

1995

Code of Ordinances City of Lewiston, Maine

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CODE OF ORDINANCES
CITY OF
LEWISTON, MAINE

Published by Order of the City Council

Approved February 7, 1995

Effective March 9, 1995

OFFICIALS

of the

CITY OF

LEWISTON, MAINE

AT THE TIME OF THIS CODIFICATION

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City Clerk

No. 95-3

Effective: 3/9/1995

**AN ORDINANCE ADOPTING AND ENACTING A NEW CODE FOR THE
CITY OF LEWISTON**

THE CITY OF LEWISTON HEREBY ORDAINS:

A new Code of Ordinances for the City of Lewiston is hereby adopted including provisions for the repeal of certain ordinances not included therein; provisions for a penalty for the violation thereof; and provisions for the manner of amending such code.

**CODE OF ORDINANCES
CITY OF LEWISTON, MAINE**

Section 1. The Code entitled "Code of Ordinances, City of Lewiston, Maine," published by Municipal Code Corporation, consisting of Chapters 1 through 82, each inclusive, is adopted.

Section 2. All ordinances of a general and permanent nature enacted on or before July 19, 1994, and not included in the Code or recognized and continued in force by reference therein are repealed.

Section 3. The repeal provided for in Section 2 hereof shall not be construed to revive any ordinance or part thereof that has been repealed by a subsequent ordinance that is repealed by this ordinance.

Section 4. Unless another penalty is expressly provided, every person convicted of a violation of any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished by a fine of not more than \$1,000.00. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. The penalty provided by this section, unless another penalty is expressly provided, shall apply to the amendment of any Code section whether or not such penalty is reenacted in the amendatory ordinance. In addition to the penalty prescribed above, the council may pursue other remedies such as abatement of nuisances, injunctive relief and revocation of licenses or permits.

Section 5. Additions or amendments to the Code, when passed in the form as to indicate the intention of the council to make the same a part of the Code, shall be deemed to be incorporated in the Code, so that reference to the Code includes the additions and amendments.

Section 6. Ordinances adopted after July 19, 1994, that amend or refer to ordinances that have been codified in the Code shall be construed as if they amend or refer to like provisions of the Code.

PART II
CITY OF LEWISTON
CODE OF ORDINANCES

Chapter 1

GENERAL PROVISIONS

- Sec. 1-1. Designation and citation of Code.
- Sec. 1-2. Definitions and rules of construction.
- Sec. 1-3. Catchlines, history notes and references.
- Sec. 1-4. Amendments to Code.
- Sec. 1-5. Unauthorized alteration or tampering with Code.
- Sec. 1-6. Effect of repeal of ordinances.
- Sec. 1-7. Severability of parts of Code.
- Sec. 1-8. General penalty for violation of Code; continuing violations.
- Sec. 1-9. Certain ordinances, rights, etc., not affected by Code.

GENERAL PROVISIONS

Sec. 1-1. Designation and citation of Code.

The ordinances embraced in the following chapters and sections shall constitute and be designated the "Code of Ordinances, City of Lewiston, Maine," and may be so cited.

(Code 1982, § 1-1)

State law references: Municipal authority to codify, 30-A M.R.S.A. § 3004.

Sec. 1-2. Definitions and rules of construction.

In the construction of this Code, and of all ordinances, the rules and definitions set out in this section shall be observed, unless such construction would be inconsistent with the manifest intent of the city council. The rules of construction and definitions set out in this section shall not be applied to any section of this Code which shall contain any express provision excluding such construction, or where the subject matter or context of such section may be repugnant thereto.

Generally. All general provisions, terms, phrases and expressions contained in this Code shall be liberally construed in order that the true intent and meaning of the city council may be fully carried out. In the interpretation and application of any provisions of this Code, such provisions shall be held to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare. Where any provision of the Code imposes greater restrictions upon the subject matter than the general provision imposed by the Code, the provision imposing the greater restriction or regulation shall be deemed to be controlling.

Charter. The words "the Charter" or "this Charter" shall mean the Charter of the City of Lewiston, Maine.

City. The words "the city" or "this city" shall mean the City of Lewiston, Maine.

City council, council. Whenever the words "council" or "city council" are used, they shall be construed to mean the city council of the City of Lewiston, Maine.

Code. The words "the Code" or "this Code" shall mean the Code of Ordinances, City of Lewiston, Maine.

Computation of time. Whenever a notice is required to be given or an act to be done a certain length of time before any proceeding shall be had, the day on which such notice is given, or such act is done, shall not be counted in computing the time, but the day on which such proceeding is to be held shall be counted.

Corporate or city limits. The terms "corporate limits" or "city limits" shall mean the legal boundaries of the City of Lewiston, Maine.

County. The words "the county" or "this county" shall mean the County of Androscoggin in the State of Maine.

Delegation of authority. Whenever a provision appears requiring the head of a department or some other city officer to do some act or perform some duty, it is to be construed to authorize the head of the department or other officer to designate, delegate and authorize subordinates to perform the required act or perform the duty unless the terms of the provision or section specify otherwise.

GENERAL PROVISIONS

Gender. A word importing the masculine gender only shall extend and be applied to females and to firms, partnerships and corporations as well as to males.

Inhabitant. The word "inhabitant" shall mean a person having an established residence in the city.

Joint authority. All words giving a joint authority to three or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.

May. The word "may" is permissive.

Mayor. The term "mayor" shall mean the mayor of the city.

Month. The word "month" shall mean a calendar month.

M.R.S.A. The abbreviation "M.R.S.A." shall mean the latest edition of the Maine Revised Statutes Annotated, as amended.

Municipal officers. The term "municipal officers" shall mean the members of the city council.

Nontechnical and technical words. Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.

Number. A word importing the singular number only may extend and be applied to several persons and things as well as to one person and thing.

Oath. The word "oath" includes an affirmation, when affirmation is allowed. Affirmation is allowed when a person required to be sworn is conscientiously scrupulous of taking an oath.

Officials, boards, commissions. Whenever reference is made to officials, boards and commissions by title only, i.e., "city council," "city clerk," "the mayor," etc., they shall be deemed to refer to the officials, boards and commissions of the City of Lewiston, Maine.

Or, and. "Or" may be read "and," and "and" may be read "or" if the sense requires it.

Owner. The word "owner," applied to a building or land, shall include any part owner, joint owner, tenant in common, tenant in partnership, joint tenant, or tenant by the entirety, of the whole or of a part of such building or land.

Person. The word "person" shall extend and be applied to associations, clubs, societies, firms, partnerships and bodies politic and corporate as well as to individuals.

Personal property. The term "personal property" includes every species of property except real property, as defined in this section.

Preceding, following. The words "preceding" and "following" mean next before and next after, respectively.

Property. The word "property" shall include real and personal property.

Real property. The term "real property" shall include lands, tenements and hereditaments.

Shall. The word "shall" is mandatory.

GENERAL PROVISIONS

Sidewalk. The word "sidewalk" shall mean any portion of a street between the curblin and the adjacent property line, intended for the use of pedestrians, excluding parkways.

Signature or subscription. The word "signature" or "subscription" includes a mark when the person cannot write.

State. The words "the state" or "this state" shall be construed to mean the State of Maine.

Street. The word "street" shall be construed to embrace streets, avenues, boulevards, roads, alleys, lanes, viaducts and all other public ways in the city, and shall include all areas thereof embraced between the property lines and dedicated to the public use.

Tenant or occupant. The word "tenant" or "occupant," applied to a building or land, shall include any person holding a written or oral lease or who occupies the whole or a part of such building or land, either alone or with others.

Tense. Words used in the past or present tense include the future as well as the past and present.

Written or in writing. The term "written" or "in writing" shall be construed to include any representation of words, letters or figures, whether by printing or otherwise.

Year. The word "year" shall mean a calendar year.

(Code 1982, § 1-2)

State law references: Similar provisions, 1 M.R.S.A. § 72.

Sec. 1-3. Catchlines, history notes and references.

- (a) The catchlines of the sections of this Code printed in boldface type are intended as mere catchwords to indicate the contents of the section, and shall not be deemed or taken to be titles of such sections, nor as any part of the section, nor, unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines, are amended or reenacted.
- (b) The history notes appearing in parentheses after each section and the references and notes scattered throughout the Code are for the benefit of the user of the Code and shall have no legal effect.

(Code 1982, § 1-3)

Sec. 1-4. Amendments to Code.

All ordinances passed subsequent to this Code which amend, repeal or in any way affect this Code may be numbered in accordance with the numbering system of this Code and printed for inclusion in this Code, or in the case of repealed chapters, sections and subsections or any part thereof, by subsequent ordinances, such repealed portions may be excluded from the Code by the omission thereof from reprinted pages affected thereby, and the subsequent ordinances as numbered and printed or omitted, in the case of repeal, shall be prima facie evidence of such subsequent ordinances until such time as this Code of Ordinances and subsequent ordinances numbered or omitted are readopted as a new Code of Ordinances by the city council.

(Code 1982, § 1-4)

GENERAL PROVISIONS

Sec. 1-5. Unauthorized alteration or tampering with Code.

It shall be unlawful for any person in the city to change or amend, by additions or deletions, any part or portions of this Code, or to insert or delete pages, or portions thereof, or to alter or tamper with such Code in any manner whatsoever which will cause the law of the city to be misrepresented thereby.

(Code 1982, § 1-5)

Sec. 1-6. Effect of repeal of ordinances.

- (a) When any ordinance repealing a former ordinance, clause or provision shall be itself repealed, such repeal shall not be construed to revise such former ordinance, clause or provision unless it shall be therein so expressly provided.
- (b) The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of the repeal, for an offense committed or cause of action arising under the ordinance repealed.

(Code 1982, § 1-6)

Sec. 1-7. Severability of parts of Code.

The sections, subsections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph, subsection or section of this Code shall be declared unconstitutional, invalid or unenforceable by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality, invalidity or unenforceability shall not affect any of the remaining phrases, clauses, sentences, paragraphs, subsections and sections of this Code. (Code 1982, § 1-7)

Sec. 1-8. General penalty for violation of Code; continuing violations.

- (a) Every person who shall be guilty of violating any provision of this Code to which a particular penalty is not annexed shall forfeit and pay a sum, in accordance with the city's policy manual as approved by the city council, to be recovered for the use of the city on complaint or by other appropriate action before the district court.
- (b) The imposition of a penalty for violation of any ordinance shall not excuse the violation, or permit it to continue; such violation shall be remedied within a reasonable time, and for each ten days that the violation is permitted to continue a separate offense will accrue.
- (c) The application of a penalty shall not be held to prevent the enforced removal of prohibited conditions. The imposition of penalties for violation of this Code or any ordinance shall not preclude the city attorney from instituting an appropriate action or proceeding to prevent an unlawful erection, construction, reconstruction, alteration, repair, conversion, removal, maintenance or use, or to restrain, correct or abate a violation or to prevent the occupancy of a building, structure or premises, or to prevent an illegal act, conduct, business or use in or about any premises.

(Code 1982, § 1-8; Ord. No. 08-06a, 8-14-08)

Charter references: Penalty for violation of ordinances, § 1.01.

GENERAL PROVISIONS

Sec. 1-9. Certain ordinances, rights, etc., not affected by Code.

- (a) Nothing in this Code or the ordinance adopting this Code shall affect any ordinance:
- (1) Promising or guaranteeing the payment of money for the city, or authorizing the issuance of any bonds of the city or any evidence of the city's indebtedness, or any contract or obligations assumed by the city;
 - (2) Containing any administrative provisions of the council not in conflict or inconsistent with the provisions of this Code;
 - (3) Prescribing rates for city utility services;
 - (4) Granting any right or franchise and establishing any rates therefor;
 - (5) Dedicating, naming, establishing, locating, relocating, opening, paving, widening, vacating, etc., any street or public way in the city;
 - (6) Making any appropriation;
 - (7) Levying or imposing taxes, not inconsistent with this Code;
 - (8) Providing for local improvements and assessing taxes therefor;
 - (9) Dedicating or accepting any plat or subdivision in the city;
 - (10) Adopting, extending or contracting the boundaries of the city;
 - (11) Prescribing the number, classification, or compensation of any city officers, employees or agents, not inconsistent herewith;
 - (12) Pertaining to zoning;
 - (13) Any other ordinance, or part thereof, which is not of a general and permanent nature;

and all such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this Code. Such ordinances are on file in the office of the city clerk.

- (b) Nothing in this Code or the ordinance adopting this Code shall affect any offense or act committed or done, or any penalty or forfeiture incurred or any contract or right established or accruing before the effective date of this Code.

Chapter 10

AMUSEMENTS AND ENTERTAINMENTS*

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- Sec. 10-2. Theaters, smoking prohibited.
- Sec. 10-3. Outdoor pageants, music festivals, concerts, etc.
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- Sec. 10-33. Local license required.
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- Sec. 10-125. Duration of licenses; expiration date.
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- Sec. 10-151. Purpose.
- Sec. 10-152. Initial permit.
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- Sec. 10-156. Purpose.
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- Sec. 10-158. License required.
- Sec. 10-159. Application.
- Sec. 10-160. Requirement for license.
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- Sec. 10-166. Duration of license.
- Sec. 10-167. Restrictions on sound and noise.
- Sec. 10-168. Penalties.
- Sec. 10-169. Subsequent application.

***Cross references:** Advertising, ch. 6; businesses, ch. 22. **State law references:** Municipal authority to regulate public exhibitions, 8 M.R.S.A. § 501 et seq.

AMUSEMENTS AND ENTERTAINMENTS

ARTICLE I. IN GENERAL

Sec. 10-1. Circuses and carnivals, license required.

Whenever a person desires to run a carnival show or circus or any other amusement of a similar kind in the city he must file with the city clerk a petition to the municipal officers for a license on forms to be provided by such clerk.

(Code 1982, § 4-1)

Sec. 10-2. Theaters, smoking prohibited.

- (a) No person shall smoke or carry a lighted cigar, cigarette or pipe in any theater or moving picture house during any performance or public meeting therein, except in such room as may be designated as a smoking room and used for that purpose. This provision shall not be construed to prohibit smoking in the outer lobby of a theater or moving picture house.
- (b) This provision shall not be construed to prohibit the use of a cigar, cigarette or pipe upon the stage of any such theater, when used in connection with any theatrical performance.

(Code 1982, § 4-2)

Sec. 10-3. Outdoor pageants, music festivals, concerts, etc.

- (a) No person shall exhibit, sponsor, hold, promote or operate any outdoor pageant, music festival, concert, motorcycle meet, snowmobile or other motorized vehicle races, exhibitions or practice sessions of same within the limits of the city without approval by a majority of the council after public hearing.
- (b) No person shall be granted such permission unless the applicant satisfies the council that sanitary facilities such as toilets, waste disposal, handwashing facilities, potable water, and first aid facilities are provided and available in close proximity to the event.

