subdivision Review”, Sections 710 and 711, and Article 14, “Definitions”. (Councilor Goss)

G. New Business

Consent Calendar

1. (2023-C018) ORDER Amend Chapter 24 of the Charter, Codes and Ordinances of the City of Brewer, entitled “Land Use Code”, Article 3 “Zoning Districts”, Section 306.5, and Article 4 “Performance Standards”, Section 443. (Councilor Daniels)
2. (2023-C019) ORDER Amend Chapter 24 of the Charter, Codes and Ordinances of the City of Brewer, entitled “Land Use Code”, Article 4, “Performance Standards”, Section 402, and Article 14, “Definitions”. (Councilor Morin)

H. New Items with Leave of Council

I. ADJOURN

A. Minutes of the September 12, 2023 Regular Meeting

ACTION: Councilor Daniels moved that the minutes to the September 12, 2023 regular meeting be accepted and placed on file. Councilor Ferris seconded the motion. The motion passed with a unanimous vote.

B. Awards, Petitions and Public Comments

Public Comments

Councilor Goss commended Mayor Phanthay for his presentation at the twenty-fifth anniversary of Chamberlain Park. Councilor Goss said the Mayor Phanthay’s remarks were personal and well done. Mayor Phanthay recognized members from Girl Scout Troop 757 that were in attendance. Mayor Phanthay presented Brewer Challenge Coins to Charolette, Abigail, and Eva with the challenge to continue to learn and live by the Girl Scout Oath.

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C. Consent Calendar

2023-A129

October 10, 2023

TITLE: ORDER, ACCEPT \$1,000 DONATION FROM BRUCE MOORE TO BREWER PUBLIC LIBRARY.

Filed September 18, 2023
By Jenn M. Morin

WHEREAS, the Brewer Public Library received a donation of \$1,000 from Bruce Moore; and

WHEREAS, the donor has specified that the funds can be used for purposes determined by the Library Director; and

WHEREAS, it is the recommendation and request of the Library Director that the donation be used toward digital resources, such as Cloud Library and Hoopla.

NOW, THEREFORE, BE IT ORDERED, that the Brewer City Council accepts the \$1,000 donation from Bruce Moore to the City of Brewer Public Library, authorizes its deposit into account 0600072-360000-72035 (Bruce Moore Gift), and authorizes its appropriation and expenditure from 0600072-560000-72035 (Bruce Moore Gift Expense).

Statement of fact: This order accepts a \$1,000 donation from Bruce Moore to support the City of Brewer Public Library's digital collection.

NOTE: The Brewer Public Library sends a letter of acknowledgement and appreciation on behalf of the City Council and the Library to all who contribute to the library.

2023-A130

October 10, 2023

TITLE: ORDER, ACCEPT SUB RECIPIENT GRANT FUNDS FROM 2020 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM.

Filed September 21, 2023
By Joseph L. Ferris

WHEREAS, the Brewer Police Department has received a grant for up to \$2,058 in the form of a 2020 Edward Byrne Memorial Justice Assistance Grant (JAG) Program grant; and

WHEREAS, Brewer PD was unable to coordinate the use of these funds for the training program they were originally designated for; and

WHEREAS, the grantor has agreed to reallocate \$1,500 of these funds to offset the cost

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associated with a speed sign available to Region V police departments.

NOW, THEREFORE, BE IT ORDERED, that the Brewer City Council herewith accepts these grant funds and authorizes the deposit of \$1,500 to 0600058-360000-58065 FY20 BYRNE JAG GRANT PROCEEDS; and

BE IT FURTHER ORDERED, that the City Council herewith authorizes the appropriation and expenditure of \$1,500 these funds from 0600058-560000-58065 FY20 BYRNE JAG GRANT EXPENSE.

Statement of Fact: The City of Brewer Police Department was awarded training funds through the 2020 Byrne JAG Grant to host a regional training program, which it was unable to coordinate. This order allows the reallocation of \$1,500 of these funds to offset the cost of a speed sign available to Region V police agencies.

2023-A131

October 10, 2023

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

Filed September 26, 2023

By Jerry Goss

WHEREAS, on May 9, 2023, the Brewer City Council approved the form of an amendment to the City's five-year contract with Malcolm McGraw d/b/a Malcolm McGraw WFT (WFT) for transportation and disposal of dewatered sludge from the City of Brewer Water Pollution Control Facility (BWPCF); and

WHEREAS, the City and WFT never executed that amendment and have subsequently arrived at slightly different, mutually agreeable terms, attached hereto, for amending the contract to reflect the significant increase in disposal costs being borne by WFT.

NOW, THEREFORE, BE IT ORDERED, that the Brewer 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.

Statement of fact: Due to no fault of the City of Brewer's contracted sludge hauler, changes in law and changes in market conditions have resulted in financial hardships that the City of Brewer recognizes would likely result in the contracted hauler defaulting 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 of Brewer ("City") and the Malcolm McGraw, WFT ("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	
	Hartland Landfill	Other Disposal Location
YEAR 1	N/A	\$1,450
YEAR 2	\$2,200	\$1,508
YEAR 3	\$2,288	\$1,568
YEAR 4	\$2,379	\$1,631
YEAR 5	\$2,474	\$1,696

2. This revised fee schedule takes into account all disposal and transportation costs, including fuel, wait times, states fees, etc.
3. WFT invoices shall indicate the location at which each load was disposed in addition to tonnage and disposal date. Loads without a location will be paid at the Other Disposal Location per load rate.
4. The City has paid the March, April, May, June, and July 2023 invoices at the Other Disposal Location rate of \$1,508 per load. Upon the execution of this contract amendment and its subsequent ratification by the Brewer City Council, Service Provider shall have the right to bill, and, subject to the provisions in Section 5 of this amendment, the City agrees to pay, the \$692 difference per load for the March - July loads that were disposed of at the Hartland facility.
5. In lieu of the Performance/Payment Bond requirement in Section 5d of the original contract, the City agrees to accept and Service Provider agrees to allow the following:
 - a. The City will hold in escrow the payments due to Service Provider for the back pay referenced in Section 4 above as well as payments due to Service Provider for sludge hauling and disposal services rendered in the remaining months of 2023 ("Escrowed Funds") until Escrowed Funds total \$100,000. Subject to the conditions below, Escrowed Funds shall be due and payable to Service Provider at the end of the contract term.

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- b. The Escrowed Funds shall provide surety against completion of the terms of the November 19, 2021 Sludge Hauling and Disposal Services Agreement and its subsequent amendment(s).
- c. No interest earned on the Escrowed Funds shall accrue or be due to Service Provider.
- d. In the event of default by Service Provider, the City shall deliver to Service Provider by certified mail or express courier, a written statement of the facts of such default. Service Provider shall have thirty (30) calendar days to cure the default. If the default remains uncured, the City shall have the right to use Escrowed Funds to cure the default.
- e. No later than sixty (60) days following the fulfillment of the November 19, 2021 Sludge Hauling and Disposal Services Agreement and its subsequent amendment(s), Service Provider shall provide the City a written request to release all remaining Escrowed Funds.
- f. The City shall respond to Service Provider's request within 30 days.

IN WITNESS WHEREOF, the parties hereto have 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: _____

Malcolm McGraw, Owner

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Date: _____

I attest that, by a ___ to ___ vote of the City Council of Brewer at a regular meeting held on _____ at which time _____ members of the council were present and voting, Order A-_____ approving an amendment to the Sludge Hauling and Disposal Agreement dated November 19, 2021 was passed.

*Vincent P. Migliore
City Clerk, Brewer, Maine*

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2023-A132

October 10, 2023

TITLE: ORDER, DECLARE CITY PROPERTY SURPLUS AND AUTHORIZE
DISPOSAL OF SURPLUS PROPERTY.

Filed September 27, 2023

By Michele Daniels

WHEREAS, the Brewer Parks & Recreation Department is planning to purchase an automatic floor scrubber as approved in the Fiscal Year 2024 Capital Improvement Program budget; and

WHEREAS, the new floor scrubber is being purchased to replace the current floor scrubber, a 20" Minuteman E20 SPORT model purchased in 2016.

NOW, THEREFORE, BE IT ORDERED, that the Brewer Parks and Recreation Department's 20" Minuteman E20 SPORT model floor scrubber be deemed surplus property; and authorize its disposal by trade, competitive sale or other means as is in the best interest of the citizens of Brewer; and

BE IT FURTHER ORDERED, that the proceeds, if any, of the disposal be deposited to 0500100-300410 (CIP Sale of Assets) and authorized for appropriation and expenditure from 0510134-551448 (Community Center Automatic Floor Scrubber) to offset the purchase of the replacement machine.

Statement of Fact: The Brewer Parks & Recreation Department purchased a 20" Minuteman E20 SPORT floor scrubber in 2016 that no longer meets the needs of the Department and is scheduled for replacement. This order declares the floor scrubber surplus and allows the City Manager or his designee to dispose of the item.

2023-B030

October 10, 2023

TITLE: RESOLVE, APPROVE USE OF SCHOOL CAPITAL RESERVE FUNDS FOR
COFFIN FIELD LIGHTS.

Filed October 2, 2023

By Jenn M. Morin

WHEREAS, in June 2021, the Brewer City Council adopted resolve 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 City Council approved the transfers of \$400,000 and \$500,000, respectively into the Capital Reserve Account; and

WHEREAS, on September 11, 2023, the Brewer School Committee approved the use of \$50,000

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of the Capital Reserve Account balance to install twenty-six new Light Emitting Diode (LED) light fixtures and wiring at Coffin Field; and

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

NOW, THEREFORE, BE IT ORDERED, that the Brewer City Council hereby approves the School Department's use of \$50,000 from its Capital Reserve Fund for the Coffin Field Light Replacement Project.

Statement of Fact: This order approves the School Department's use of \$50,000 from its Capital Reserve Fund to install new LED lights at Coffin Field. The existing lights were installed in 1995 and are now in poor repair and past their intended lifespan. The installation of 26 new LED fixtures will significantly reduce the wattage required to light the field, enabling all the lights for the entire Brewer Athletic Complex and Coffin Field to safely run at the same time. The reduction in wattage will also enable the School to add power to an anticipated concession stand/restroom building. The Brewer Athletic Boosters have donated \$25,000 toward this project, which is expected to cost approximately \$75,000. The School has also applied for an Efficiency Maine Rebate.

2023-A133

October 10, 2023

TITLE: ORDER, ACCEPT FUNDS FROM MAINE MUNICIPAL ASSOCIATION'S EDWARD MACDONALD SAFETY ENHANCEMENT GRANT PROGRAM.

Filed October 2, 2023

By Joseph L. Ferris

WHEREAS, the Brewer Fire Department has been awarded up to \$2,170 through the Maine Municipal Association's Edward MacDonal Safety Scholarship Program to fund the cost of purchasing a Multi Gas Meter; and

WHEREAS, this grant is expected cover the full cost of this purchase.

NOW, THEREFORE, BE IT ORDERED, that the City of Brewer, by vote of its City Council, herewith accepts these grant funds and directs the funds be deposited in account 0600502-360000-59043 (Natural Gas Meter Grant Revenue); and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the appropriation and expenditure of these grant funds from account 0600502-560000-59043 (Natural Gas Meter Grant Expense).

Statement of Fact: The Brewer Fire Departments has been awarded up to \$2,170 to fund the purchase of a multi gas meter. This order accepts the funds and authorizes their expenditure.

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2023-A134

October 10, 2023

TITLE: ORDER, ACCEPT FUNDS FROM MAINE DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT REIMBURSING THE CITY OF BREWER FOR COSTS INCURRED TO IMPLEMENT LEGISLATIVE DOCUMENT 2003.

Filed October 3, 2023
By Jerry Goss

WHEREAS, Legislative Document 2003 (LD2003) was signed into law in 2022 with the goal of removing unnecessary regulatory barriers to housing production in Maine; and

WHEREAS, the legislation requires municipalities to update their ordinances by January 1, 2024 to comply with the new housing provisions; and

WHEREAS, recognizing the amount of staff time, legal guidance, and other resources that would be required to implement LD2003 and subsequent legislation, the State is offering communities up to \$10,000 in funding to offset costs associated with implementation.

NOW, THEREFORE, BE IT ORDERED, that the Brewer City Council hereby accepts \$10,000 from the Maine Department of Economic and Community Development Housing Opportunity Program and directs that the funds be deposited into the City's State Reimbursement Revenue account (0106902-300230); and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the appropriation and expenditure of these funds from Planning Department and Legal Services (organization codes 01167810, 01167811, and 0115400) as needed to cover implementation costs associated with LD2003 and subsequent legislation.

Statement of Fact: This order accepts \$10,000 from the Maine Department of Economic and Community Development and authorizes its use to cover costs associated with implementing the provisions of the LD2003, the act to increase housing opportunities in Maine, and subsequent related legislation.

2023-A135

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TITLE: ORDER, DECLARE CITY PROPERTY SURPLUS AND AUTHORIZE DISPOSAL OF SURPLUS PROPERTY.

Filed October 4, 2023
By Michele Daniels

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WHEREAS, the grader attachment for the City of Brewer Public Works Department skid steer is not as useful as anticipated and is used infrequently; and

WHEREAS, other attachments are available for the skid steer that may be more useful to the City; and

WHEREAS, the grader attachment is still in good condition and is of substantial value.

NOW, THEREFORE, BE IT ORDERED, that the grader attachment for City of Brewer Public Works Unit #441, a 2019 Bobcat skid steer, be declared surplus equipment; and

BE IT FURTHER ORDERED, that the City Manager, or his designee, is authorized to dispose of said surplus property by means that would be in the best interest of the City of Brewer; and

BE IT FURTHER ORDERED, that the funds received from the sale of the said surplus item be receipted to the City's Capital Improvement Program Sale of Asset account (0500100-300410) and authorized for appropriation and expenditure from the Skid Steer Loader CIP account (0510133-551628) to be used to support the purchase of more useful attachment(s) for the skid steer.

Statement of Fact: At the time of the skid steer purchase, the grader attachment seemed like a useful tool but the Public Works Department has determined the grader attachment is limited and more suited for landscaping. The value of the grader attachment is significant, and its sale will generate funds to acquire a more useful attachment. The Public Works Department is considering the purchase of a wider mower attachment that could be used to mow the landfill, or a cutter attachment for pavement and concrete in the roadway.

2023-A136

October 10, 2023

TITLE: ORDER, AUTHORIZE PURCHASE OF A REPLACEMENT ZERO-TURN MOWER.

Filed October 5, 2023
By Jenn M. Morin and
Joseph L. Ferris

WHEREAS, the City of Brewer Environmental Services Department maintains the grounds at the Water Pollution Control Facility (WPCF) and fourteen pump stations; and

WHEREAS, proper maintenance of the grounds shows pride and ensures staff and contractors have easy access to the facilities; and

WHEREAS, the Environmental Services Department's current zero-turn lawn mower is a 2016 model at the end of its useful life; and

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WHEREAS, the Environmental Services Department has funds in its capital reserve account to purchase of a replacement.

NOW, THEREFORE, BE IT ORDERED, that the City of Brewer, by vote of its City Council, authorizes the Director of Environmental Services to purchase a 48” MR TITAN zero-turn mower from Bradstreet Lawn and Garden for the cost of \$6,000; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the appropriation of \$6,000 of Sewer Capital Reserve funds (0700000-110805) for expenditure from the Sewer CIP Zero Turn Mower account (0581003-583026); and

BE IT FURTHER ORDERED, that the City Council declares the 2016 zero-turn lawn mower as surplus and authorizes the Director of Environmental Services, or his designee, to dispose of it as would be in the best interest of Brewer sewer ratepayers, and to deposit any proceeds in the Sewer Capital Reserve account (0700000-110805).