(Code 1982, § 4-3)

Cross references: Police supervision of public gatherings, § 50-10.

State law references: Mass gatherings, 22 M.R.S.A. § 1601 et seq.

Secs. 10-4--10-30. Reserved.

ARTICLE II. RACE TRACKS*

***Cross references:** Traffic and vehicles, ch. 70.

State law references: State regulation of harness racing, 8 M.R.S.A. §§ 261--282.

Sec. 10-31. Intent and purpose.

The intention of this article is to provide for the promotion of the safety and general welfare of the public and of the occupants and users of race tracks in the city when used with the intent of financial gain to any person by means of harness horse racing.

(Code 1982, § 4-19)

Sec. 10-32. Definitions.

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The following words and terms as used in this article shall be deemed to mean and shall be construed as follows:

Grandstand means any structure on a race track used by spectators during the running of races.

Meet or meeting means the total number of consecutive days, excluding Sundays during which races are run.

Permit means a permit issued in accordance with the provisions of this article.

Race track means any fairgrounds, race track or field in the city which has on it any structure or grandstand, with a capacity of over 100 persons and which is used by spectators at races.

Races means a meeting for contests in the running of horses with the intent to financially benefit any person, including "sulky races," "harness races," and races of horses in any form over a regular course at a set time, with the exception of and the intent to exclude "running races" with "runners" so-called.

(Code 1982, § 4-20)

Cross references: Definitions generally, § 1-2.

Sec. 10-33. Local license required.

No person shall use any race track for races without first obtaining a local license as required by the provisions of this article and those of chapter 22.

(Code 1982, § 4-21)

State law references: State license required to hold a harness race where parimutuel betting occurs, 8 M.R.S.A. §§ 269, 270.

Sec. 10-34. Proof of insurance required.

Upon the request of the city clerk, any person making application for a permit for the operation of a race track for the running of races, as defined in this article, shall give proof to the clerk showing that he, the applicant, carries reasonable liability insurance for the protection of spectators in case of accidents occurring at such races.

(Code 1982, § 4-22)

Sec. 10-35. State regulations govern.

All meets at race tracks shall be set up and run as prescribed by the rules and regulations of the state harness racing commission and as provided by law.

(Code 1982, § 4-23)

Sec. 10-36. Other regulations.

In order to provide for the safety and general welfare of the public and of the occupants and users of the race tracks at races, and in order to eliminate fire hazards, the following provisions shall apply:

- (1) The person in charge shall employ at his own expense, during such races, such

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number of police officers as the chief of police feels is reasonably necessary to carry out the intent of this section.

- (2) If, in the opinion of the chief engineer of the fire department such is reasonably necessary, there shall be a fire truck and crew from the city standing by at the race track during such races. The services of such crew and use of the fire truck shall be paid for by the person in charge at a reasonable rate per day, such rate to be set by the city council and payable to the city.
- (3) All gates leading in and out of any grandstand area shall be kept open during the running of the races.
- (4) Exit lights shall be installed in conspicuous and appropriate places in any grandstand.
- (5) Fire extinguishers shall be placed in appropriate places in all grandstands and underneath such grandstands upon recommendation and under the supervision of the chief of the fire department.
- (6) The grandstands and surrounding area shall be swept clean daily.

(Code 1982, § 4-24)

Sec. 10-37. Appeals.

Appeal from any order issued under this article shall be as provided by law.

(Code 1982, § 4-25)

Secs. 10-38--10-60. Reserved.

ARTICLE III. SPECIAL AMUSEMENT PERMIT*

***Editor's note:** Ord. No. 04-05, effective April 1, 2004, amended art. III in its entirety to read as herein set out. Formerly, said article pertained to similar subject matter as enacted by Code 1982; as amended.

DIVISION 1. GENERALLY

Sec. 10-61. Purpose.

The purpose of this article is to regulate, pursuant to 28-A M.R.S.A. § 1054 et seq., the issuance of special amusement permits for music, dancing or entertainment in facilities licensed by the state to sell alcoholic beverages, and to regulate, pursuant to the City of Lewiston's home rule authority, the issuance of special amusement permits for dance halls or nightclubs that admit patrons under the age of 21.

(Ord. No. 04-05, 4-1-04; Ord. No. 11-04, 5-19-11)

Sec. 10-62. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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Entertainment includes any amusement, performance, exhibition or diversion for patrons or customers of the licensed premises whether provided by professional entertainers or by full-time or part-time employees of the licensee whose incidental duties include activities with an entertainment value.

Dance hall or nightclub includes any commercial premises a primary function of which is to offer patrons an opportunity to engage in social activities such as dancing, the enjoyment of live or prerecorded music, or the enjoyment of entertainment provided by dancers or other performers, provided that it shall not include (1) events sponsored by accredited educational institutions and held under the direct supervision of school authorities, or (2) events sponsored by bona fide nonprofit organizations which limit admissions to members and guests and which use revenue accruing from admissions exclusively for the benevolent purposes of the organization.

(Ord. No. 04-05, 4-1-04; Ord. No. 11-04, 5-19-11)

Secs. 10-63--10-75. Reserved.

DIVISION 2. PERMIT

Sec. 10-76. Required.

- (a) A licensee for the sale of alcoholic beverages to be consumed on the licensed premises shall not permit any live music, dancing, or entertainment of any kind on the premises until he has first obtained a special amusement permit approved by the city council. A business shall not operate as a dance hall or nightclub that admits persons under the age of 21 until the business has first obtained a special amusement permit Class E or Class F approved by the city council. The categories of a special amusement permit are as follows:

Special amusement permit--Class A. Any licensee of a food service establishment Class A, B, or C, or holder of an innkeeper license, with entertainment, which does not include dancing.

Special amusement permit--Class B. Any licensee of a Class A lounge, or holder of an innkeeper license, with entertainment, which does not include dancing.

Special amusement permit--Class C. Any licensee of a Class A lounge, a food service establishment Class A, B or C license, or holder of an innkeeper license, with entertainment, including dancing.

Special amusement permit--Class D. Any business that operates primarily as a function hall for the rental of space for events and holds a Class A lounge, a food service establishment Class A, B or C license, or holder of an innkeeper license, with entertainment, including dancing.

Special amusement permit – Class E. Any business operating as a dance hall or nightclub that admits persons under the age of 21.

Special amusement permit – Class F. Any business operating as a “chem-free” dance hall or nightclub that admits persons age 18 years and older, with no liquor service.

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- (b) Applications for all special amusement permits shall be made in writing to the city clerk and shall state the name and address of the applicant; the name, address and nature of the business; and any additional information required by the city council necessary to the processing of the application, including but not limited to a copy of the applicant's liquor license.

(Ord. No. 04-05, 4-1-04; Ord. No. 11-04, 5-19-11)

Sec. 10-77. Public hearing.

Before granting a permit, the city council shall hold a public hearing to determine whether issuance of the permit would be detrimental to the public health, safety or welfare or would violate any law, ordinance or regulation. Such determination may include, but is not limited to:

- (a) The violation of any law, ordinance or regulation, either in the past or caused by the issuance of the same; or
- (b) Conditions of record such as waste disposal violations, health, or safety violations or repeated parking or traffic violations on or in the vicinity of the premises and caused by persons patronizing or employed by the premises or such conditions caused by persons patronizing or employed by the premises which unreasonably disturb, interfere with or affect the ability of persons or businesses residing or located in the vicinity of the premises to use their property in a reasonable manner; or
- (c) Repeated incidents of record of breaches of peace, disorderly conduct, vandalism or other violations of law on or in the vicinity of the premises and caused by persons patronizing or employed by the premises.
- (d) Any other incident, behavior or occurrence on or about the location that the city council deems to be detrimental to the public health, safety or welfare.

The city council may impose conditions for protecting the public health, safety and welfare on any special amusement permit it issues.

(Ord. No. 04-05, 4-1-04; Ord. No. 04-16, 7-15-04; Ord. No. 11-04, 5-19-11)

Sec. 10-78. Denial.

If the application for a special amusement permit is denied, the city council shall give the applicant a written statement of the reasons for the denial.

(Ord. No. 04-05, 4-1-04)

Sec. 10-79. Term.

A special amusement permit Class A, B, C or D is valid only for the license year of the applicant's existing license. A special amusement permit Class E or F is valid for one year from the date of issuance of the permit.

(Ord. No. 04-05, 4-1-04; Ord. No. 11-04, 5-19-11)

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Sec. 10-80. Inspection.

Applicants shall be subject to the inspection provisions of section 22-34.

Whenever inspections of the premises used for or in connection with the operation of a business which has obtained a special amusement permit are provided for or required by ordinance or state law, or are reasonably necessary to secure compliance with any ordinance provision or state law, it shall be the duty of the permittee, or the person in charge of the premises to be inspected, to admit any officer, official, or employee of the municipality authorized to make the inspection at any reasonable time that admission is requested.

In addition to any other penalty which may be provided, the city clerk may suspend for a period of up to 30 days and the city council, after notice and public hearing, may revoke the special amusement permit of any permittee in the municipality who refuses to permit any such officer, official, or employee to make an inspection, or who interferes with such officer, official, or employee while in the performance of his duty, provided that no license or special amusement permit shall be suspended or revoked unless written demand for the inspection is made upon the permittee or person in charge of the premises, at the time it is sought to make the inspection.

(Ord. No. 04-05, 4-1-04; Ord. No. 04-16, 7-15-04; Ord. No. 11-04, 5-19-11)

Sec. 10-81. Suspension or revocation.

The city clerk may suspend any special amusement permit for a period up to 21 days where there is an immediate risk to the public health, safety or welfare. The city council may, after a public hearing preceded by notice to interested parties, suspend or revoke any special amusement permits which have been issued under this article on the grounds that the music, dancing, entertainment or activities so permitted constitutes a detriment to the public health, safety or welfare; violates any law, ordinance or regulation; or if any duly authorized city official has been refused admission to make an inspection of the premises after written request.

(Ord. No. 04-05, 4-1-04; Ord. No. 04-16, 7-15-04; Ord. No. 11-04, 5-19-11)

Sec. 10-82. Adult-oriented live entertainment prohibited.

No entertainment regulated as adult-oriented live entertainment by the provisions of article IV shall be provided by or on behalf of, or at the licensed premises of the holder of a special amusement permit or of an FSE-Class E license.

(Ord. No. 04-05, 4-1-04)

Sec. 10-83. Regulations.

The city council is further authorized, after public notice and hearing, to establish further written rules and regulations governing the issuance, suspension, and revocation of special amusement permits, the classes of permits, the music, dancing, entertainment or activities permitted under each class, and other limitations on these activities required to protect the public health, safety and welfare whenever the need arises. These rules and regulations may specifically determine the location and size of permitted premises, the facilities that may be required for the permitted activities on those premises, and the hours during which the permitted activities are permitted.

Such rules and regulations shall be additional to and consistent with all sections of this article.

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All permittees shall comply with Policy Number 10, section V(B) of the City Policy Manual enacted by the city council pertaining to holders of special amusement permits and FSE-Class E licenses and the city council may enact such other or further regulations it deems necessary or appropriate to carry out the purpose of this article.

(Ord. No. 04-05, 4-1-04; Ord. No. 04-16, 7-15-04; Ord. No.11-04, 5-19-11)

Sec. 10-84. Previous ownership.

If the applicant has previously owned, operated or managed or been the primary ownership interest in any company, corporation or other legal entity that has previously held a special amusement permit or liquor license from this municipality, then such information may be used as a basis for determination of the issuance of the permit, consistent with section 10-77.

(Ord. No. 04-16, 7-15-04)

Sec. 10-85. Penalties.

In addition to suspending or revoking a license or permit, the city may prosecute violations in court. A violation of this division shall be punished by a fine, in accordance with the city's policy manual as approved by the city council, regardless of the time between offenses. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense. In addition to such penalty, the city may enjoin or abate any violation of this division by appropriate action. In addition to such penalty, if the court finds for the city, the city shall recover its costs of suit including reasonable experts' fees, attorneys' fees and investigative costs.

(Ord. No. 04-16, 7-15-04; Ord. No. 08-06b, 8-14-08; Ord. No.11-04, 5-19-11)

Sec. 10-86. Additional Criteria - Special amusement permit – Class E.

- (a) No one who is under the age of 14 or over the age of 20 shall be admitted as a patron of the business while the business is operating under this permit classification.
- (b) The business owner shall be responsible for posting a notice in plain view at the establishment regarding the city's curfew for minors, as outlined in Chapter 50 of this Code and shall also be responsible for the enforcement of such curfew, as outlined in Chapter 50 of this Code.

(Ord. No.11-04, 5-19-11)

Secs. 10-87--10-100. Reserved.

ARTICLE IV. ADULT-ORIENTED LIVE ENTERTAINMENT*

***Editor's note:** Ord. No. 01-2, adopted March 8, 2001, amended the title of Art. IV to read as herein set out.

DIVISION 1. GENERALLY

Sec. 10-101. Purpose.

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The purpose of this article is to regulate live entertainment and nudity and near nudity as forms of commercial activity. It has been enacted for the purpose of promoting and protecting the general welfare, public safety and public order of the city and its citizens, to prevent the creation of a tawdry atmosphere that adversely affects the quality of life within the city, to prevent blight and the deterioration of the city's neighborhoods and to prevent the occurrence of harmful secondary effects such as the incidence of crime, disorderly conduct and juvenile delinquency associated with adult-oriented live entertainment in general and more particularly with entertainment such as nude and nearly-nude commercial entertainment. It is not intended to suppress or inhibit the free exchange of ideas or artistic expression.

(Ord. No. 92-33, § 17-139, 1-7-93; Ord. No. 01-2, 3-8-01)

Sec. 10-102. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Adult-oriented live entertainment means entertainment that involves near nudity or conduct which shall be deemed obscene under this Code of Ordinances.

Entertainment means any amusement, performance, exhibition or diversion provided by any performer for the patrons or customers of the licensed premises.

Nude entertainment means entertainment in which any performer appears in such a manner or attire as to expose to view any portion of the pubic area, anus, buttocks, vulva or genitals or any simulation thereof, or when any female appears on a licensee's premises in such a manner or attire as to expose to view any portion of the breast referred to as the areola, nipple or simulation thereof. Exposed to view shall be interpreted to include, without limitation, clear, see-through or otherwise non-opaque clothing.

Performer means any person, without regard to whether compensation is paid by the establishment, its patrons or customers, who presents or participates in any entertainment, including, but not limited to, professional entertainers and full-time or part-time employees of the licensed premises whose incidental duties include activities with an entertainment value.

(Ord. No. 92-33, § 17-139.4, 1-7-93; Ord. No. 01-2, 3-8-01; Ord. No. 02-27, 2-20-03)

Cross references: Definitions generally, § 1-2.

Sec. 10-103. Applicability.

This article shall apply to all persons who provide entertainment by one or more performers to members of the general public and who require or accept any valuable consideration for admission or attendance thereto. This article shall apply to holders of existing special amusement permits or FSE-Class E licenses issued by the city. The provisions of this article which require a permit shall not apply to persons who provide entertainment primarily to persons under the age of 17.

(Ord. No. 92-33, § 17-139.1, 1-7-93; Ord. No. 01-2, 3-8-01; Ord. No. 02-27, 2-20-03)

Sec. 10-104. Exceptions.

This article shall not apply to a theater, dinner theater or similar establishment which is

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primarily devoted to theatrical performances or the presentation of movies.

(Ord. No. 92-33, § 17-139.2, 1-7-93)

Sec. 10-105. Violations.

Any violation of any provision of this article or of any regulation enacted pursuant to this article shall be subject to the penalties provided for in sections 1-8 and 22-27.

(Ord. No. 92-33, § 17-139.11, 1-7-93)

Secs. 10-106--10-120. Reserved.

DIVISION 2. LICENSE

Sec. 10-121. Required.

No person shall offer or provide entertainment by one or more performers to members of the general public and require or accept any valuable consideration for admission or attendance thereto without having first obtained an adult-oriented live entertainment license approved by the city council.

(Ord. No. 92-33, § 17-139.3, 1-7-93; Ord. No. 01-2, 3-8-01)

Sec. 10-122. Applications.

Applications for all adult-oriented live entertainment licenses shall be made in writing to the city clerk on forms which the city clerk shall provide. The application shall state the name and address of the applicant; address and nature of the entertainment; and any additional information required by the city council or city clerk as necessary to the processing of the application.

(Ord. No. 92-33, § 17-139.5, 1-7-93; Ord. No. 01-2, 3-8-01)

Sec. 10-123. Public hearing.

Before granting a license, the city council shall hold a public hearing to determine whether issuance of the license would be detrimental to the public health, safety or welfare or would violate any statute, ordinance or regulation.

(Ord. No. 92-33, § 17-139.6, 1-7-93)

Sec. 10-124. Denial.

If an application for an adult-oriented live entertainment license is denied, the city council shall give the applicant a written statement of the reasons for the denial.

(Ord. No. 92-33, § 17-139.7, 1-7-93; Ord. No. 01-2, 3-8-01)

Sec. 10-125. Duration of licenses; expiration date.

All licenses, except when otherwise provided, shall be for 12 months duration and shall expire one year from the date of issuance.

(Ord. No. 92-33, § 17-1, 1-7-93)

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Sec. 10-126. Schedule of fees.

Unless otherwise provided, no person shall engage in any of the following businesses or activities in the city without having paid the proper fee and obtained a license or permit therefor. The fee shall be paid in accordance with the business fee schedule as established by the city council.

(Ord. No. 92-33, § 17-22, 1-7-93; Ord. No. 01-2, 3-8-01; Ord. No. 04-15, 7-15-04)

Sec. 10-127. Nude entertainment prohibited.

No adult-oriented live entertainment license shall be issued to conduct the activity of nude entertainment on the applicant's premises or any activity otherwise prohibited by the Code. It shall be unlawful and a violation of this article for a licensee holding an adult-oriented live entertainment permit to permit nude entertainment or any other activity otherwise prohibited by this Code on the premises.

(Ord. No. 92-33, § 17-139.8, 1-7-93; Ord. No. 01-2, 3-8-01; Ord. No. 02-27, 2-20-03)

Sec. 10-128. Inspection.

Applicants shall be subject to the inspection provisions of section 22-34.

(Ord. No. 92-33, § 17-139.9, 1-7-93)

Sec. 10-129. Suspension or revocation.

The city council may, after a public hearing preceded by notice to interested parties, suspend or revoke an adult-oriented live entertainment license if it determines that the conduct of the licensed premises constitutes a detriment to the public health, safety or welfare or violates any statute, ordinance or regulation or if any duly authorized city official has been refused admission to make an inspection of the premises after written request.

(Ord. No. 92-33, § 17-139.10, 1-7-93; Ord. No. 01-2, 3-8-01)

Sec. 10-130. Regulations.

All licensees shall comply with Policy Number 10, section V(B) of the city policy manual enacted by the city council pertaining to holders of special amusement permits and FSE-Class E licenses and the city council may enact such other or further regulations it deems necessary or appropriate to carry out the purpose of this article.

(Ord. No. 92-33, § 17-139.13, 1-7-93; Ord. No. 02-27, 2-20-03)

Secs. 10-131--10-150. Reserved.

ARTICLE V. NONCONFORMING USE PERMIT FOR ADULT BUSINESS ESTABLISHMENTS

Sec. 10-151. Purpose.

The purpose of this article is to regulate the issuance and renewal of permits for adult business establishments, as defined in appendix A, article II, § 2, which are nonconforming by reason of the density provisions of appendix A, article XI.

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(Code 1982, § 17-141)

Sec. 10-152. Initial permit.

- (a) *Notice.* The city clerk shall send a notice by registered or certified mail to the owner, as shown on the tax records of the city, of any property containing, and to any tenant as shown on the records of the city clerk, holding any license to operate an adult business establishment which is apparently nonconforming by reason of the density provisions of appendix A, article XI. The notice shall advise said owner or tenant that the use of the property as an adult business establishment is apparently nonconforming and that failure to apply for and obtain a nonconforming use permit, as provided herein, may result in the termination of its right to continue such a use.
- (b) *Time for application.* An adult business establishment which is eligible for a nonconforming use permit, pursuant to appendix A, article IV, § 6, must submit a complete application, as provided herein, to the city clerk within 90 days from December 20, 1984, or within 30 days from the date of mailing of the notice to the owner or tenant operating said establishment, whichever is later. Nothing herein shall be construed to prevent an eligible nonconforming adult business establishment from applying for a use permit before a notice is sent by the city clerk, and an application for a use permit shall be deemed a waiver of the notice requirement.
- (c) *Contents of application.* The application for an initial nonconforming use permit shall be on a form provided by the city clerk, and a complete application shall contain such information as deemed necessary by the city clerk including, but not limited to:
 - (1) Name and address of applicant.
 - (2) Whether the applicant is the owner, tenant, or licensee of the premises.
 - (3) The type of adult business establishment.
 - (4) The nature of the goods and/or services which make the entity an adult business establishment.
 - (5) Whether during the 12 months prior to December 20, 1984 the applicant met the qualifications set forth in appendix A, article IV.

The person signing the application shall make an oath or solemn affirmation, as to the truth of the statements therein, before a notary public or attorney.

- (d) *Failure to apply.* No nonconforming use permit shall be issued to any adult business establishment which fails to submit a complete application within the time provided in subsection (b) of this section.
- (e) *Effective date.* Each permit issued under this section shall be made effective as of December 20, 1984, and shall be valid for a period of one year.

(Code 1982, § 17-142)

Sec. 10-153. Permit renewal.

- (a) *Time for application.* The holder of a nonconforming use permit shall submit a complete renewal application, as provided herein, within 30 days prior to the expiration date of the permit.

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- (b) *Notice of proposed termination.* If no renewal application is received by the expiration date, the city clerk shall thereafter send a notice, by registered or certified mail, to the name and address of the holder of the expired permit as shown on the records of the city clerk, which notice shall advise the holder that failure to submit a late application, as provided herein, will result in termination of its right to continue the nonconforming use.
- (c) *Late application.* The holder of an expired nonconforming use permit may obtain a renewal permit by submitting a complete renewal application, as provided herein, together with a late fee of \$10.00, not later than 15 days from the date of mailing of the notice.
- (d) *Contents of renewal application.* The renewal application shall be on a form provided by the city clerk, and a complete application shall contain such information as deemed necessary by the city clerk; including, but not limited to, such information as is necessary to establish that during the 12 months immediately following the effective date of the last issuance of such permit, the adult business establishment met the qualifications set forth in appendix A, article IV. The person signing the application shall make an oath or solemn affirmation, as to the truth of the statements therein before a notary public or attorney.
- (e) *Failure to apply.* No nonconforming use permit shall be issued to any adult business establishment which fails to submit a complete renewal application within the time provided in subsections (b) and (c) of this section.

(Code 1982, § 17-143)

Sec. 10-154. Burden of proof.

In any initial permit application or renewal application under this article, the burden of proof as to whether the applicant meets the qualifications for such a permit shall be on the applicant. The city clerk may require the applicant to produce such documents and records, and to respond to such interrogatories under oath or affirmation, as is reasonably necessary to establish that the applicant qualifies for the permit. For purposes of establishing that the applicant has met the gross receipts requirements of appendix A, article IV, a sworn affidavit of a certified public accountant, who has personal knowledge of the financial records of the applicant, shall be accepted as sufficient evidence on such issues.

(Code 1982, § 17-144)

Sec. 10-155. Decisions and appeals.

Notwithstanding the provisions of sections 22-35 and 22-36, the city clerk shall approve or disapprove any application for a permit under this article, and the board of appeals shall have exclusive jurisdiction over any appeal from the denial of a permit under this article. Any such appeal shall be written, shall state with particularity the grounds upon which the appeal is based, and shall be filed with the board of appeals, with a copy to the city clerk, not more than 15 days after notice of the denial is delivered or mailed to the applicant.

(Code 1982, § 17-145)

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ARTICLE VI. AFTER HOURS ENTERTAINMENT EVENTS

DIVISION 1. GENERALLY

Sec. 10-156. Purpose.

The purpose of this article is to control the issuance of licenses for the conduct of after hours entertainment events in order to protect the public health, safety, and peace.

(Ord. No. 00-20, 10-5-00)

Sec. 10-157. Definitions.

An after hours event means an event conducted either indoors or outdoors, normally occurring between the hours of 1:00 a.m. and dawn, where the participants are invited to entertainment in a venue which may be advertised as a chemical free. For the purposes of this chapter, an after hours event will mean a gathering held with the intent to attract the attendance of 100 or more for the purpose set forth herein.

An event which falls within the above description will be regulated by this chapter even if its promoters chose to describe it by another name, augment the entertainment by means of lighting, the use of visual images, or by other means.

The fact that an after hours event might be conducted in a bottle club, or in premises licensed to sell alcoholic beverages will not exempt it from the provisions of this chapter.

(Ord. No. 00-20, 10-5-00; Ord. No. 02-23, 1-9-03)

DIVISION 2. LICENSE

Sec. 10-158. License required.

No person may conduct an after hours event without having obtained a license to do so from the city council. The city council shall conduct a public hearing prior to the issuance of a license.

- (1) *Time of filing.* An application for a license to conduct an after hours event must be filed no later than 45 days before the event.
- (2) *Application fee.* All applications will require a non-refundable processing fee. The fee shall be paid in accordance with the business fee schedule as established by the city council.
- (3) *General provisions to apply.* Except to the extent that this chapter may contain contrary provisions, the provisions of chapter 10 will apply to after hour event licenses.
- (4) If the applicant is a fixed and established business located within the city, with an approved entertainment license, sponsoring their own event, and has regularly scheduled after hours entertainment events held at least on a monthly basis, an application will be required on an annual basis. Renewal licenses for an annual after hours entertainment license shall be obtained from the city clerk.

(Ord. No. 00-20, 10-5-00; Ord. No. 02-09, 5-16-02; Ord. No. 02-23, 1-9-03; Ord. No. 04-15, 7-15-04)

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Sec. 10-159. Application.

Applications for an after hours event license will be filed in accordance with chapter 10. In addition to the requirements of that chapter, an applicant for an after hours event will furnish the following to the clerk:

- (1) An affidavit, identifying all the principal officers of the applicant and their places of residence at the present time, as well as for the immediately preceding three years;
- (2) A description of the premises for which a license is desired, including such other material information, description, or plan of that part of the premises where it is proposed to conduct the after hour event, as the clerk may require;
- (3) A floor plan showing the layout of the premises; its dimensions; the location of all emergency equipment, including, but not limited to, fire exits and sprinkler systems; rest rooms, including the number and location of all sanitary facilities; the location and number of each entrance and exit; the location of the main fuse box; and such other information as may be required by other city departments; the location of public pay telephones, and
- (4) The name, address, date of birth, driver's license number, and state of issuance of all the applicants employees.
- (5) If the application is filed on an annual basis, the applicant will furnish any changes identifying the principal officers and employees as they occur.

Ord. No. 00-20, 10-5-00; Ord. No. 02-09, 5-16-02)

Sec. 10-160. Requirement for license.

In addition to any other requirement which may be imposed either by this chapter or by other provisions of the City Code, an applicant for an after hours event license will be required to provide the following police services at no cost to the city:

Police. The applicant will provide a minimum number of sworn members of the Lewiston Police Department in accordance with the requirements of the chart below:

<i>Number of Attendees</i>	<i>Number of Police</i>
1-200	1
201-400	2
401-600	3
601+	One sergeant, and one additional officer for each 200 attendees or portion thereof in excess of 601

Additional officers may be required by the chief of police, or his designee, if alcohol is served at the event, or as other situations warrant or at the chief's discretion.

(Ord. No. 00-20, 10-5-00)

Sec. 10-161. Traffic control.

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The applicant will provide traffic control in order to ensure the safe movement of pedestrians and vehicles on and about the premises where the after hour event will occur as well as along adjacent public ways. The specific types of control and how they will be provided will be determined by the city's traffic engineer and its police department.

(Ord. No. 00-20, 10-5-00)

Sec. 10-162. Parking.

The applicant will provide off-street parking in the vicinity of the site where the after hour event will be conducted, as follows: One parking space for each 100 square feet or major fraction thereof used in conjunction with the after hour event, excluding restrooms.

(Ord. No. 00-20, 10-5-00)

Sec. 10-163. Sanitation facilities.

The applicant will provide free, potable drinking water, hot water for sanitary purposes, and clean well equipped restroom facilities as directed by the city's health officer or his designee in accordance with the health code. The applicant may be required to provide portable toilet and hand washing facilities. (Ord. No. 00-20, 10-5-00)

Sec. 10-164. Right of entry.

Any law enforcement officer, member of the fire department, or code enforcement officer of the city will have the right to enter in and upon the premises for which a license is sought, during business hours, prior to the after hours event as well as during the time when the after hours event will take place. It is the duty of every licensee as well as the principal officers thereof to afford free access to every part of the establishment and to render all aid and assistance necessary to enable the officials to make a full, thorough, and complete examination thereof in order to determine compliance with this Code and the laws of the state.