Statement of Fact: The Department of Environmental Services maintains the grounds of the WPCF and fourteen pump stations. Environmental Services’ current mower is well past its useful life is in need of replacement. Prices for similar models were as follows:

Toro 48” MR TITAN	\$6,000
John Deere Ztrak Z720E	\$8,079
Kubota Z412KW-48	\$8,699

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

D. Monthly Reports

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

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**E. Nominations, Appointments, Elections
Consent Calendar**

2023-A137

October 10, 2023

TITLE: ORDER, ISSUE WARRANT FOR NOVEMBER 7, 2023 CITY OF BREWER ANNUAL MUNICIPAL ELECTION AND SET POLLING HOURS FOR THE NOVEMBER 7, 2023 CITY OF BREWER ANNUAL MUNICIPAL ELECTION AND STATE OF MAINE REFERENDUM ELECTION.

Filed September 13, 2023
By Jerry Goss

WHEREAS, the City of Brewer Annual Municipal Election and State of Maine Referendum Election will be held on Tuesday, November 7, 2023; and

WHEREAS, Title 21-A, M.R.S.A., §626(1) provides that the polls must be opened no earlier than 6:00 a.m. and no later than 8:00 a.m. on election day; and

WHEREAS, Title 21-A, M.R.S.A., §626(1) further provides that the municipal officers shall determine the time of opening the polls within the time limits of 6:00 a.m. to 8:00 a.m.; and

WHEREAS, a poll opening time of 7:00 a.m. will, in the judgment of the municipal officers, meet the needs of the municipality for the November 7, 2023 election.

NOW, THEREFORE, BE IT ORDERED, that the municipal officers herewith set the time of 7:00 a.m. for opening the polls and a time of 8:00 p.m. for closing the polls for the November 7, 2023 City of Brewer Annual Municipal Election and State of Maine Referendum Election; and

BE IT FURTHER ORDERED, that the municipal officers issue the warrant for the City of Brewer Annual Municipal Election to be held on November 7, 2023 with the polls to open at 7:00 a.m. and close at 8:00 p.m.

**CITY OF BREWER
ANNUAL MUNICIPAL ELECTION**

Penobscot ss.

State of Maine

To: _____, a Constable in the City of Brewer.

You are hereby required in the name of the State of Maine to notify the voters of the City of Brewer of the election described in this warrant.

**TO THE VOTERS OF THE CITY OF BREWER
WARD 1, PRECINCT 1**

You are hereby notified that the annual municipal election in the municipality will be held at the Joseph L. Ferris Community Center on Tuesday, the seventh day of November 2023 for the purpose of affecting the election of:

- ONE MEMBER OF THE CITY COUNCIL FOR A THREE-YEAR TERM
- TWO MEMBERS OF THE SUPERINTENDING SCHOOL COMMITTEE FOR THREE-YEAR TERMS
- ONE TRUSTEE OF THE BREWER HIGH SCHOOL DISTRICT FOR A FIVE-YEAR TERM

The polls shall be open at 7:00 A.M. and close at 8:00 P.M.

The Registrar of Voters shall hold office hours while the polls are open to correct any error in or change of name or address on the voting list, to accept the registration of any person eligible to vote and to accept new registrations.

A person who is not registered as a voter may not vote in any election.

Dated at Brewer, Maine this 10th day of October in the year of Our Lord, Two-Thousand-and-Twenty-Three.

Majority of the Municipal Officers of Brewer

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2023-B031

October 10, 2023

TITLE: RESOLVE, PRESCRIBE REGISTRAR OF VOTERS HOURLY SCHEDULE FOR THE NOVEMBER 7, 2023 CITY OF BREWER ANNUAL MUNICIPAL ELECTION AND STATE OF MAINE GENERAL ELECTION.

Filed September 13, 2023
By Michele Daniels

WHEREAS, the City of Brewer Annual Municipal Election and State of Maine Referendum Election will be held on Tuesday, November 7, 2023; and

WHEREAS, Title 21-A M.R.S.A., §122 (6)(A)(2) provides in part, that in a municipality with a population of more than 2,500, the Registrar of Voters shall accept registrations on the last 5 business days before election day, during the hours that the City Clerk's office is open (8:00 a.m. to 4:00 p.m.) and for 2 hours in the evening between 5:00 p.m. and 9:00 p.m. on at least 1 of these days; and

WHEREAS, the City of Brewer has a population greater than 2,500 according to the 2020 Federal Census; and

WHEREAS, the Registrar of Voters suggests that holding office hours on Wednesday, November 1, 2023 from 5:00 p.m. until 7:00 p.m. will satisfy the requirements of Title 21-A M.R.S.A., §122 (6)(A)(2) and serve the needs of the community; and

WHEREAS, the municipal officers concur with this assessment by the Registrar of Voters.

NOW, THEREFORE, BE IT RESOLVED, that the municipal officers herewith prescribe the hours of registration as 8:00 a.m. to 4:00 p.m. on the five business days prior to the City and State Elections to be held on November 7, 2023; and

BE IT FURTHER RESOLVED, that the municipal officers herewith prescribe the additional hours of registration as 5:00 p.m. to 7:00 p.m. on Wednesday, November 1, 2023.

2023-B032

October 10, 2023

TITLE: RESOLVE, ACCEPT RESIGNATION OF PAUL MILLS FROM THE CITY OF BREWER PLANNING BOARD AND THE CITY OF BREWER CONSERVATION COMMISSION.

Filed September 25, 2023
By Jenn M. Morin

WHEREAS, Paul Mills submitted his resignation from the City of Brewer Planning Board and the City of Brewer Conservation Committee by electronic mail, dated September 25 2023; and

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WHEREAS, the Brewer City Council must vote to accept this resignation and declare vacancies for members before proceeding to fill the vacancies for the unexpired terms of Paul Mills.

NOW, THEREFORE, BE IT RESOLVED, that the Brewer City Council herewith accepts the resignation of Paul Mills as an Associate Member of the City of Brewer Planning Board and as a Member of the City of Brewer Conservation Commission and declares that vacancies will exist on the aforementioned boards for an associate member and a member respectively.

2023-B033

October 10, 2023

TITLE: RESOLVE, ACCEPT RESIGNATION OF MARK CALL FROM THE CITY OF BREWER PLANNING BOARD.

Filed October 3, 2023

By Joseph L. Ferris

WHEREAS, Mark Call submitted his resignation from the City of Brewer Planning Board on October 3, 2023; and

WHEREAS, the Brewer City Council must vote to accept this resignation and declare a vacancy for a member before proceeding to fill the vacancy for the unexpired term of Mark Call.

NOW, THEREFORE, BE IT RESOLVED, that the Brewer City Council herewith accepts the resignation of Mark Call as an Associate Member of the City of Brewer Planning Board and declares that a vacancy will exist on the aforementioned board for an associate member.

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

F. Unfinished Business

2023-C017

September 12, 2023

TITLE: ORDER, AMEND CHAPTER 24 OF THE CHARTER, CODES AND ORDINANCES OF THE CITY OF BREWER, ENTITLED "LAND USE CODE", ARTICLE 4, "PERFORMANCE STANDARDS", SECTIONS 439, ARTICLE 7, "SUBDIVISION REVIEW", SECTIONS 710 AND 711, AND ARTICLE 14, "DEFINITIONS".