(Ord. No. 00-20, 10-5-00)

Sec. 10-165. Appeal.

Any applicant who is denied a renewal license may request a hearing before the city council. The hearing will be held in ten business days by the city council. Any appeal from the decision of the city council will be to the superior court in accordance with Rule 80B of the Maine Rules of Civil Procedure.

(Ord. No. 00-20, 10-5-00; Ord. No. 02-23, 1-9-03)

Sec. 10-166. Duration of license.

Any license granted under this chapter will be valid for a single event which may not exceed 18 continuous hours in duration. (Ord. No. 00-20, 10-05-00)

Sec. 10-167. Restrictions on sound and noise.

Any other provisions of this Code notwithstanding, a licensee may not allow either the licensed activity or any other activities on the licensed premises to generate sound or noise, after 1:00 a.m., which exceeds 50 decibels, when measured at the property line of the nearest lot containing a residential dwelling unit.

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(Ord. No. 00-20, 10-5-00; Ord. No. 02-23, 1-9-03)

Sec. 10-168. Penalties.

In addition to suspending or revoking a license, the city may prosecute violations in court. A violation of this chapter will be punished by a civil penalty, in accordance with the city's policy manual as approved by the city council, regardless of the time between offenses. Each act of violation and every day upon which any violation should occur will constitute a separate offense. In addition to a civil penalty, the city may enjoin or abate any violation of this chapter by appropriate action. In addition to a civil penalty, if the court should find for the city, it will be entitled to its costs of suit, including reasonable experts' fees, attorneys' fees and investigative costs.

In addition to any civil penalty which may be authorized by this chapter, other provisions of Lewiston's Code, or state law, it will be a violation of this chapter if the sale of scheduled drugs should take place on the licensed premises either with the licensee's knowledge or under circumstances where the licensee, in the exercise of reasonable diligence and care, should have been aware that such sales were occurring. "Scheduled drugs" are those listed in 17-A M.R.S.A. Section 1102, as it may be amended from time to time.

(Ord. No. 00-20, 10-5-00; Ord. No. 08-06b, 8-14-08)

Sec. 10-169. Subsequent application.

- (a) In addition to the civil penalties provided in the prior section, any person who is found to be in violation of any provision of this chapter will be barred from obtaining an after hours event license for a 12-month period. The 12-month period will commence to run at the time of final adjudication of the violation and may extend beyond the year in which the license was issued.
- (b) The 12-month bar provided in this section will also apply to any private corporation, business, or other economic entity in which the licensee is, directly or indirectly, the owner of at least ten percent of the stock of such private corporation or owns at least a ten percent interest in such business or other economic entity.

(Ord. No. 00-20, 10-5-00)

Chapter 14

ANIMALS*

***Editor's note:** Ord. No. 01-7, effective May 31, 2001, amended Ch. 14 in its entirety to read as herein set out. Formerly said chapter pertained to similar subject matter. See the Code Comparative Table. **Cross references:** City clerk to perform animal control functions, § 2-104; disposal of dead animals restricted, § 34-37; application of traffic ordinances to animals, § 70-9.

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- Sec. 14-2. Penalties.
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- Sec. 14-8. Prohibited actions.
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Article III. Rabies Control; Quarantine

- Sec. 14-10. Rabies inoculation.
- Sec. 14-11. Animal bites and scratch reports; submission to quarantine.
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- Sec. 14-14. Impoundment generally.
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Article V. Dangerous Animals

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- Sec. 14-19. Complaints regarding dangerous animals.
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- Sec. 14-24. Right of entry.

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ANIMALS

ARTICLE I. IN GENERAL

Sec. 14-1. Definitions.

For the purposes of this chapter, the following terms, phrases and words used herein shall be interpreted to read as follows; and any words not herein defined shall be construed in the context used in 7 M.R.S.A. Chapters 717 through 739 or 17 M.R.S.A Chapter 42 and by ordinary interpretation, and not as a word of art:

Animal means any living creature classified as a member of the animal kingdom including, but not limited to, birds, fish, mammals and reptiles, but specifically excluding human beings.

Animal control facility means any facility owned, approved, and/or contracted by the City of Lewiston for the purposes of housing, impounding, quarantine, medical treatment, or euthanasia of animals.

Animal control officer (ACO) means the person or persons, including but not limited to the appointed ACO and the members of the city's police department, designated by the City of Lewiston to act as the representative agent for the city in the impoundment of animals and in the controlling of stray animals which come into the custody of the city.

At-large refers to dogs and other domestic animals which are legally in compliance with all local, state and federal laws, rules and regulations, other than a domestic cat, that is on any public right-of-way or publicly owned land unless controlled by a leash of not more than eight feet in length, except as provided for in section 14-37 and 14-38 of this chapter. A domestic cat shall be considered at-large when not located on the premises owned or controlled by its owner and not otherwise under immediate effective control.

City means the City of Lewiston.

Dangerous animal means any animal which demonstrates behavior and/or possesses the vicious propensity to inflict serious bodily injury or death upon human beings and/or other animals and constitutes a danger to human life or other animals; or any animal which has behaved in such a manner that the owner thereof knows, or reasonably should know, that the animal is possessed of tendencies to commit unprovoked attacks or to injure human beings or other animals; or any animal certified by a doctor of veterinary medicine, after observation thereof, as posing a danger to human beings or animals; or any animal, without provocation, that assaults an individual or animal; or any animal that commits an unprovoked act that causes a person, acting in a reasonable and non-aggressive manner, to reasonably believe that the animal will attack and cause bodily injury to that person or animal.

Dog means both male and female canines.

Domestic animal means any animal whose physiology has been determined or manipulated through selective breeding, and which does not occur naturally in the wild, and which may be vaccinated against rabies with an approved rabies vaccine, and has an established rabies quarantine observation period.

Exotic animal means any non-domesticated animal, other than livestock, that is native to a foreign country or of foreign origin or character, or was introduced from abroad. This term will specifically include, but not be limited to, animals such as lions, tigers, jackals, dingoes, leopards, elephants, pandas, camels, antelope, anteaters, kangaroos, chimpanzees, gorillas,

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orangutans, water buffalo, and species of foreign domestic livestock requiring state and federal permits.

Fowl means a bird of any kind, including, but not limited to, chickens, ducks, geese, guineas, pigeons, emus, ostriches, rheas, turkeys and pheasants.

Guard dog means a dog trained and used by law enforcement, private security, or in protective functions where the dog is responsive to control by its owner or handler and used only for protective functions.

Guide dog means a dog trained to assist a physically challenged person.

Immediate effective control means the confinement of an animal to the premises of its owner by a fence of sufficient strength and height to prevent an animal from escaping there from; or contained inside a house or other enclosure; or secured on the premises by a leash of sufficient strength to prevent the animal from escaping from said premises and so arranged that the animal will remain upon said premises when the leash is stretched to full length in any direction. An animal shall also be considered under immediate effective control when used to assist a physically challenged person or when the animal is under the immediate control of a person by means of a cage, leash, or effective restraint to control said animal. The term "effective restraint" as used herein shall include, but not be limited to, training employing audible and/or visual commands, remote control devices, and/or other means to control the animal.

Kennel means any business or establishment other than a veterinary hospital, whether operated separately or in connection with another business or establishment, that keeps, boards and/or trains dogs and/or cats or other animals, which may legally be present in such facilities, for profit. Kennels must be established, maintained and operated in compliance with all applicable zoning and land use regulations of the city and all state statues and regulations of the State of Maine. Livestock shall mean, but may not be limited to, any horses, mules, donkeys, cattle, goats, sheep or swine.

Livestock shall mean, but may not be limited to, any horses, mules, donkeys, cattle, goats, sheep or swine.

Owner means any person, partnership, corporation or association that harbors, shelters, keeps, controls, manages, possesses or has whole or part interest in any animal. The occupant, owner or head of a household of any premises where an animal remains for 24 hours or more shall presumed to be the owner of such animal for the purposes of this chapter.

Pet means any animal which may be legally owned in accordance with the provisions of this chapter, normally kept for pleasure rather than utility, excluding livestock, is in the owner's possession and for which it can be reasonably demonstrated that the care of said pet is the responsibility of a given individual or individuals.

Pet store means any business or establishment other than a veterinary hospital, whether operated separately or in connection with another business or establishment, that buys and sells dogs, cats, and/or other species of pet for profit. Pet stores or shops must be established, maintained and operated in compliance with all applicable zoning and land use regulations and all other applicable laws or rules of the city and the State of Maine.

Public auction means any place or facility where animals are sold to the highest bidder. This definition does not apply to individual sales of animals by private owners or other private owners.

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Public park or playground mean any city-owned or operated public park, playground or school ground.

Public nuisance means the following:

- (1) An owner's failure to control, restrain or otherwise allow, either by conduct or condition, any animal to:
 - a. Engage in conduct which establishes such an animal as a "dangerous animal"; or
 - b. Be at-large; or
 - c. Cause a disturbance by excessive barking or noise-making near the private residence or business of another or of any government or public facility; or
 - d. Produces maggots, flies, odors, or unclean conditions sufficient to annoy or endanger adjacent property owners, residents or other individuals who may be reasonably exposed by such conditions; or
 - e. Chase vehicles or molest, attack or interfere with other persons and animals on public or private property.
- (2) Any animal normally found in the wild that has entered onto any public or private property and by its presence is a threat to public health and safety or is generally interrupting the tranquility of the location.

Restraint means to control an animal by physical means, such as a cage, leash, rope or confinement within an enclosed space or by training or employing audible and/or visual commands, remote control devices, and/or other means to control the animal.

Stray means an animal that is improperly restrained and that wanders upon a public place, roadway, street, highway, or the property of another person.

Vaccination means the inoculation of an animal with a rabies vaccine or other medicine that is licensed by the United States Department of Agriculture for use in that species, and which is administered by a licensed veterinarian for the purpose of immunizing the animal against rabies or other diseases.

Veterinary hospital means any establishment that is maintained and operated by a licensed veterinarian for the diagnosis, treatment or surgery of injuries and diseases to animals.

Wild animals mean any animal not normally considered domesticated and which is now or historically has been found in the wild, or in the wild state, including but not limited to the following:

- (1) Reptiles; venomous reptiles; any type of crocodile or alligator; or
- (2) Fish: Piranha; or
- (3) Birds: Condors, eagles, hawks, falcons, owls; or
- (4) Mammals: Ocelots, lions, tigers, jaguars, leopards, cougars, wolves, dingoes, coyotes and coyote mixes, jackals, weasels, martens, minks, badgers, skunks, raccoons, pandas, bears, kangaroos, opossums, sloths, anteaters, armadillos, monkeys, chimpanzees, gorillas, orangutans, porcupines, antelope, deer, fox,

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elephant, lynx, squirrels, chipmunks; or

- (5) Any species of animal illegal to own under federal, state or local law.

(Ord. No. 01-7, 5-31-01)

Sec. 14-2. Penalties.

Any person violating any provision of this chapter shall pay a fine of no less than the amount set in accordance with the city's policy manual as approved by the city council, unless otherwise specified in this chapter, for each of the first and second violation. The minimum penalty for any subsequent violation of this chapter shall be set in accordance with the city's policy manual as approved by the city council unless otherwise specified in this chapter, for each offense. In no case shall the court assess a fine that is less than those defined in state statute if the city's policy manual minimums are less. Violators of this chapter must pay for all costs associated with any action taken by the ACO involving the impoundment, treatment or humane euthanasia by a licensed veterinarian relating to animals of which they are owners. Where financial hardship is demonstrated, a violator of this chapter may perform community service in lieu of the financial penalty if such a program is available through the city.

(Ord. No. 01-7, 5-31-01; Ord. No. 08-06c, 8-14-08)

Sec. 14-3. Enforcement.

- (a) The ACO shall be responsible for enforcement of this chapter except as may be provided herein. Enforcement may be by the filing of a criminal complaint in District or Superior Court; by civil proceedings to enjoin nuisances; or in any other manner authorized by federal, state or local law, rule or ordinance.
- (b) It shall be unlawful for any person being issued a citation to district court or any civil proceeding to intentionally or knowingly fail to give the ACO their true name and address or to intentionally or knowingly fail to appear in accordance with the terms of a citation or civil process issued by the ACO.
- (c) If the individual who is to receive the citation is not present, the ACO may send the citation to the alleged offender by certified or registered return receipt mail. If said citation should come back unclaimed, the citation shall be sent regular mail. If this regular mailing is returned as unclaimed, the service shall then be deemed as completed.

(Ord. No. 01-7, 5-31-01)

Sec. 14-4. Exemption.

This chapter shall not apply to any animal accompanying a physically challenged person who, by reason of his/her handicap, is physically unable to comply with the requirements of this chapter. (Ord. No. 01-7, 5-31-01)

Sec. 14-5. Severability clause.

If any part of this chapter shall be held invalid, such part shall be deemed severable and the invalidity thereof shall not affect the remaining parts of this chapter.

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Sec. 14-6. Repealed.

All other applicable ordinances are repealed.

(Ord. No. 01-7, 5-31-01)

ARTICLE II. ANIMAL CARE--GENERAL

Sec. 14-7. Care of animals.

Animals shall be provided humane care, treated and transported in a humane manner and not in violation of any federal, state or local law, rule or ordinance.

(Ord. No. 01-7, 5-31-01)

Sec. 14-8. Prohibited actions.

A person commits an offense if:

- (1) A person fails to provide an animal under his or her control and/or ownership with adequate wholesome food and water, proper shelter and protection from inclement weather, and veterinary care when needed to prevent suffering; or
- (2) A person having charge or custody of an animal, places or confines such animal, or allows such animal to be placed or confined in a motor vehicle, trailer, or other enclosure under such conditions, or for such a period of time, as to endanger the health of the animal due to heat, lack of food or water, or such other circumstances as may cause injury or death to the animal; or
- (3) A person treats an animal in an inhumane or cruel manner as defined by 17 M.R.S.A. Chapter 42.
- (4) A person knowingly owns, harbors, trains, sells, or offers for sale any animal which is used for the purpose of fighting; or to be trained, tormented, badgered or baited for the purpose of causing or encouraging said animal to attack human beings or animals when not provoked, except that this section shall not apply to guard dogs or dogs used by local, state or federal law enforcement agencies; or
- (5) A person mutilates any animal, whether such animal is dead or alive. This subsection does not apply to medical or veterinary medical research, medical or veterinary medical autopsies, or biology class use of animals for educational purposes; or
- (6) A person causes an animal to fight another animal or person; or
- (7) A person other than a licensed veterinarian docks an animal's tail, or crops an animal's ears; or castrates an animal; provided, however, this subsection shall not apply to normal livestock operations occurring within the city; or
- (8) A person dyes or colors chicks, ducks, rabbits, reptiles or birds; or
- (9) A person transporting an animal fails to effectively restrain an animal so as to prevent the animal from leaving or being accidentally thrown from a vehicle during normal operation of the vehicle; or fails to effectively restrain an animal so

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as to prevent infliction of bodily harm to passerby. Provided, however, the provisions herein shall not prohibit a person from transporting an effectively confined or tethered dog(s) in the open bed of a pickup truck; or

- (10) A person is in control of a motor vehicle which strikes a domestic animal or livestock within the corporate limits of the city and fails to report the accident to the city police department or the ACO as soon as practical; or
- (11) A person abandons any animal, including the abandonment of an impounded animal at the city contracted or owned animal control facility with the intent to readopt the animal to avoid impoundment fees; or
- (12) An animal damages or destroys public property while in their possession. If the person in possession of the animal at the time the property damage cannot be determined, the owner may be charged under this section if the evidence can reasonably demonstrate the identity of the animal; or
- (13) Permits any public nuisance, as defined in section 14-1, to exist.

(Ord. No. 01-7, 5-31-01)

Sec. 14-9. Number of dogs limited.

- (a) It shall be unlawful for any person to keep or harbor within the city more than three dogs over four months old in or about any premises, house, barn or other building, or in or about all buildings on any one premises occupied by any one family, and the keeping or harboring of dogs as aforesaid is hereby declared to be a public nuisance.
- (b) The payment of the license or licenses on dogs required by Maine state law, as amended, shall not be construed to allow the keeping of more than three dogs, as aforesaid, on any one premises.
- (c) The limitations in this section shall not apply to any person, group of persons, or corporations engaged in the commercial business of breeding, buying, selling or boarding of dogs, or operating a veterinary hospital, providing a state kennel license is obtained if applicable.

(Ord. No. 01-7, 5-31-01)

ARTICLE III. RABIES CONTROL; QUARANTINE

Sec. 14-10. Rabies inoculation.

Before the city clerk issues the required licenses for any animal requiring a rabies vaccination as stipulated in state statute, the city clerk shall require the owner to prove immunization against rabies as prescribed by state statute and/or by state rules and regulations.

(Ord. No. 01-7, 5-31-01)

Sec. 14-11. Animal bites and scratch reports; submission to quarantine.

- (a) Any person who is bitten or scratched by an animal shall report that fact to the ACO or the police department within 24 hours. If the person bitten or scratched is a minor under

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the age of 17, the parent or legal guardian of such minor, if he/she has knowledge of the incident, shall report that fact to the ACO or the city's police department within 24 hours.

- (b) A person who owns, keeps, harbors or allows an animal to remain on premises under his/her control shall report to the ACO or the police department, within 24 hours, any incident where such animal has bitten or scratched any person.
- (c) If the ACO has determined that there is reasonable evidence of an animal biting or otherwise attacking any person, and such animal has rabies or symptoms thereof, or is suspected by the ACO of having rabies, or has been exposed to rabies, upon demand of the ACO or his/her deputies, it shall be surrendered to him/her and shall be impounded by the ACO at a facility, which in his/her opinion, is properly suited to safely handle the animal for a period of ten days. The ACO may, upon written request of the owner, authorize the owner to confine the animal with a chain appropriate to the animal's size, and in a manner where no person will be bitten by the quarantined animal, for a period of ten days. During such owner confinement, the animal shall be subject to examination by the ACO or his/her deputy at any time.
- (d) Impoundment at any state or city approved facility for rabies quarantine purposes shall be at the expense of the owner of the impounded animal, livestock or wildlife. In the event a harbinger of a quarantined animal cannot be identified and located within a reasonable length of time, the victim, at his/her option (or at the option of the parent or legal guardian in the case of a minor under the age of 18 year of age), may elect to have the animal examined by a veterinarian, or to have the tissue submitted for laboratory examination; and the costs so incurred shall be borne by the victim. No animal, livestock or wildlife confined for quarantine purposes under the provisions of this section shall be released to any person until all vaccinations required by state statute have been given.
- (e) If the harbinger of an attacking animal refuses to release for quarantine such animal, then it shall be the duty of the ACO to obtain a seizure warrant from an appropriate judicial official for seizure and quarantine of the animal in question.
- (f) The ACO may order that all impoundment fees for the quarantine be paid by the person bitten or scratched if:
 - (1) The animal has a rabies vaccination certificate; or
 - (2) The animal was on property under the control of animal's owner when the bite or scratch occurred; or
 - (3) The bite or scratch occurred when the animal was acting to defend its owner or his/her property, or after reasonable provocation.
- (g) The ACO shall use his/her discretion to determine what provisions of this chapter or state law shall be most appropriate in all matters having to do with the quarantine of any animal.

(Ord. No. 01-7, 5-31-01)

Sec. 14-12. Contents of required animal bites and scratch reports.

When an individual is placed under a duty to report an incident in which an animal has bitten or scratched some person or some animal or to report an animal known or suspected to be

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rabid, that report to the ACO shall include, if the person making the report knows, the following information:

- (1) The location where the bite or scratch occurred.
- (2) The location where the animal which committed the act or which is known or suspected to have rabies or have been exposed to rabies can be located.
- (3) The name and address of any person who was bitten or scratched.
- (4) The name and address of the person who owns, keeps, harbors, or has control over the premises where the animal committing the act normally can be found.
- (5) The names and addresses of the persons who own, keep or harbor any other animal exposed to rabies can be found.

(Ord. No. 01-7, 5-31-01)

Sec. 14-13. Authorization for city-wide quarantine.

In the event that the ACO or the state department of health declare that a potential outbreak of rabies is suspected and the danger to the public safety from rabid animals is reasonably imminent, the city director of public health or his/her designee, shall be authorized to issue a quarantine proclamation ordering persons owning, keeping, or harboring any animal to muzzle the same or confine it as herein provided for such time as may be specified in such quarantine proclamation. Upon the publication of such proclamation by the director, any person keeping or harboring any animal shall restrain the animal from running at-large except that such animal under the control of an adult person and on a leash, may do so only if the animal is effectively muzzled. All animals found at-large during the time specified in the proclamation by the director may be destroyed by the ACO or any law enforcement officer if said agents are unable, with reasonable effort, to apprehend such animal for impoundment.

(Ord. No. 01-7, 5-31-01)

ARTICLE IV. IMPOUNDMENT, REDEMPTION AND DISPOSITION OF ANIMALS

Sec. 14-14. Impoundment generally.

- (a) The ACO is hereby authorized to capture and impound any animal upon having probable cause to believe said animal to be in violation of any provision of this chapter or state law which authorizes or requires the animal's capture and impoundment, and in so doing, to enter upon any fenced or unfenced lot, tract or parcel of land when deemed necessary for the protection of public health, safety and welfare. As a matter of policy, the ACO shall not enter private property to capture and/or impound any animal known to belong to the owner of said property without probable cause to believe that said animal poses a threat, public nuisance or danger to property, human beings or other animals.
- (b) Additionally, it is the responsibility of the ACO to accept any animal delivered to the ACO or the facility under his/her control (while he/she or other authorized agents of the city are physically present) pursuant to the requirements of this chapter, except those animals that are voluntarily released by their owners. For an animal to be voluntarily released, the owner must sign an owner release form provided by the ACO.

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- (c) It shall be unlawful for any person to interfere with, or attempt to prevent, an ACO or those acting in their capacities as law enforcement agents, from capturing or impounding any animal which may be legally impounded or otherwise interfering with the ACO, his/her designees, or any law enforcement agents while carrying out their lawful duties.
- (d) Prior to the release from impound, the authorized owner must obtain an impound release form from the ACO or an official within the police department. The fee for an impoundment of animal is \$50.00. Animal owners who can demonstrate a financial hardship may request a waiver of the animal impoundment fee; such requests should be directed to the Chief of Police or his designee.

(Ord. No. 01-7, 5-31-01; Ord. No. 10-06, 5-06-10)

Sec. 14-15. Duties of the ACO.

- (a) It is the duty of the ACO to capture and impound, when appropriate, wild or non-domesticated animals in response to citizen complaints of public nuisance or to control feral populations.
- (b) If, by identification tag, the owner of an impounded animal can be identified, the ACO will, as soon as practical, notify the owner either in person or by telephone of said impoundment. If the animal is locally owned within the city and telephone contact cannot be made, the ACO will leave a notice at the owner's last known and verifiable residence indicating that the animal has been impounded.
- (c) All impounded animals shall be kept for not less than eight days, unless the animal is reclaimed earlier by the rightful owner under conditions acceptable to the ACO. However, no impoundment period is required for an animal voluntarily delivered and released into the custody of the ACO by its owner.
- (d) After the expiration of any required impoundment period, the impounded animal shall be released to the animal control facility or veterinary hospital contracted by, or doing business with, the city. At that time, the animal shall be disposed of by adoption from the facility, by offering it to a local animal humane group for adoption, or by humanely destroying the animal. No record shall be kept by the ACO as to the disposition of an individual animal after release is made to the animal control facility/veterinary hospital for the purposes specified in this paragraph.

(Ord. No. 01-7, 5-31-01)

Sec. 14-16. Disposal of dead animals.

It shall be the responsibility of the owner to remove and properly dispose of a deceased animal within 24 hours of the animal's death. Proper disposal constitutes bringing such animal to a licensed veterinarian for cremation or proper burial at a pet cemetery.

(Ord. No. 01-7, 5-31-01)

Sec. 14-17. Disposal of dead animals found on public property.

It shall be the responsibility of any person to notify the department of public works of the location of the deceased animal so proper removal and disposal may occur.

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(Ord. No. 01-7, 5-31-01)

ARTICLE V. DANGEROUS ANIMALS

Sec. 14-18. Permit required.

No person shall knowingly sell, own, offer for sale, breed, possess, keep, buy or attempt to buy, or train a dangerous animal within the city unless the owner has received the proper permits and/or authorizations pursuant to this chapter.

(Ord. No. 01-7, 5-31-01)

Sec. 14-19. Complaints regarding dangerous animals.

- (a) Upon receipt of a written sworn notarized affidavit by any person, charging that a particular animal is dangerous, the city director of public health shall conduct an administrative hearing within ten days of the receipt of such affidavit, to determine whether such animal is, in fact, dangerous. Unless the matter is resolved by mutual agreement of all parties involved prior to the hearing, said animal shall be impounded until a final disposition is reached. Any written sworn notarized affidavit shall contain at least the following information:
- (1) Name, address and telephone number of the complainant and witnesses; and
 - (2) Date, time and location of the incident(s); and
 - (3) A complete description, to the best of the complainant's ability, of the animal including breed, color, sex, size, etc.; and
 - (4) Name, address and telephone number of the animal's owner and/or the premises where the animal is kept, if known; and
 - (5) A statement that the animal bit or attacked; and
 - (6) Any other facts that the complainant believes to be relevant to the incident.
- (b) The following will apply regarding the administrative hearing to determine whether an animal shall be declared "dangerous":
- (1) The suspect animal shall be seized by the ACO pursuant to a complaint, impounded and, if necessary, medically examined at the owner's expense if the animal caused injury to a person requiring medical treatment. An animal causing such injury shall be held at an animal control facility chosen by the ACO pending the outcome of such hearing and determination as to whether an animal is, in fact, classifiable as dangerous. Such hearing to determine if an animal is dangerous shall be conducted by the city director of public health within ten days after receipt of the complaint or seizure of the animal by the ACO.
 - (2) Notice of such hearing shall be provided by the ACO to the owner of the animal by certified return receipt mail. The complainant in the matter shall also be notified by certified return receipt mail. At such hearing, all parties shall be given the opportunity to present evidence on the issue of whether or not such animal is to be declared dangerous.

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- (c) Upon conclusion of a dangerous animal hearing, the city director of public health may find that the animal is not dangerous. In such cases, the animal shall be returned to the owner, provided the animal has been properly vaccinated and registered and all applicable fees are paid.
- (d) Should the animal be classified as a dangerous animal, the owner shall comply with one of the following requirements:
 - (1) Humane destruction of the dangerous animal; or
 - (2) Provide for the keeping of the animal as detailed in section 14-20 and 14-21 of this chapter.
- (e) No animal shall be declared a dangerous animal if the threat, injury or damages caused by the animal were the result of a willful trespass upon another's property; or the person injured was tormenting, provoking, abusing or assaulting the animal or its owner, or was committing or attempting to commit a crime at the time of the injury.
- (f) Findings of the city director of public health pertaining to dangerous animals may be appealed to the superior court in accordance with the provisions outlined in state law. During the pendency of such appeal, the findings of the city director of public health shall be suspended. However, the animal shall continue to be impounded at the owner's expense at the animal control facility selected by the ACO for observation and to protect the health and safety of the public until a final disposition is reached.
- (g) If an animal that has been declared dangerous causes death or serious bodily injury to a person or to another animal, the city director of public health may order that the animal be destroyed in a manner consistent with state law. All related expenses shall be paid by the owner.
- (h) Where the victim of a dangerous animal, specifically a dog, has incurred medical expenses, veterinary expenses, or any other direct financial loss, the owner of said dangerous dog shall be ordered to pay restitution to the victim in accordance with the criteria set forth in 17-A M.R.S.A. § 1325.

(Ord. No. 01-7, 5-31-01)

Sec. 14-20. Keeping of dangerous animals.

The owner of a dangerous animal shall be required to:

- (1) Register the dangerous animal with the ACO; and
- (2) Obtain liability insurance in an amount not less than \$300,000.00 covering bodily injury or death of any person or animal, or for damages to any person's or entity's property, resulting from the keeping of such dangerous animal(s); and
- (3) Restrain the dangerous animal at all times on a leash in the immediate control of the owner or in a secure pen enclosure as prescribed in section 14-21; and
- (4) Provide to the ACO the name and address of the owner, breed, age, sex, color, and any other identifying marks of said animal; the location where the animal is be kept if not at the address of the owner; two color photographs of the dangerous animal; and the aforementioned certificate of liability insurance; and

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- (5) Provide proof of the required documents necessary to register the animal, and pay the required registration fee of \$100.00. The ACO shall provide to the owner a registration tag designating the animal as dangerous. The owner must place the tag on the animal's collar and must ensure that the animal wears such tag and collar at all times; and
- (6) Not allow the animal to go outside its pen, cage or enclosure unless the animal is under physical restraint and securely muzzled. No person shall permit a dangerous animal to be kept outside its cage, pen or enclosure on a chain, rope or other type of leash unless the owner is in physical control of the chain, rope or other leach type. Dangerous animals shall not be leashed to inanimate objects such as trees, posts, buildings, etc. Signs giving notice of the dangerous animal shall be prominently displayed so that all persons entering said property are immediately notified a dangerous animal is being kept at the location.