Filed August 18, 2023

By Jerry Goss

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BE IT ORDAINED, by the Brewer City Council 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 4, Article 7, and Article 14:

Article 4 Performance Standards

439 STORMWATER MANAGEMENT

439.1 General standards.

1. Adequate provision must be made for the collection and disposal of stormwater that runs off proposed streets, parking areas, roofs, and other surfaces, through a stormwater drainage system, which must not have adverse impacts on abutting or downstream properties.
2. To the extent possible, the drainage system must retain stormwater on the site using the natural features of the site.
3. The applicant must demonstrate that on and off-site downstream channel or system capacity is sufficient to carry the flow without adverse effects, including but not limited to, flooding and erosion of areas, or that he/she will be responsible for whatever improvements are needed to provide the required increase in capacity and/or mitigation.
4. All natural drainage ways must be preserved at their natural gradients and must not be filled or converted to a closed system unless approved as part of the site plan review system.
5. The design of the stormwater drainage system must provide for the disposal of stormwater without damage to streets, adjacent properties, downstream properties, soils, and vegetation.
6. The design of the storm drainage systems must be fully cognizant of upstream runoff which must pass over or through the site to be developed and provide for this movement.
7. Non-stormwater discharges to the City’s storm drainage system are prohibited as detailed in Chapter 31; ~~Article 6-B, Sections 605-A, B, and C~~ of the City of Brewer’s Charter, Codes and Ordinances.
8. Developments ~~disturbing over 1 acre of area~~ required to meet the LID standards of section 439.2 below are required to provide a continuing stormwater management plan with annual inspections and reporting per Chapter 31; ~~Article 6-C~~ of the City of Brewer’s Charter, Codes and Ordinances.

439.2 Low Impact Development (LID) standards and review.

In addition to the general standards listed in section 439.1, these standards apply to all activities which create a disturbed area of either a) one or more acres of land, b) less than one acre of land if part of a larger common plan of development or sale that as approved or amended would create a disturbed area of one acre or more, or c) less than one acre of land if located within the Felts Brook watershed as noted below.

Felts Brook is the City’s priority watershed and may be at risk of becoming an urban-impaired stream as a result of current and future development and therefore must be protected to the greatest

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extent practicable. Unreasonable impacts on any waterbody or wetland due to pollutants shall be adequately addressed.

1. The City of Brewer Environmental Services Department shall review the proposed work and determine if the LID standards and review process is required.
2. If determined the LID standards and review process is not required, the City of Brewer Environmental Services Department shall be allowed access to the site during earthwork for inspections. Any deficiencies pertaining to stormwater management and/or erosion control shall be reported to the Brewer Code Office for enforcement.

439.2.1 LID Standards.

The design of the project shall include the following LID measures:

1. Minimize site clearing.
2. Protect natural drainage systems.
3. Minimize decrease in Time of Concentration.
4. Minimize impervious area.
5. Minimize effect of impervious area.
6. Minimize soil compaction.
7. Minimize lawns and maximize landscaping that encourages runoff retention.
8. Provide vegetated open channel conveyance systems.
9. Meet stormwater quality treatment and retention requirements.

The design, plans, and documentation shall include:

1. Locations of all “sensitive areas” as identified by qualified professions and a description of how the applicant has prioritized the protection of the “sensitive areas” in the following order:
 - a) Waters of the State and Shoreland Zoning
 - b) Protected natural resources
 - c) Predevelopment drainage ways
 - d) High permeability soils (for natural infiltration)
 - e) Maine native vegetation and climate resilient northeast native vegetation
 - f) Significant and essential wildlife habitats
2. Limits of disturbance shown on plans and at construction sites (using flagging, fencing, signs, or other means to provide a clear indication).
3. Demonstration that stream crossing for Waters of the State have been designed in accordance with Maine Stream Smart Principles to preserve natural pre-development drainage ways. Exception: stream crossings over portions of streams that are artificially channelized are not subject to this requirement.
4. Preservation of the natural pre-development drainage ways by using the natural flow patterns and pathways for the post-construction drainage system. The applicant may submit an “alternative analysis” which demonstrates that this performance standard is impractical. Exception: If the Time of Concentration for a predevelopment drainage way is the same as or shorter than the post-development drainage way.

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5. Meet stormwater treatment measures in accordance with Chapter 500 Section 4.C General Standards, 4.C (2) Treatment requirements, 4.C Phosphorus Standard (for lake watersheds only) and additionally:
 - a) Individual stormwater treatment measures may not treat more than one acre of impervious area.
 - b) Vegetation used in stormwater treatment measures and general buffers shall be Maine native vegetation or climate resilient northeastern native vegetation.
6. Provide volume control on-site (through infiltration or storage) in accordance with the following:
 - a) Volume control for new impervious area times:
 - 0.4 inches of rain for type A soils.
 - 0.25 inches of rain for type B soils.
 - 0.1 inches of rain for type C soils.
 - No infiltration for type D soils.
 - b) May not use stormwater treatment measures with lines for this requirement.
7. Minimize impervious area and the effect of impervious area from road runoff by designing treatment of at least 70% of roadway runoff be directed into a stormwater treatment measure.
8. Minimize impervious area from parking areas by using a maximum parking space stall dimension of 9-foot x 18-foot stall, with the exception for public safety.
9. Runoff from on-site roofs, sidewalks, and peak-use overflow parking runoff shall be directed into stormwater treatment buffers or stormwater treatment infiltration measures.
10. Construction equipment movement, laydown areas, and parking shall be restricted to the designated disturbed areas. Areas to be vegetated shall be tilled and the soils amended with organic matter as needed based on the results of soil tests.
11. Snow storage areas shall be depicted on plans. The location of snow storage areas in stormwater treatment measures and Shoreland Zoning setback buffers shall be prohibited.

439.2.2 LID Review and Approval Process.

When an activity is required to obtain Planning Board approval (such as, but not limited to, site plan, subdivision, fill/grading), these LID standards and submittals shall be included, as applicable, in said approval applications. For all other activities, the applicant shall obtain approval from the Municipal Environmental Review Authority. Criteria for approval shall be that the project protects sensitive areas, provides on-site volume control, provides treatment of stormwater, and minimizes impervious areas.

The applicant shall include the following information for review:

1. Project narrative and documentation describing:
 - a) The overall approach to their stormwater management on the site.
 - b) A listing of stormwater treatment measures that will be in use and which will be maintained privately and which will be offered to the municipality for operation. Reference is made to Chapter 31 of the City of Brewer's Charter, Codes and Ordinances for private maintenance.
 - c) Documentation and plans to demonstrate how the LID standards are met.
 - d) A rationale for any exceptions from the LID standards.

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2. Contact information (ie. Name, state license number, company if applicable, phone number, mailing address, physical address, and email address) of all Maine Licensed Landscape Architects, Maine Certified Soil Scientists, Maine Professional Engineers, and any other state licensed professionals working on the project.
3. Project plans consisting of a graphic representation of the site at a scale no smaller than 1 inch = 100 feet showing:
 - a) Waters of the State and their associated Shoreland Protection areas.
 - b) Protected natural resources.
 - c) Predevelopment drainage areas, pathways, and associated Time of Concentration.
 - d) High permeability soils.
 - e) Maine native and climate-resilient northeastern native vegetation in general buffer areas and shoreland zoning buffer areas.
 - f) Significant and essential wildlife habitats.
 - g) Limits of disturbance.
 - h) Post-development drainage areas, pathways, and associated Time of Concentration.
 - i) Locations of snow storage areas.
 - j) Stormwater treatment measures.
4. The applicant shall submit the following information pertaining to infiltration:
 - a) Information required by Chapter 500 Section (7)(D)(5)(c) Infiltration Submittals including a plan for use of de-icing materials, pesticides and fertilizers within the drainage area of any infiltration Stormwater Treatment Measures.
 - b) Locations of any Uncontrolled Hazardous Substance Sites, Voluntary Response Action Program sites, RCRA Corrective Action sites, or Petroleum Remediation sites on or adjacent to the site.

Article 7 Subdivisions

710 PERFORMANCE STANDARDS

710.2 POLLUTION

1. The proposed subdivision shall not discharge waste water to a water body without a license from the Maine Department of Environmental Protection.
2. Discharges of storm water shall be treated to remove fat, oil, grease, ~~and~~ sediment, trash, and other solid debris prior to discharge into surface water bodies. When the subdivision is within the watershed of a great pond, the storm water shall be treated in order to remove excess nutrients.

710.7 SEWAGE DISPOSAL

1. Public System
 - A. Any subdivision within two hundred (200) feet of an existing public sewer must connect to the public sewer system unless specifically allowed otherwise by the Brewer

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Environmental Services Department. All connections and sewers shall meet the requirements of Chapter 31 of the City of Brewer Charter, Codes, and Ordinances. ~~Any subdivision within the area designated in the comprehensive plan for future public sewage disposal service shall be connected to the public system.~~

- B. When a subdivision is proposed to be served by the public sewage system, the complete collection system within the subdivision, including manholes and pump stations, shall be installed at the expense of the applicant.
 - C. The Director of Environmental Services shall certify that providing service to the proposed subdivision is within the capacity of the system's existing collection and treatment system or improvements planned to be complete prior to the construction of the subdivision.
 - D. The Director of Environmental Services and/or the City Engineer shall review and approve the construction drawings for the sewerage system. The size and location of laterals, collectors, manholes, and pump stations shall be reviewed and approved in writing by the servicing sewer department.
2. Private Systems
- A. Private sewage systems shall meet the requirements of Chapter 31 of the City of Brewer Charter, Codes, and Ordinances and all applicable State regulations. ~~When a proposed subdivision is not within the area designated for public sewage disposal service in the comprehensive plan, connection to the public system shall not be permitted. Sewage disposal shall be private subsurface waste water disposal systems or a private treatment facility with surface discharge.~~
 - B. The applicant shall submit evidence of site suitability for subsurface sewage disposal prepared by a Maine Licensed Site Evaluator in full compliance with the latest requirements of the State of Maine Subsurface Wastewater Disposal Rules.
 - 1) The site evaluator shall certify in writing that all test pits which meet the requirements for a new system represent an area large enough to install a disposal area on soils which meet the Disposal Rules.
 - 2) On lots in which the limiting factor has been identified as being within 24 inches of the surface, a second site with suitable soils shall be shown as a reserve area for future replacement of the disposal area. The reserve area shall be shown on the plan and restricted so as not to be built upon.

710.15 STORM WATER MANAGEMENT

1. Adequate provision shall be made for the management of the quantity and quality of all storm water generated within the subdivision, and any drained ground water through a management system of swales, culverts, underdrains, storm drains and best management practices equivalent to those described in the Maine Erosion and Sediment Control Best Management Practices (BMPs) Manual for Designers and Engineers, October 2016, published by the Maine Department of Environmental Protection, in conformance with the

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policies of the comprehensive plan. The storm water management system shall be designed to meet the following standards:

- A. Quantity. Peak post-development discharge rates shall be limited to the pre-development levels for the 2-year, 10-year, and 25-year frequency, 24-hour duration storm unless storm water from the subdivision will drain directly into a major water body such as a great pond or the ocean.
2. Where necessary to achieve the above standards, there shall be provided easements or drainage rights-of-way ~~with-for existing and proposed~~ swales, culverts, catch basins, stormwater pipes, or other means of treating and/or channeling surface water within the subdivision and over other properties. Wherever the storm drainage system is not within the right-of-way of a public street, perpetual easements shall be provided as necessary. The subdivision plan shall include who will own and be responsible for the maintenance and/or replacement of the storm drainage system. Such responsibility may be designated to the individual lot owner on which the infrastructure is located or may be a group or entity. A Homeowners Association ~~may shall~~ be created to own and maintain all stormwater infrastructure that is not within the public right of way. All stormwater infrastructure that is not within the public right of way will not be maintained by the City. If the City is required to perform maintenance to infrastructure owned by the lot owner, group, entity, or Homeowners Association, all expenses that are incurred will be charged to said owner ~~the Homeowners Association~~ for reimbursement, including labor by City Staff.
3. The stormwater management plan ~~shall will be required to~~ meet the requirements of Article 4, section 439 of this Land Use Code and Chapter 31, ~~Articles 6-B, and 6-C~~ of the City of Brewer's Charter, Codes and Ordinances. The stormwater management plan shall also include ~~These sections refer to~~ post construction stormwater monitoring and maintenance requirements for all persons discharging into the City storm sewer system.
4. Whenever State or Federal permits are required for a proposed subdivision plan application, whichever standard between City, State, or Federal standards is more strict shall govern.

711 DESIGN GUIDELINES

711.5 STORM WATER MANAGEMENT DESIGN GUIDELINES (#44)

3. The minimum pipe size for any storm drainage pipe shall be 15 inches for driveway entrances and eighteen inches for cross culverts. If site conditions prohibit the use of minimum size culverts, the City Engineer or Planning Board may consider allowing the use of a smaller diameter pipe. Maximum trench width at the pipe crown shall be the outside diameter of the pipe plus two feet. Pipe shall be bedded in a fine granular material, containing no stones larger than three inches, lumps of clay, or organic matter, reaching a minimum of six inches below the bottom of the pipe extending to a minimum of twelve inches above the top of the driveway pipe and eighteen inches above the cross culvert.

Article 14 Definitions

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Buffer, Stormwater Treatment: A buffer constructed in accordance with Appendix F in Chapter 500 for the purposes of providing pollutant removal.

Buffer, Shoreland Zoning Setback: A buffer required by municipal Shoreland Zoning to protect Water of the State.

Chapter 500: Chapter 500 of the Maine Department of Environmental Protection’s Rules (“Stormwater Management Rules”).

Climate Resilient Northeast Native Vegetation: Plants identified as native to the Northeast as identified by the Northeast Regional Invasive Species & Climate Change (RISCC) Network or a Maine Licensed Landscape Architect.

Disturbed Area: All land areas that are stripped, graded, grubbed, filled, or excavated at any time during the site preparation or removing vegetation for, or construction of, a site. Cutting of trees, without grubbing, stump removal, disturbance, or exposure of soil is not considered Disturbed Area. Disturbed Area does not include routine maintenance but does include redevelopment and new Impervious Areas.

Disturbed Area Routine Maintenance: is maintenance performed to maintain the original line and grade, hydraulic capacity, and original purpose of the facility. Paving impervious gravel surfaces provided that an applicant or permittee can prove the original line and grade and hydraulic capacity shall be maintained and original purpose of the gravel surface remains the same is considered routine maintenance. Replacement of a building is not considered routine maintenance of the building and is therefore considered Disturbed Area.

Impervious Area: The total area of a Parcel covered with a low-permeability material that is highly resistant to infiltration by water, such as asphalt, concrete, or rooftop, and areas such as gravel roads and unpaved parking areas that will be compacted through design or use to reduce their permeability. Common Impervious Areas include, but are not limited to, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and macadam or other surfaces which similarly impede the natural infiltration of stormwater. Pervious pavement, pervious pavers, pervious concrete, and under drained artificial turf fields are all considered impervious. For the purpose of determining whether a Site exceeds the Impervious Surface thresholds requiring conformance to LID performance standards, the municipality may exclude these from calculation of Impervious Area if these are designed to be infiltration Stormwater Treatment Measures.

Low Impact Development (LID): The broad approach to site planning that preserves natural resources, processes, and habitat, defines what portions of the site are suitable for development and then utilizes stormwater treatment measures to manage runoff from the proposed developed impervious areas. In LID, stormwater treatment measures using natural processes such as vegetated buffers are given preference over constructed treatment Stormwater Treatment Measures. The goals of LID are to minimize the environmental impacts of the development.