(Ord. No. 01-7, 5-31-01)

Sec. 14-21. Dangerous animal enclosures.

The pen, cage or enclosure for a dangerous animal must be constructed from materials of sufficient strength to prevent the animal's escape, and must have secure sides, a secure top attached to the sides, and a secure bottom which is either attached to the sides or constructed so that the sides of the structure are embedded in the ground no less than two feet.

(Ord. No. 01-7, 5-31-01)

Sec. 14-22. Authority to seize dangerous and wild or exotic animals.

In the event that any animal is declared to be a dangerous animal and/or where a wild or exotic animal is found in violation of any provision of this chapter or state law, such animal may be seized immediately and impounded by the ACO. Where said animal is found at large and is presenting a clear and present danger of imminent bodily injury and/or death to the ACO, other human beings or animals, the animal may be destroyed and the owner notified if the owner can be reasonably established.

(Ord. No. 01-7, 5-31-01)

Sec. 14-23. Penalties.

The financial penalty for a violation of this section is set in accordance with the city's policy manual as approved by the city council. This penalty shall not be waived by the court.

(Ord. No. 01-7, 5-31-01; Ord. No. 08-06c, 8-14-08)

ARTICLE VI. RIGHT OF ENTRY

Sec. 14-24. Right of entry.

- (a) The ACO is hereby authorized to enter upon any fenced or unfenced lot, tract or parcel of land for the purpose of capturing, impounding and/or quarantining any animal upon having probable cause to believe said animal to: Have bitten, injured or otherwise

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attacked a human being or other animal; to have, or have been exposed to rabies or another communicable disease posing a danger to the public health, safety or welfare; or otherwise pose a clear and present danger to human beings or other animals. This authorization is granted due to the emergency created by the potential rabies hazard or danger of injury to persons or other animals, and in recognition of the likelihood that such animals will otherwise escape capture. As a matter of policy, ACO's shall not enter upon private property to capture and/or impound any animal known to belong to the owner of said property without probable cause to believe said animal poses a threat or danger to property, human beings or other animals.

- (b) Furthermore, should the ACO be unable or not permitted to gain entry to a property or premises where a dangerous animal(s) is believed to be present, the ACO or any law enforcement agent may seek an ex parte order from the district court or superior court for authorization to take possession of the dangerous animal.

(Ord. No. 01-7, 5-31-01)

ARTICLE VII. KEEPING OF NON-DOMESTIC ANIMALS

DIVISION 1. WILD OR EXOTIC ANIMALS

Sec. 14-25. Keeping of wild or exotic animals prohibited.

Any species of wild or exotic animal, not normally considered domesticated, that poses a potentially serious threat to public health, safety or welfare, or is protected by international, federal, or state regulations, or any other wild animal, including birds of prey capable of or inclined to do serious bodily harm to humans or other animals or fowl, shall not be kept within the corporate limits of the city.

(Ord. No. 01-7, 5-31-01)

Sec. 14-26. Exemptions to prohibition to keep wild or exotic animals.

The provisions in section 14-25 above shall not apply to the keeping of wild or exotic animals if the owner or possessor:

- (1) Is a governmental agency or entity; or
- (2) Holds a circus, carnival or zoo license from the State of Maine; or
- (3) Is a licensed individual, or a member of a non-profit animal rehabilitation organization holding a permit from the Maine Department of Wildlife and Inland Fisheries; or
- (4) Is an accredited research or educational institution.

(Ord. No. 01-7, 5-31-01)

DIVISION 2. LIVESTOCK

Sec. 14-27. Keeping of livestock generally.

It shall be unlawful for any person to keep or permit the keeping of livestock on premises

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owned by him/her or under his/her control, except in compliance with the following regulations:

- (1) Livestock shall only be kept on lots or tracts of land zoned or designated for rural or agricultural purposes by the city.
- (2) Livestock shall not be kept on lots and tracts of land less than one acre in area.
- (3) The provisions of article II Animal care--General herein, relative to animal care in general, shall specifically apply to the keeping of livestock.

(Ord. No. 01-7, 5-31-01)

Sec. 14-28. Adequate fences and barriers.

It shall be unlawful for any person to keep on their premises any livestock without providing adequate fences or barriers that will prevent such livestock from escaping and/or damaging neighboring flowers, trees, shrubbery and/or other property located on adjacent property.

(Ord. No. 01-7, 5-31-01)

Sec. 14-29. Other places livestock prohibited.

It shall be unlawful for any person to ride or allow any type of livestock upon any public school ground, public park or municipal/school grounds within the city other than public rights-of-way or areas designated for such purposes. Provided, however, the provisions of this section shall not apply to the riding or showing of horses or other livestock in conjunction with city authorized parades, carnivals or other school or civic sponsored programs or events which are in compliance with all city, state and federal law, rules and regulations.

(Ord. No. 01-7, 5-31-01)

Sec. 14-30. Impounding of livestock.

The provisions of section 14-14 herein, relative to impounding of animals in general, shall specifically apply to the impounding of livestock.

(Ord. No. 01-7, 5-31-01)

DIVISION 3. OTHER ANIMALS

Sec. 14-31. Keeping of fowl, rabbits and guinea pigs.

Fowl, rabbits and guinea pigs must be kept indoors, or if outdoors, in a secure pen or enclosure. Litter and droppings from these animals must be collected and disposed of in accordance with the provisions of section 14-41, disposal of excrement in general, shall specifically apply to the disposal of excrement of fowl, rabbits, and guinea pigs. Provided, however, that the provisions of this section and section 14-41 shall not apply to ducks or other waterfowl inhabiting natural or manmade water courses or bodies of water.

(Ord. No. 01-7, 5-31-01)

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Sec. 14-32. Keeping of bees.

All persons within the property of the city adhere to the statutes of the state as described in 7 M.S.R.A. Chapter 521 through 531, as well as:

- (1) No person shall have no more than two colonies on one-quarter acre or less; or
- (2) No person shall have no more than four colonies on one-quarter to one-half acre; or
- (3) No person shall have no more than six colonies on one-half to one acre; or
- (4) No person shall have no more than eight colonies on a tract of land greater than one acre; and
- (5) All colonies' hives shall be located a minimum of 100 feet from any inhabited dwelling other than that of the person keeping such bees; and
- (6) There is adequate source of water available at all times to the bees on the owner's property.

(Ord. No. 01-7, 5-31-01)

ARTICLE VIII. PROHIBITIONS

Sec. 14-33. Placement and baiting of animal traps.

It shall be unlawful for any person to place, set or bait any trap for the purpose of catching, wounding or killing of any animal, fowl or reptile without permission or assistance of the local, state or federally designated ACO. This section, however, does not preclude the use of commercially sold rat and mouse traps, nor does this section precluded the use of "Have a Heart" traps for the relocation of animals, fowl or reptiles.

(Ord. No. 01-7, 5-31-01)

Sec. 14-34. Prohibition of animal poisoning.

It shall be unlawful to place any substance or article which has in any manner been treated with any poisonous substance in any place accessible to human beings, birds, dogs, cats or other animals with the intent to harm or kill animals. This section, however, does not preclude the use of commercially sold rodent poisons when applied in accordance with the manufacturer's directions for such use.

(Ord. No. 01-7, 5-31-01)

Sec. 14-35. Noise prohibition.

The provision of subsection 14-40(a) herein, relative to public nuisance in general, shall specifically be applied to noise prohibition.

(Ord. No. 01-7, 5-31-01)

Sec. 14-36. Odors and unclean condition prohibitions.

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It shall be unlawful for any owner to allow an animal to produce odors or unclean conditions sufficient to create a public nuisance.

(Ord. No. 01-7, 5-31-01)

Sec. 14-37. Animals at-large prohibition.

- (a) It shall be unlawful for any owner to allow an animal to chase vehicles or molest, attack or interfere with other animals or persons on public property, or be at-large as defined in section 14-1 of this chapter.
- (b) It shall be unlawful for an animal to be left unrestrained in a parked motor vehicle so as to allow the animal to project its head from the vehicle.

(Ord. No. 01-7, 5-31-01)

ARTICLE IX. PUBLIC LANDS, PARKS AND PLAYGROUNDS: CONTROL OR PROHIBITION OF DOMESTIC ANIMALS

DIVISION 1. LEASH REQUIREMENTS

Sec. 14-38. Sixteen-foot leash requirements and exceptions.

Only domestic animals are authorized on all city-owned public ways, sidewalks, and all publicly owned property within the city. Any such animal shall be on a leash or other tether, in the control of an individual, of not more than 16 feet in length with the following exceptions:

- (1) Any domestic animal in the aforementioned public areas must be on a leash or other tether of not more than eight feet in length when signs are posted stating "Maximum Eight-Foot Leash is Required" by the city to accommodate mass gatherings or public events. The authority to post such areas shall lie with the city council.
- (2) All domestic animals may only be present during the specified hours between 6:00 a.m. to 8:30 a.m. and 6:00 p.m. and 8:30 p.m. at the following public facilities:
 - a. Montello Track (far right-hand side of the track field closest to the woods and farthest away from the playground).
 - b. Sunny Side Park (field area).
 - c. Simard-Payne Police Memorial Park (area farthest away from the planned playground and closest to the river).

(Ord. No. 01-7, 5-31-01; Ord. No. 08-09, 1-1-09)

DIVISION 2. CITY PROPERTY

Sec. 14-39. Parks, cemeteries, playgrounds and athletic fields.

- (a) Domestic animals will not be permitted in the following parks and athletic fields for the period commencing one-half hour prior to and for the duration of any city or school

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department scheduled or sanctioned activity or event: Holy Family Field, Marcotte Park, Randall Road Softball Complex and Simard-Payne Police Memorial Park.

- (b) Domestic animals may be authorized in all city-owned cemeteries and must be on a leash or other tether, under the control of an individual, of not more than 16 feet in length provided, however, that such animals shall be allowed only on the roadways and walkways of the cemeteries and not on the cemetery lots.
- (c) All domestic animals shall not be permitted in the following public parks and playground areas: Lionel Potvin Park, St. Mary's Playground (Oxford Street), Marcotte Park playground area, Kennedy Park playground area, Knox Street Playground, Mark W. Paradis Park, River Valley basketball courts and Sunnyside Park playground area.
- (d) All domestic animals shall not be permitted in the following athletic fields: Franklin Pasture Athletic Complex, Lewiston Athletic Park, Marcotte Park Mutli-use field, Montello Multi-use field, Simard-Payne Police Memorial Park Multi-use field and Upper Franklin field.

(Ord. No. 01-7, 5-31-01; Ord. No. 08-09, 1-1-09; Ord. No. 13-02b, 3-21-13)

ARTICLE X. NUISANCES

Sec. 14-40. Public nuisances.

It shall be unlawful to harbor or keep any animal or bird, which causes annoyance to the peace of any person, either by:

- (1) Excessively barking, howling or making other sounds common to its species; or
- (2) Failing to keep any female dog in heat confined at all times. Every bitch in violation of this section shall be impounded and the owner, keeper or person harboring such bitch, shall be deemed guilty of an offense; or
- (3) Knowingly have any animal, requiring a license or some other form of registration by the state, run at-large.

(Ord. No. 01-7, 5-31-01)

Sec. 14-41. Disposal of excrement.

All manure and other excrement shall be disposed of in such a manner so as to prevent it from becoming a public nuisance or health hazard. With regard to dogs on public or private property, other than the owner's, the owner shall be responsible for the immediate removal of excrement.

(Ord. No. 01-7, 5-31-01)

Sec. 14-42. Trucks, trailers and other vehicles.

A person commits an offense if a person parks or leaves standing any truck, trailer, or other vehicle that has been used for the hauling of livestock, animals, fish or fowl in a residentially zoned area of the city, whereas notified by the city's enforcement agents that such vehicle is creating a public nuisance.

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(Ord. No. 01-7, 5-31-01)

ARTICLE XI. DAMAGE TO PROPERTY

Sec. 14-43. Complaint and recovery.

- (a) *Compliant.* Whenever any damage is inflicted on any person and/or property by a dog, the victim and/or owner may make a complaint to the ACO or city police department within the next business day following discovery of the damage.
- (b) *Recovery.* If after reviewing the evidence, the ACO and/or police department are satisfied that a dog committed the damage, they shall estimate values of the injured person or damaged property. The investigation agents will then determine if the dog can be reasonably identified and if so, the owner of said dog will be liable for all related expenses caused by said dog.

(Ord. No. 01-7, 5-31-01)

ARTICLE XII. ANIMAL SAFETY

Sec. 14-44. Authority of the ACO.

A person commits an offense if a person parks or leaves any animal in a any type of vehicle and does not provide for adequate ventilation or allows the animal to protrude its head out of the vehicle and consequently attack or attempt to attack a passerby.

The ACO shall have, for the purposes of this section, the authority to order the removal of a vehicle or to remove the animal from any vehicle by any means possible if, in the opinion of the ACO, it appears that the animal is in distress or the animal poses a threat or public nuisance to the general public.

(Ord. No. 01-7, 5-31-01)

Chapter 18

BUILDINGS AND BUILDING REGULATIONS*

***Cross references:** Fire prevention and protection, ch. 38; solid waste, ch. 62; streets and sidewalks, ch. 66; utilities, ch. 74; zoning and land use code, app. A.

State law references: Regulation of construction and improvements, 30-A M.R.S.A. § 4101 et seq.

Article I. In General

Secs. 18-1--18-25. Reserved.

Article II. Building Code

Sec. 18-26. Adoption of building code.

Sec. 18-27. Amendments to building code.

Secs. 18-28--18-50. Reserved.

Article III. Property Maintenance Code

Sec. 18-51. Adoption of International Property Maintenance Code.

Sec. 18-52. Amendments to the property maintenance code.

Secs. 18-53--18-75. Reserved.

Article IV. Plumbing Code

Sec. 18-76. Definitions.

Sec. 18-77. Compliance with state law.

Sec. 18-78. Compliance with water division regulations.

Sec. 18-79. Removal of contents of privies, cesspools or septic tanks.

Sec. 18-80. House trap, when required.

Sec. 18-81. Water tank heaters.

Sec. 18-82. Special provisions for flood hazard areas.

Sec. 18-83. Permit fees.

Sec. 18-84. Master oil burner technicians.

Secs. 18-85--18-105. Reserved.

Article V. Electrical Code

Division 1. Generally

Sec. 18-106. Liability established.

Sec. 18-107. Definitions.

Secs. 18-108--18-120. Reserved.

Division 2. Administration and Enforcement

Sec. 18-121. Enforcement officer.

Sec. 18-122. Entry for inspections.

Sec. 18-123. Emergency orders.

Sec. 18-124. Violation orders.