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Maine Native Vegetation: Vegetation including grass seed mixtures, identified as native to Maine from lists maintained by: US Department of Agriculture Hardiness Zones by the Maine Cooperative Extension, Wild Seed Project, Regional Soil and Water Conservation District, Maine YardScaping Program, or a Maine Licensed Landscape Architect.

Municipal Environmental Review Authority: The municipal official or body that has jurisdiction over the land use approval or permit required for the new development or redevelopment. The Municipal Environmental Review Authority shall consist of the City Planner, Code Enforcement Officer, City Engineer, and Environmental Services Director and/or their designees.

Runoff: The rainwater, stormwater, meltwater, precipitation, condensate, or other liquid material that drains off an area of land, building, structure, etc. in sheet form, channelized, concentrated flow, or drainage way.

Stormwater Treatment Measures - a stormwater management system or innovative treatment measure as described in Maine DEP Chapter 500 4.c.(3) Types of treatment measures allowed. These measures include wet ponds, vegetated soil filters, infiltration, buffers, or innovative treatment measures. For purposes of this Ordinance these are cumulatively referred to as Stormwater Treatment Measures, or individually referred to as Stormwater Treatment Wet Pond, Stormwater Treatment Vegetated Soil Filter, Stormwater Treatment Infiltration Measure, Stormwater Treatment Buffer, or Stormwater Treatment Innovative Measure.

Stream crossing designed in accordance with Maine Stream Smart Principles - A Stream Crossing designed by a Maine Professional Engineer who has completed the Maine Audubon Society Stream Smart Workshops (Parts I and II), which includes the standards recommended by that program's stream span, elevation, slope and skew and substrate to promote passage of fish and other organisms and to limit road-damaging flows from extreme weather.

Time of Concentration - The same as "Time of concentration" defined in Maine DEP Chapter 500.

Waters of the State - See 38 M.R.S. §361-A (7).

Wildlife Habitat, Significant or Essential Wildlife Habitat: Areas identified by the Maine Department of Inland Fisheries and Wildlife as having significant or essential value as habitat for ~~animals-~~ endangered or threatened species and any areas identified in the municipality's Comprehensive Plan.

Statement of Fact: These ordinance amendments are proposed in order to meet the requirements of the latest State of Maine's MS4 General Permit (stormwater) and to clarify environmental items in the local subdivision regulations. The Planning Board held a public hearing on August 7, 2023 and unanimously made the recommendation to adopt these amendments to Chapter 24 Land Use Code as written. There were no public comments.

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ACTION: Councilor Goss moved that the amendment be enacted. Councilor Ferris seconded the motion. The motion passed with a unanimous vote.

**G. New Business
Consent Calendar**

2023-C018

September 12, 2023

TITLE: ORDER, AMEND CHAPTER 24 OF THE CHARTER, CODES AND ORDINANCES OF THE CITY OF BREWER, ENTITLED “LAND USE CODE”, ARTICLE 3, “ZONING DISTRICTS” SECTION 306.5, AND ARTICLE 4 “PERFORMANCE STANDARDS”, SECTION 443.

Filed October 3, 2023

By Michele Daniels

BE IT ORDAINED, by the Brewer City Council 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 3, and Article 4:

Article 3 Zoning Districts

306 SCHEDULE OF USES

306.5 SCHEDULE OF USES (#31) (#46) (#52) (#57)

USE	RURAL	LDR	MDR-1	MDR-2	HDR	HDR-2	CB	GB	IND	IND-2	OR	PB	DD
RESIDENTIAL USES													
Accessory Use	P	P	P	P	P	P	P				P		P
Single-family Dwelling	P-70	P-70	P-70	P-70	P-70	P-70	P-70	P-61,70			P-70		
Home Occupations	P	P	P	P	P	P	P				P		
Home Day Care	D-62	D-62	D-62	D-62	D-62	D-62	D-62				D-62		
Medical Marijuana Home Production	Y-66, 67	Y-66, 67	Y-66, 67	Y-66, 67	Y-66, 67	Y-66, 67	Y-66, 67	Y-66, 67	Y-66, 67	Y-66, 67	Y-66, 67	Y-66, 67	Y-66, 67
Manufactured Housing*													
Mobile Home Park		S-15,16				S-15,16							
Multi-family, 3 or more,		S-69,70			S-69,70	S-69,70	S-69,70	P-61,69,70			S-69,70		S-65,

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Dwelling Units (#18)													<u>69,70</u>
Planned Unit Development Of Residential Units		S	S-12,15,16	S-12,15,16	S	S-12,15,16	S-12,15,16						
Two-family Dwelling Units (#18)		<u>P-70</u>		<u>P-70</u>	<u>P-70</u>	<u>P-70</u>	<u>P-70</u>	P-61, <u>70</u>				<u>P-70</u>	S-65, <u>70</u>

Any non-residential uses allowed with or without a permit which creates 5,000 square feet of new gross floor area, or creates 5,000 square feet or greater of new un-vegetated area in the development, separately or collectively, shall be subject to Site Plan Review. Any proposed non-residential uses allowed, with or without a permit, exceed the 5,000 square foot area for new gross floor area or new un-vegetated area, or any proposed combination of the two activities, within a two (2) year period shall be considered cumulative activity and shall require site plan review. (#17)

Footnotes to Schedule of Land Uses

69. Reference is made to Article 4, Section 419 Multi-Family Dwellings in LDR District; Article 4, Section 443 Affordable Housing Developments in Multi-Family Zoning Districts; and Article 9, Section 906 Standards For Streets.

70. Effective as of January 1, 2024, a dwelling unit allowance may be provided in accordance with M.R.S. Title 30-A §4364-A meeting the following standards and requirements: (Note: §4364-A may not be construed to interfere with, abrogate, or annul the validity or enforceability of any valid and enforceable easement, covenant, deed restriction or other agreement or instrument between private parties that imposes greater restrictions than those provided under this section as long as the agreement does not abrogate rights under the United States Constitution or the Constitution of Maine)

a. For any area in which residential uses are allowed, including as a conditional use, up to two (2) dwelling units may be allowed on a lot that does not contain an existing dwelling unit with the exception that up to four (4) dwelling units may be allowed on a lot that does not contain an existing dwelling unit and which is located in a designated growth area per the City of Brewer’s current adopted Comprehensive Plan. It shall be prohibited to demolish a dwelling unit in existence after January 1, 2024 for the purposes of meeting the provisions of M.R.S. Title 30-A §4364-A. Further, for the purposes of this section, a person may not demolish a dwelling unit in existence on or after September 1, 2023 through January 1, 2024 for the purposes of meeting the provisions of 30-A M.R.S. §4364-A. If dwelling units are demolished and the demolition results in an empty lot, there can be no increase in the number of units above what existed on the lot prior to demolition. (Note: “Residential uses” as defined under this section may include single-family, multi-family housing, condominiums, time-share units, and apartments and does not include dormitories, congregate living facilities, campgrounds, campsites, hotels, motels, beds and breakfasts, or other types of lodging accommodations, and transient housing or short-term rentals);

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b. If a lot already contains one (1) existing dwelling unit, the addition of up to two (2) additional dwelling units may be allowed as follows:

One (1) within the existing structure or attached to the existing structure; One (1) detached from the existing structure; or One (1) of each;

c. If a lot contains two (2) existing dwelling units, no additional dwelling units are allowed;

d. If more than one (1) dwelling unit has been constructed on a lot as a result of this allowance in accordance with M.R.S. Title 30-A §4364-A, the lot is not eligible for any additional units or increases in density;

e. Dimensional requirements per Section 307 of this Land Use Code shall apply and off-street parking is required in accordance with Land Use Code Section 424;

f. The property owner shall provide written verification that each proposed dwelling unit is to be connected to adequate water and wastewater services to include: proof of water and sewer payment; proof of adequate service to support additional wastewater flow created by the dwelling unit; proof of adequate service to support additional water flow created by the dwelling unit including the volume and supply of water required; proof of adequate sewage disposal for subsurface wastewater to include plans for subsurface wastewater disposal prepared by a site evaluator licensed by the State of Maine in accordance with 10-144 C.M.R. Ch. 241, Subsurface Wastewater Disposal Rules which must be verified as adequate by the City of Brewer plumbing inspector pursuant to 30-A M.R.S. §4221; and proof of access to potable water as defined by the U.S. Environmental Protection Agency's (EPA) Drinking Water Standards and Health Advisories Table and Maine Department of Health and Maine's interim drinking water standards for six different perfluoroalkyl and polyfluoroalkyl substances (PFAS), Resolve 2021 Chapter 82 along with any test of an existing or proposed well which must indicate that the water supply is potable and acceptable for use;

g. Dwelling units must comply with shoreland zoning requirements by the Department of Environmental Protection under Title 38, chapter 3 and municipal shoreland zoning ordinances along with any overlay protection district requirements;

h. Dwelling units must comply with all permitting, subdivision and/or site plan requirements and all applicable Codes and Ordinances of the City of Brewer.

Article 4 Performance Standards

443. AFFORDABLE HOUSING DEVELOPMENTS IN MULTI-FAMILY ZONING DISTRICTS

As required under Title 30-A MRSA §4364 by the State of Maine per L.D. 2003, the following affordable housing regulations shall become effective on January 1, 2024.

This section may not be construed to interfere with, abrogate or annul the validity or enforceability of any valid and enforceable easement, covenant, deed restriction or other agreement or instrument

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between private parties that imposes greater restrictions than those provided in this section. Property owners are encouraged to conduct due diligence with any applicable State, Federal and Local laws.

This section may not be construed to exempt a subdivider from the requirements of MRSA Title 30-A Chapter 187 subchapter 4.

This section may allow a dwelling unit density bonus for certain affordable housing developments approved on or after January 1, 2024 in accordance with 30-A MRSA §4364 and this section.

443.1 APPLICABILITY AND DEFINITIONS

443.1.1 An affordable housing development may be allowed in zoning districts where multi-family dwellings are allowed and which are located in a designated growth area per the City of Brewer’s current adopted Comprehensive Plan meeting the following definition and requirements. The affordable housing development shall be allowed to have a dwelling unit density of 2 ½ times the base density that is otherwise allowed in the zoning district that the affordable housing development is located in. If fractional results occur when calculating the bonus density under this subsection, the number of units is rounded down to the nearest whole number. Affordable housing development as defined under this section shall mean:

For rental housing, a development in which a household whose income does not exceed (80) eighty percent of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 75-412, 50 Stat. 888, Section 8 as amended, can afford fifty-one (51) percent or more of the units in the development without spending more than (30) thirty percent of the household’s monthly income on housing costs; and

For owned housing, a development in which a household whose income does not exceed (120) one hundred twenty percent of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 75-412, 50 Stat. 888, Section 8 as amended, can afford fifty-one (51) percent or more of the units in the development without spending more than (30) thirty percent of the household’s monthly income on housing costs.

“Housing costs” include but are not limited to the cost of rent and any utilities such as electricity, heat, water, sewer and/or trash that the household pays separately from the rent; and for an ownership dwelling unit, the cost of mortgage principal and interest, real estate taxes (including assessments), private mortgage insurance, homeowner’s insurance, condominium fees, and homeowner’s association fees. “Area median income” means the midpoint of a region’s income distribution calculated on an annual basis by the U.S. Department of Housing & Urban Development.

“Base density” for purposes of this section shall mean the maximum number of units allowed on a lot not used for affordable housing based on dimensional requirements in the City of Brewer Land Use Code.

443.2 ELIGIBILITY REQUIREMENTS FOR DENSITY ALLOWANCE

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443.2.1 The affordable housing development must be located in an area in which multifamily dwellings are allowed per the City of Brewer Land Use Code and must be in a designated growth area per the City of Brewer's current adopted Comprehensive Plan;

443.2.2 The affordable housing development must meet the definition of an affordable housing development as defined under this section, and greater than fifty-one (51) percent of the proposed and existing dwelling units on the same lot shall be affordable for rental housing or owned housing;

443.2.3 An affordable housing development must comply with shoreland zoning requirements established by the Department of Environmental Protection under Title 38, chapter 3 and City of Brewer shoreland zoning ordinances;

443.2.4 Any lot of land containing a residential dwelling unit disposing of wastewater by means of a subsurface wastewater disposal system must contain a minimum of 20,000 square feet and if the lot abuts a lake, pond, stream, river or tidal area, it shall further have a minimum frontage of 100 feet on such body of water in accordance with MRSA Title 12 Chapter 423-A. The affordable housing development must also comply with City of Brewer Ordinance Chapter 31 Sewer and Pretreatment;

443.2.5 The owner of an affordable housing development shall at the time of site plan and/or subdivision review, submit written verification that each dwelling unit of the affordable housing development is proposed to be connected to adequate water and wastewater service which is accomplished by the following:

a) If a dwelling unit is connected to an off-lot sewer system, proof of adequate service to support any additional wastewater flow created by the unit and proof of payment for the connection to the sewer system must be provided;

b) If a dwelling unit is connected to a septic system, proof of adequate sewage disposal for subsurface wastewater must be provided. The septic system must be verified as adequate by the City of Brewer plumbing inspector pursuant to 30-A M.R.S. §4221. Plans for a subsurface wastewater disposal must be prepared by a State of Maine licensed site evaluator in accordance with 10-144 C.M.R. Ch. 241, *Subsurface Wastewater Disposal Rules*;

c) If a dwelling unit is connected to a public, special district or other centrally managed water system, proof of adequate service to support any additional water flow along with the volume and supply of water required for the dwelling unit and proof of payment for the connection must be provided. For purposes of this section, a centrally managed water system shall be defined as a water system that provides water for human consumption through pipes or other constructed conveyances to at least fifteen (15) service connections or serves an average of at least twenty-five (25) people for at least 60 days a year as regulated by 10-144 C.M.R. Ch. 231, *Rules Relating to Drinking Water*. This system may be privately owned.;

d) If a dwelling unit is connected to a well, proof of access to potable water as defined by the U.S. Environmental Protection Agency's (EPA) Drinking Water Standards and

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Health Advisories Table and Maine’s interim drinking water standards for six different perfluoroalkyl and polyfluoroalkyl substances (PFAS), Resolve 2021 Chapter 82 along with any test of an existing or proposed well which must indicate that the water supply is potable and acceptable for use.

443.3 OTHER REQUIREMENTS

443.3.1 Prior to granting any final approval of an affordable housing development, the owner of the affordable housing development shall execute a restrictive covenant recorded in the Penobscot County Registry of Deeds for the benefit of and enforceable by a party acceptable to the City of Brewer, to ensure that for at least 30 years after completion of construction:

For rental housing, occupancy of all of the units designated affordable in the development will remain limited to households at or below (80) eighty percent of the local area median income at the time of initial occupancy; and

For owned housing, occupancy of all of the units designated affordable in the development will remain limited to households at or below (120) one hundred twenty percent of the local area median income at the time of initial occupancy. For the purposes of this section, upon any change of ownership, affordable requirements must be met as a new “time of initial occupancy”.

443.3.2 An affordable housing development shall meet the Parking and Loading requirements of Article 4 section 424 with the exception that an affordable housing development meeting all definitions and requirements of this Section are allowed (2) two off-street parking motor vehicle spaces for every (3) three dwelling units of an affordable housing development. Note: If fractional results occur when calculating the number of motor vehicle parking spaces, the number of spaces shall be rounded up to the nearest whole number.