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- Sec. 18-125. Appeals.
- Sec. 18-126. Stop work order.
- Sec. 18-127. Penalty for violation of article.
- Sec. 18-128. Relief from personal liability.
- Secs. 18-129--18-140. Reserved.

Division 3. Permits and Inspections

- Sec. 18-141. Permit required; exceptions.
- Sec. 18-142. Application for permit.
- Sec. 18-143. Prerequisites to issuance of permit.
- Sec. 18-144. Fee required.
- Sec. 18-145. Installation limited to that described in application.
- Sec. 18-146. Transferability.
- Sec. 18-147. Suspension of permits.
- Sec. 18-148. Prerequisites for electrical installations.
- Sec. 18-149. Proof of licensure.
- Sec. 18-150. Installations without a permit.
- Sec. 18-151. Inspection of wiring before concealment; responsibility.
- Sec. 18-152. Application for inspection; examination of work.
- Sec. 18-153. Statement of defects.
- Sec. 18-154. Certificate of inspection required.
- Sec. 18-155. Schedule of fees for electrical permits.

Secs. 18-156--18-170. Reserved.

Division 4. Standards

- Sec. 18-171. Installations.
- Sec. 18-172. Aluminum wire.
- Sec. 18-173. Service entrance equipment; switches, conduit.
- Sec. 18-174. Fustat plugs or circuit breakers required.
- Sec. 18-175. Installation of rigid conduit.

Secs. 18-176--18-185. Reserved.

Division 5. Poles and Wires

- Sec. 18-186. Supports required; owner's consent when buildings are used.
- Sec. 18-187. Safe carrying of wires required.
- Sec. 18-188. Disposition of scraps, unused coils, loose ends regulated.
- Secs. 18-189--18-199. Reserved.

Article VI. Residential Code

- Sec. 18-200. Adoption of residential code.
- Sec. 18-201. Amendments to the residential code.

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ARTICLE I. IN GENERAL

Secs. 18-1--18-25. Reserved.

ARTICLE II. BUILDING CODE

Sec. 18-26. Adoption of building code.

There is hereby adopted by the city for the purpose of establishing rules and regulations for the construction, alteration, removal, demolition and insurance coverage, use and occupancy, equipment, location and maintenance of building and structures, including permits and penalties, that certain building code known as the 2003 International Building Code, save and except such portions as are in this article deleted, modified or amended. No fewer than three copies of such code have been and now are filed in the office of the city clerk and such copies are hereby adopted and incorporated as fully as if set out at length in this article.

(Ord. No. 92-15, § 7-1, 8-13-92; Ord. No. 05-01, 3-10-05)

Sec. 18-27. Amendments to building code.

The building code adopted in section 18-26 is amended and changed as follows:

Chapter 1 is repealed in its entirety.

Chapter 1 Administration, is enacted to read as follows:

CHAPTER 1 ADMINISTRATION

SECTION 101 GENERAL

101.1 Title. These regulations shall be known as the Building Code of the City of Lewiston, Maine, hereinafter referred to as "this code."

101.2 Scope. The provisions of the code shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use, and occupancy, location, maintenance, removal, and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures.

Exceptions:

1. Detached one-and two-family dwellings and multiple single-family dwellings (town houses) not more than three stories above grade in height with a separate means of egress and their accessory structures shall comply with the International Residential Code.

101.2.1 Appendices. Provision in the appendices shall not apply unless specifically adopted.

101.3 Intent. The purpose of this code is to establish the minimum requirements to safeguard the public health, safety and general welfare through structural strength, means of egress facilities, stability, adequate light and ventilation, energy conservation, and safety to life and property from fire and other hazards attributed to the built environment and to provide safety to fire fighters and emergency responders during emergency

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operations.

101.4 Referenced codes. The other codes listed in Section 101.4.1 through 101.4.7 and referenced elsewhere in this code shall be considered part of the requirements of this code to the prescribed extent of each such reference.

101.4.1 Electrical. The provisions of the Chapter 18, Article V. ELECTRICAL CODE of the Code of Ordinances of the City of Lewiston shall apply to the installation of electrical systems, including alterations, repairs, replacement, equipment, appliances, fixtures, fittings and appurtenances thereto. All references to the ICC Electrical Code are hereby deleted in favor of the applicable section(s) of the National Electrical Code as adopted.

101.4.2 Gas. The provisions of Chapter 38, Article II FIRE PREVENTION CODE of the aforementioned Code of Ordinances shall apply to the installation of gas piping from the point of delivery, gas appliances and related accessories as covered in this code. All references to the International Gas Code are hereby deleted in favor of the applicable section(s) of the National Fire Codes as adopted.

101.4.3 Mechanical. The provisions of the International Mechanical Code shall apply to the installation, alterations, repairs and replacement of mechanical systems, including equipment, appliances, fixtures, fittings and/or appurtenances, including ventilating, heating, cooling, air-conditioning and refrigeration systems, incinerators and other energy-related systems.

101.4.4 Plumbing. The provisions of Chapter 18, Article IV. PLUMBING CODE of the aforementioned Code of Ordinances shall apply to the installation, alteration, repair and replacement of plumbing systems, including equipment, appliances, fixtures, fittings and appurtenances, and where connected to a water or sewerage system. The provisions of the Maine Subsurface Waste Water Disposal Rules shall apply to private sewage disposal systems. All references to the International Plumbing Code and International Private Sewage Disposal Code are hereby deleted in favor of the applicable section(s) of these regulations.

101.4.5 Property maintenance. The provisions of Chapter 18, Article III. PROPERTY MAINTENANCE CODE of the aforementioned Code of Ordinances shall apply to existing structures and premises; equipment and facilities; light, ventilation, space heating, sanitation, life and fire safety hazards; responsibilities of owners, operators and occupants; and occupancy of existing premises and structures. All references to the International Property Maintenance Code shall be deemed to reference the applicable section(s) of the currently adopted property maintenance code.

101.4.6 Fire prevention. The provisions of Chapter 38, Article II FIRE PREVENTION CODE of the aforementioned Code of Ordinances shall apply to matters affecting or related to structures, processes and premises from the hazard of fire and explosion arising from the storage, handling or use of structures, materials or devices; from conditions hazardous to life, property or public welfare in the occupancy of structures or premises; and from the construction, extension, repair, alteration or removal of fire suppression and alarm systems or fire hazards in the structure or on the premises from occupancy or operation. All references to

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the International Fire Code are hereby deleted in favor of the applicable section(s) of the National Fire Codes as adopted.

101.4.7 Energy. The provisions of the Maine Guide to Energy Efficient Construction: A Manual of Accepted Practice (third edition) shall apply to all habitable residential buildings and structures. The provisions of ASHRAE 90B shall be applicable to all occupiable nonresidential buildings and structures. All references to the International Energy Conservation Code are hereby deleted.

SECTION 102 APPLICABILITY

102.1 General. Where, in any specific case, different sections of this code specify different materials, methods of construction or other requirements, the most restrictive shall govern. Where there is a conflict between a general requirement and a specific requirement, shall be applicable.

102.2 Other Laws. The provisions of this code shall not be deemed to nullify any provisions of local, state and federal law.

102.3 Application of references. References to chapter or section numbers, or to provisions specifically identified by number, shall be construed to refer to such chapter, section or provision of this code.

102.4 Referenced codes and standards. The codes and standards referenced in this code shall be considered part of the requirements of this code to be prescribed extent of each such reference. Where differences occur between provisions of this code and referenced codes and standards, the provisions of this code shall apply.

102.5 Partial invalidity. In the event any part or provision of this code is held to be illegal or void, this shall not have the effect of making void or illegal any of the other parts of the provisions.

102.6 Existing structures. The legal occupancy of any structure existing on the date of adoption of this code shall be permitted to continue without change, except as is specifically covered in this code, the currently adopted Property Maintenance Code, or as is deemed necessary by the building official for the general safety and welfare of the occupants and the public.

SECTION 103 DEPARTMENT OF PLANNING AND CODE ENFORCEMENT

103.1 Building official. The department of planning and code enforcement is hereby charged with the administration and enforcement of this code. The director of planning and code enforcement and the building inspector, acting under the direction of the director of planning and code enforcement, shall be designated as the municipal building officials for the purpose of administration and enforcement of the code.

103.2 Qualifications of building official. To be eligible for appointment, the candidate for the position shall have had experience as an architect, structural engineer, building inspector, foreman or superintendent of building construction. He shall be in good health, physically capable of making the necessary examinations and inspections. He shall not have any interest whatever, directly or indirectly, in the sale or manufacture of any material, process, or device entering into or used in or in connection with building

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construction, alteration, removal and demolition.

103.3 Deputies. In accordance with the prescribed procedures of this jurisdiction and with the concurrence of the appointing authority, the director of code enforcement shall have the authority to appoint a deputy building official, the related technical officers, inspectors, plan examiners and other employees. Such employees shall have powers as delegated by the building official.

SECTION 104 DUTIES AND POWERS OF BUILDING OFFICIALS

104.1 General. The building official is hereby authorized and directed to enforce the provisions of this code. The building official shall have the authority to render interpretations of this code and to adopt policies and procedures in order to clarify the applications of its provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of this code. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this code.

104.2 Applications and permits. The building officials shall receive applications, review construction documents and issue permits for the erection, and alteration, demolition and moving of building and structures, inspect the premises for which such permits have been issued and enforce compliance with the provisions of this code.

104.3 Notices and orders. The building official shall issue all necessary notices and orders to ensure compliance with this code.

104.4 Inspections. The building official shall make all of the required inspections, or the building official shall have the authority to accept reports of inspection by approved agencies or individuals. Reports of such inspections shall be in writing and be certified by a responsible officer of such approved agency or by the responsible individual. The building official is authorized to engage such expert opinion as deemed necessary to report upon unusual technical issues that arise, subject to the approval of the appointing authority.

104.5 Identification. The building official shall carry proper identification when inspecting structures or premises in the performance of duties under this code.

104.6 Right of entry. Where it is necessary to make an inspection to enforce the provisions of this code, or where the building official has reasonable cause to believe that there exists in a structure or upon premises a condition which is contrary to or in violation of this code which makes the structure or premises unsafe, dangerous or hazardous, the building official is authorized to enter the structure at reasonable times to inspect or to perform the duties imposed by this code, provided that if such structure or premises be occupied that credentials be presented to the occupant and entry requested. If such structure or premises be unoccupied, the building official shall first make reasonable effort to locate the owner or other person having charge or control of the structure or premises and request entry. If entry is refused, the building official shall have recourse to the remedies provided by the law to secure entry.

104.7 Department records. The building official shall keep official records of applications received, permits and certificates issued, fees collected, reports of inspections, and notices and orders issued. Such records shall be retained in the official records for the period required for retention of public records.

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104.8 Liability. The building official or other employee or appointee charged with the enforcement of this code, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be rendered liable personally and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of act or omission in the discharge of official duties. Any suit instituted against an officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be defended by legal representative of the jurisdiction until the final termination of the proceedings. The building official or any subordinate shall not be liable for cost in any action, suit or proceeding that is instituted in pursuance of the provisions of this code. This section shall remain in effect regardless of the employment status of the building official or other employee or appointee charged with the enforcement of the code.

104.9 Approved materials and equipment. Materials, equipment and devices approved by the building official shall be constructed and installed in accordance with such approval.

104.9.1 Used materials and equipment. The use of used materials which meet the requirements of this code for new materials is permitted. Used equipment and devices shall not be reused unless approved by the building official.

104.10 Modifications. Wherever there are practical difficulties involved in carrying out the provisions of this code, the building official shall have the authority to grant modifications for individual cases, upon application of the owner or the owner's representative, provided the building official shall first find that special individual reason makes the strict letter of this code impractical and the modification is in compliance with the intent and purpose of this code at that such modification does not lessen health, accessibility, life and fire safety, or structural requirements. The details of action granting modifications shall be recorded and entered in the files of the department of building safety.

104.11 Alternative materials, design and methods of construction and equipment. The provisions of this code are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by this code, provided that any such alternative has been approved. An alternative material, design or method of construction shall be approved where the building official finds the proposed design is satisfactory and complies with the intent of the provisions of this code, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code in quality, strength, effectiveness, fire resistance, durability and safety.

104.11.1 Research reports. Supporting data, where necessary to assist in the approval of materials or assemblies not specifically provided for in this code, shall consist of valid research reports from approved sources.

104.11.2 Test. Whenever there is insufficient evidence of compliance with the provisions of this code, or evidence that a material or method does not conform to the requirements of this code, or in order to substantiate claims for alternative materials or methods, the building official shall have the authority to require tests as evidence of compliance to be made at no expense to the jurisdiction. Test methods shall be as specified or by other recognized and accepted test standards.

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In the absence of recognized and accepted test methods, the building official shall approve the test procedures. Tests shall be performed by an approved agency. Reports of such tests shall be retained by the building official for the period required for retention of public records.

SECTION 105 PERMITS

105.1 Required. Any owner or authorized agent who intends to construct, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permits.

105.2 Work exempt from permit. Exemptions from permit requirements for this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction. Permits shall not be required for the following:

1. Repairs, in accordance with Section 105.2.2.
2. Re roofing, where no structural repairs or improvements are involved.
3. Siding of existing buildings or structures, where no structural repairs or improvements are involved.
4. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.
5. Temporary motion picture, television and theater stage sets and scenery.
6. Prefabricated swimming pools, accessory to a Groups R-2 and R-3 occupancies, which have less than 36 inches (915 mm) of water depth capacity and are installed entirely above ground.
7. Shade cloth structures constructed for nursery or agricultural purposes and not including service systems.
8. Swings and other playground equipment accessory to one- and two-family dwellings.
9. Window awnings supported by an exterior wall of Group R-3, as applicable in Section 101.2, and Group U occupancies.
10. Movable cases, counters and partitions not over 5 feet 9 inches (1753 mm) in height.

105.2.1 Emergency repairs. When equipment replacements and repairs must be performed in an emergency situation, the permit application shall be submitted within the next working business day to the building official.

105.2.2 Repairs. Application or notice to the building official is not required for ordinary repairs to structures, replacement of lamps or the connection of approved portable electrical equipment to approved permanently installed receptacles. Such repairs shall not include the cutting away of any structural beam or load-bearing support, or the removal or change of any required means of egress, or

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rearrangement of parts of a structure affecting the egress requirements.

105.3 Application for permit. To obtain a permit, the applicant shall first file an application thereof in writing on a form furnished by the department of building safety for that purpose. Such application shall:

1. Identify and describe the work to be covered by the permit for which application is made.
2. Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.
3. Indicate the use and occupancy for which the proposed work is intended.
4. Be accompanied by construction documents and other information as required in Section 106.3.
5. State the valuation of the proposed work.
6. Be signed by the applicant, or the applicant's authorized agent.
7. Give such other data and information as required by the building official.