443.3.3 An affordable housing development shall comply with all other applicable Codes and Ordinances of the City of Brewer.

Statement of Fact: These ordinance amendments are proposed in order to meet the requirements of the State Legislative Document 2003 (LD2003) and subsequent legislation. The changes allow for an increase of dwelling units with regulations, and also allows for affordable housing developments in multi-family zoning districts with regulations. The Brewer Planning Board held a public hearing on September 11, 2023 and unanimously made the recommendation to adopt these amendments to Chapter 24 “Land Use Code” as written. There were no public comments.

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2023-C019

September 12, 2023

TITLE: ORDER, AMEND CHAPTER 24 OF THE CHARTER, CODES AND ORDINANCES OF THE CITY OF BREWER, ENTITLED "LAND USE CODE", ARTICLE 4 "PERFORMANCE STANDARDS", SECTION 402, AND ARTICLE 14 "DEFINITIONS".

Filed October 3, 2023
By Jenn M. Morin

BE IT ORDAINED, by the Brewer City Council 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 4, and Article 14:

Article 4 Performance Standards

426 ACCESSORY ~~LIVING-QUARTERS-DWELLING~~ UNITS (ADUs)

The following provisions in accordance with LD 2003 under Title 30-A MRSA §4364-B as amended shall govern accessory ~~living quarters~~ dwelling units as defined in Article 14 of this Land Use Code.

This section may not be construed to interfere with, abrogate or annul the validity or enforceability of any valid or enforceable easement, covenant, deed restriction or other agreement or instrument between private parties that imposes greater restrictions than those provided in this section pursuant to 30-A MRSA §4364-B.

402.1 OCCUPANCY

~~Accessory living quarters shall not be occupied in excess of four (4) months during any twelve (12) month period. No accessory dwelling unit shall be occupied unless a Certificate of Occupancy has been issued after final inspection from the Code Enforcement Officer certifying that the ADU meets all applicable Codes and Ordinances of the City of Brewer and this section.~~

402.1.1 An accessory dwelling unit shall not be rented or leased for less than twenty-eight (28) consecutive days to a person or persons.

402.1.2 Prior to occupancy the owner of an ADU must provide written verification to the Code Enforcement Officer that the ADU is connected to adequate water and wastewater services to include:

a) Proof of payment for the connection to the off-lot sewer system along with written verification from the Director of Environmental Services certifying that the proposed

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accessory dwelling unit is within the capacity of the system's existing collection and treatment system;

b) Plans for subsurface wastewater disposal prepared by a State of Maine licensed site evaluator prepared in accordance with 10-144 C.M.R. Ch. 241, *Subsurface Wastewater Disposal Rules* which must be verified as adequate by the City of Brewer Plumbing Inspector when connected to a septic system;

c) Proof of payment for the connection to the off-lot water system along with the volume and supply of water required for the ADU, proof of adequate service to support any additional flow created by the ADU, and written verification from the Superintendent of the Water Department that the proposed ADU will not impose an unreasonable burden on the municipal water system and that the municipal water system has the supply and capacity of water required for the accessory dwelling unit when connected to the city water supply;

d) When connected to a well, proof of access to a potable water supply to include any tests of an existing well or proposed well which must indicate that the water supply is potable and acceptable for domestic use in accordance with the U.S. Environmental Protection Agency's (EPA) Drinking Water Standards and Advisories Table and Maine's interim drinking water standards for six different perfluoroalkyl and polyfluoroalkyl substances (PFAS), Resolve 2021 Chapter 82.

402.2 SIZE OF THE UNIT AND DIMENSIONAL REQUIREMENTS

The size of the accessory dwelling unit ~~living quarters~~ shall be at least 190 square feet in size pursuant to the current minimum adopted standard of the Technical Building Code and Standards Board, under Title 10 M.R.S. §9722 as the same may be amended from time to time. The accessory dwelling unit must be constructed on a permanent foundation and shall not exceed four hundred fifty (450) square feet. The Code Enforcement Officer shall determine if a dwelling unit or an accessory dwelling unit (ADU) has been constructed on a lot for purposes of this section. Accessory dwelling units shall meet the zoning district Dimensional Requirements of Article 3 Section 307 of this Land Use Code with the exception of requirements for lot area and density.

402.3 DISTRICTS WHERE PERMITTED AND OTHER REGULATIONS

Accessory ~~living quarters~~ dwelling units may be located on the same lot where a single-family dwelling is the principal structure. ~~shall be permitted in the same districts as single family dwellings.~~ In accordance with Title 30-A MRSA §4364-B as amended, only one (1) accessory dwelling unit may be located on the same lot where the single-family dwelling is the principal structure, including as a conditional use. Note: An accessory dwelling unit may be constructed within or attached to an existing single-family structure which does not conform to the regulations of the district in which it is located so long as that structure is a legally existing non-conforming

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principal structure that is a single-family dwelling unit and as long as the ADU does not further increase the nonconformity.

a) One (1) accessory dwelling unit may be constructed only within a legally existing single-family dwelling unit on the lot; attached to an existing single-family dwelling; or as a new accessory dwelling structure on the lot for the primary purpose of creating an accessory dwelling unit. An accessory dwelling unit shall not be constructed or established within an existing accessory structure or building.

b) An accessory dwelling unit is not subject to any additional motor vehicle parking requirements beyond the parking requirements of the single-family dwelling on the lot where the ADU is located. No parking space to be provided for an accessory dwelling unit shall be located or assumed within the right-of-way of any public street or roadway.

c) An accessory dwelling unit located in a shoreland zone must comply with shoreland zoning requirements established by the Department of Environmental Protection under Title 38, chapter 3 and City of Brewer Shoreland and Overlay Zone requirements.

d) An accessory dwelling unit shall not be sold separately.

e) Manufactured homes as defined in Article 14 of this Land Use Code shall not be used as an accessory dwelling unit, except as may otherwise be allowed in this Land Use Code and under this section.

f) Recreational vehicles, travel trailers, camping/camper trailers, tents, temporary structures and temporary shelters shall not be used on the premises as an accessory dwelling unit or in conjunction with an accessory dwelling unit.

g) An accessory dwelling unit shall comply with all permitting, subdivision and/or site plan requirements and all other applicable Codes and Ordinances of the City of Brewer.

Article 14 Definitions

Accessory Living Quarters Dwelling Unit (ADU). ~~An accessory building used solely as the temporary dwelling of guests of the occupants of the premises; such dwelling having no kitchen facilities and not rented or otherwise used as a separate dwelling unit.~~ An accessory dwelling unit (ADU) is a smaller, secondary self-contained dwelling unit located within, attached to or detached from a single-family dwelling unit located on the same lot as the principal single-family dwelling and meets minimum square footage requirements in accordance with the Technical Building Code and Standards Board, under Title 10 M.R.S. §9722 as may be amended from time to time and does not exceed (450) four hundred fifty square feet.

Statement of Fact: These ordinance amendments are proposed to meet the requirements of the State Legislative Document 2003 (LD2003) and subsequent legislation. The changes combine current ordinance regulations on Accessory Living Quarters (brought up to today's standards) with the State requirements allowing ADUs. The Brewer Planning Board held a public hearing on October 2, 2023 and

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unanimously made the recommendation to adopt these amendments to Chapter 24 “Land Use Code” as written. There were no public comments.

ACTION: Councilor Daniels moved that the amendments on the consent calendar be certified and filed with the city clerk for posting. Councilor Morin 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.

I. ADJOURN

ACTION: Councilor Ferris moved to adjourn. Councilor Daniels seconded the motion. The motion passed by a unanimous vote. The meeting was adjourned at 6:14 P.M.

ADJOURNED, ATTEST: _____ Vincent P. Migliore
City Clerk

A TRUE COPY, ATTEST: _____ Brewer, Maine