105.3.1 Action on application. The building official shall examine or cause to be examined applications for permits and amendments thereto within a reasonable time after filing. If the application or the construction documents do not conform to the requirements of pertinent laws, the building shall reject such application in writing, stating the reasons therefor. If the building official is satisfied that the proposed work conforms to the requirements of this code and laws and ordinances applicable thereto, the building official shall issue a permit therefor as soon as practicable.

105.3.2 Time limitation of application. An application for a permit for any proposed work shall be deemed to have been abandoned 180 days after the date of filing, unless such application has been pursued in good faith or a permit has been issued; except that the building official is authorized to grant one or more extensions of time for additional periods not exceeding 90 days each. The extension shall be requested in writing and justifiable cause demonstrated.

105.4 Validity of permit. The issuance or granting of a permit shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this code or of any other ordinance of the jurisdiction. Permits presuming to give authority to violate or cancel the provisions of this code or other ordinances of the jurisdiction shall not be valid. The issuance of a permit based on construction documents and other data shall not prevent the building official from requiring the correction of errors in the construction documents and other data. The building official is also authorized to prevent occupancy or use of a structure where in violation of this code or of any other ordinances of this jurisdiction.

105.5 Expiration. Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The building official is authorized to grant, in

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writing, one or more extensions of time, for periods not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.

105.6 Suspension or revocation. The building official is authorized to suspend or revoke a permit issued under the provisions of this code wherever the permit is issued in error or on the basis of incorrect, inaccurate or incomplete information, or in violation of any ordinance or regulation or any of the provisions of this code.

105.7 Placement of permit. The building permit or copy shall be kept on the site of the work until the completion of the project.

SECTION 106 CONSTRUCTION DOCUMENTS

106.1 Submittal documents. Construction documents, special inspection and structural observation programs, and other data shall be submitted in one or more sets with each application for a permit. The construction documents shall be prepared by a registered design professional where required by the statutes of the jurisdiction in which the project is to be constructed. Where special conditions exist, the building official is authorized to require additional construction documents to be prepared by a registered design professional.

Exception: The building official is authorized to waive the submission of construction documents and other data not required to be prepared by a registered design professional if it is found that the nature of the work applied for is such that reviewing of construction documents is not necessary to obtain compliance with this code.

106.1.1 Information on construction documents. Construction documents shall be dimensioned and drawn upon suitable material. Electronic media documents are permitted to be submitted when approved by the building official. Construction documents shall be of sufficient clarity to indicate the location, nature and extent of the work proposed and show in detail that it will conform to the provisions of this code and relevant laws, ordinances, rules and regulations, as determined by the building official.

106.1.1.1 Fire protection system shop drawings. Shop drawings for the fire protection system(s) shall be submitted to indicate conformance with this code and the construction documents and shall be approved prior to the start of system installation. Shop drawings shall contain all information as required by the referenced installation standards in Chapter 9.

106.1.2 Means of egress. The construction documents shall show in sufficient detail the location, construction, size and character of all portions of the means of egress in compliance with the provisions of this code. In other than occupancies in Groups R-2 and R-3 as applicable in Section 101.2 and I-1, the construction documents shall designate the number of occupants to be accommodated on every floor, and in all rooms and spaces.

106.1.3 Exterior wall envelope. Construction documents for all building shall describe the exterior wall envelope in sufficient detail to determine compliance with this code. The construction documents shall provide details of the exterior wall envelope as required, including flashing, intersections with dissimilar

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materials, corners, end details, control joints, intersections at roof, eaves, or parapets, means of drainage, water-resistive membrane, and details around openings.

The Construction documents shall include manufacturing installation instructions that provide supporting documentation that the proposed penetration and opening details described in the construction documents maintain the weather resistance of the exterior wall envelope. The supporting documentation shall fully describe the exterior wall system which was tested, where applicable, as well as the test procedure used.

106.2 Site plan. The construction documents submitted with the application for permit shall be accompanied by a site plan showing to scale the size and location of new construction and existing structures on the site, distances from lot lines, the established street grades and the proposed finished grades, as applicable, flood hazard areas, floodways, and design flood elevations; and it shall be drawn in accordance with an accurate boundary line survey. In the case of demolition, the site plan shall show construction to be demolished and the location and size of existing structures and construction that are to remain on the site or plot. The building official is authorized to waive or modify the requirement for a site plan when the application for permit is for alteration or repair or when otherwise warranted.

106.3 Examination of documents. The building official shall examine or cause to be examined the accompanying construction documents and shall ascertain by such examinations whether the construction indicated and described is in accordance with the requirements of this code and other pertinent laws or ordinances.

106.3.1 Approval of construction documents. When the building official issues a permit, the construction documents shall be approved, in writing or by stamp, as "Reviewed for Code Compliance." One set of construction documents so reviewed shall be retained by the building official. The other set shall be returned to the applicant, shall be kept at the site of work and shall be open to inspection by the building official or his authorized representative.

106.3.2 Previous approvals. The code shall not require changes in the construction documents, construction or designated occupancy of a structure for which a lawful permit has been heretofore issued or otherwise lawfully authorized, and the construction or which has been pursued in good faith within 180 days after the effective date of this code and has not been abandoned.

106.3.3 Phased approval. The building official is authorized to issue a permit for the construction of foundations or any other part of a building or structure before the construction documents for the whole building or structure have been submitted, provided the adequate information and detailed statements have been filed complying with pertinent requirements of this code. The holder of such permit for the foundation or other parts of a building or structure shall proceed at the holder's own risk with the building operation and without assurance that a permit for the entire structure will be granted.

106.3.4 Design professional in responsible charge.

106.3.4.1 General. When it is required that documents be prepared by a

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registered design professional, the building official shall be authorized to require the owner to engage and designate on the building permit application a registered design professional who shall act as the registered design professional in responsible charge. If the circumstances require, the owner shall designate a substitute registered design professional in responsible charge who shall perform the duties required of the original registered design professional in responsible charge. The building official shall be notified in writing by the owner if the registered design professional in responsible charge is changed or is unable to continue to perform the duties.

The registered design professional in responsible charge shall be responsible for reviewing and coordinating submittal documents prepared by others, including phased and deferred submittal items, for compatibility with the design of the building.

Where structural observation is required by Section 1709, the inspection program shall name the individual or firms who are to perform structural observation and describe the stages of construction at which structural observation is occur. See also duties specified in Section 1704.

106.3.4.2 Deferred submittals. For the purposes of this section, deferred submittals are defined as those portions of the design that are not submitted at the time of the application and that are to be submitted to the building official within a specified period.

Deferral of any submittal items shall have the prior approval of the building official. The registered design professional in responsible charge shall list the deferred submittals on the construction documents for review by the building official.

Documents for deferred submittal items shall be submitted to the registered design professional in responsible charge who shall review them and forward them to the building official with a notation indicating that the deferred submittal documents have been reviewed and that they have been found to be in general conformance with the design of the building. The deferred submittal items shall not be installed until their design and submittal documents have been approved by the building official.

106.4 Amended construction documents. Work shall be installed in accordance with the reviewed construction documents, and any changes made during construction that are not in compliance with the approved construction documents shall be resubmitted for approval as an amended set of construction documents.

106.5 Retention of construction documents. One set of approved construction documents shall be retained by the building official for a period of not less than 180 days from date of completion of the permitted work, or as required by state or local laws.

SECTION 107 TEMPORARY STRUCTURES AND USES

107.1 General. The building official is authorized to issue a permit for temporary

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structures and temporary uses. Such permits shall be limited as to time of service, but shall not be permitted for more than 180 days. The building official is authorized to grant extensions for demonstrated cause.

107.2 Conformance. Temporary structures and uses shall conform to the structural strength, fire safety, means of egress, accessibility, light, ventilation and sanitary requirements of this code as necessary to ensure the public health, safety and general welfare.

107.3 Temporary power. The building official is authorized to give permission to temporarily supply and use power in part of an electric installation before such installation has been fully completed and the final certificate of completion has been issued. The part covered by the temporary certificate shall comply with the requirements specified for temporary lighting, heat or power in the ICC Electrical Code.

107.4 Termination of approval. The building official is authorized to terminate such permit for a temporary structure or use and to order the temporary structure or use to be discontinued.

SECTION 108 FEES

108.1 Payment of fees. A permit shall not be valid until the fees prescribed by law have been paid. Nor shall an amendment to a permit be released until the additional fee, if any, has been paid.

108.2 Schedule of permit fees. On buildings, structures, or alterations requiring a permit, a fee for each permit shall be paid as required, in accordance with the schedule as established by the applicable governing authority.

108.3 Building permit valuations. The applicant for a permit shall provide an estimated permit value at time of application. Permit valuations shall include total value of work, including materials and labor, for which the permit is being issued, such as electrical, gas, mechanical, plumbing equipment and permanent systems. If, in the opinion of the building official, the valuation is underestimated on the application, final building permit valuation shall be set by the building official utilizing Means Square Foot Costs or similar documents, unless the applicant can show detailed estimates to meet the approval of the building official.

108.4 Work commencing before permit issuance. Any person who commences any work on a building or structure, before obtaining the necessary permit, shall be subject to an additional fee established by the building official that shall be in addition to the required permit fees.

108.5 Related fees. The payment of the fee for the construction, alteration, removal or demolition for work done in connection with or concurrently with the work authorized by a building permit shall not relieve the applicant or holder of the permit from the payment of other fees that are prescribed by law.

108.6 Refunds. The building official is authorized to establish a refund policy.

SECTION 9 INSPECTIONS

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109.1 General. Construction or work for which a permit is required shall be subject to inspection by the building official and such construction or work shall remain accessible and exposed for inspection purposes until approved. Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction. Inspections presuming to give authority to violate or cancel the provisions of this code or of other ordinances of the jurisdiction shall not be valid. It shall be the duty of the permit applicant to cause the work to remain accessible and exposed for inspection purposes. Neither the building official nor the jurisdiction shall be liable for expense entailed in the removal or replacement of any material required to allow inspection.

109.2 Preliminary inspection. Before issuing a permit, the building official is authorized to examine or cause to be examined buildings, structures and sites for which an application has been filed.

109.3 Required inspections. Upon notification in accordance with 109.5 or upon his own volition, the building official shall from time to time conduct inspections of the work for which the permit has been issued. These may include, but are not limited to, the inspections set forth in Sections 109.3.1 and 109.3.10.

109.3.1 Footing or foundation inspection. Footing and foundation inspections shall be made after excavations for footings are complete and any required reinforcing steel is in place. For concrete foundations, any required forms shall be in place prior to inspection. Materials for the foundation shall be on the job, except where concrete is ready mixed in accordance with ASTM C 94, the concrete need not be on the job.

109.3.2 Concrete slab or under-floor inspection. Concrete slab and under-floor inspections shall be made after in-slab or under-floor reinforcing steel and building service equipment, conduit, piping accessories and other ancillary equipment items are in place, but before any concrete is placed or floor sheathing installed, including the subfloor.

109.3.3 Lowest floor elevation. In flood hazard areas, upon placement of the lowest floor, including the basement, and prior to further vertical construction, the elevation certification required in Section 1612.5 shall be submitted to the building official.

109.3.4 Frame inspection. Framing inspections shall be made after the roof deck or sheathing, all framing, fire blocking and bracing are in place and pipes, chimneys and vents to be concealed are complete and the rough electrical, plumbing, heating wires, pipes and ducts are approved.

109.3.5 Lath or gypsum board inspection. Lath and gypsum board inspections shall be made after lathing and gypsum board, interior and exterior, is in place, but before any plastering is applied or before gypsum board joints and fasteners are taped and finished.

Exception: Gypsum board that is not part of a fire resistive assemble or a shear assembly.

109.3.6 Fire-resistant penetrations. Protection of joints and penetrations in fire-

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resistance-rated assemblies shall not be concealed from view until inspected and approved.

109.3.7 Other inspections. In addition to the inspections specified above, the building official is authorized to make or require other inspections of any construction work to ascertain compliance with the provisions of this code and other laws that are enforced by the department of building safety.

109.3.8 Special inspections. For special inspections, see Section 1704.

109.3.9 Final inspection. The final inspection shall be made after all work required by the building permit is completed.

109.4 Inspection agencies. The building official is authorized to accept reports of approved inspection agencies, provided such agencies satisfy the requirements as to qualifications and reliability.

109.5 Inspection requests. It shall be the duty of the holder of the building permit or their duly authorized agent to notify the building official when work is ready for inspection. It shall be the duty of the permit holder to provide access to and means for inspection of such work for any inspections that are required by this code.

109.6 Approval required. Work shall not be done beyond the point indicated in each successive inspection without first obtaining the approval of the building official. The building official, upon notification, shall make the requested inspections and shall either indicate the portion of the construction that is satisfactory as completed, or shall notify the permit holder or an agent of the permit holder wherein the same fails to comply with this code. Any portions that do not comply shall be corrected and such portion shall not be covered or concealed until authorized by the building official.

SECTION 110 CERTIFICATE OF OCCUPANCY

110.1 Use and occupancy. No building or structure shall be used or occupied, and no change in the existing occupancy classification of a building or structure or portion thereof shall be made until the building official has issued a certificate of occupancy therefor as provided herein. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction.

110.2 Change in use. Changes in the character or use of an existing structure shall not be made except as specified in Chapter 34.

110.3 Certificate issued. After the building official inspects the building or structure and finds no violations of the provisions of this code or other laws that are enforced by the department of building safety, the building official shall issue a certificate of occupancy that shall contain the following:

1. The building permit number.
2. The address of the structure.
3. The name and address of the owner.
4. A description of that portion of the structure for which the certificate is

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issued.

5. A statement that the described portion of the structure has been inspected for compliance with the requirements of this code for the occupancy and division of occupancy and the use for which the proposed occupancy is classified.
6. The name of the building official.
7. The edition of the code under which the permit was issued.
8. The use and occupancy, in accordance with the provisions of Chapter 3.
9. The type of construction as defined in Chapter 6.
10. The design occupant load.
11. If an automatic sprinkler system is provided, whether the sprinkler system is required.
12. Any special stipulations and conditions of the building permit.

110.4 Temporary occupancy. The building official is authorized to issue a temporary certificate of occupancy before the completion of the entire work covered by the permit, provided that such portion or portions shall be occupied safely. The building official shall set a time period during which the temporary certificate of occupancy is valid.

110.5 Revocation. The building official is authorized to, in writing, suspend or revoke a certificate of occupancy or completion issued under the provisions of this code wherever the certificate is issued in error, on the basis of incorrect information supplied, or where it is determined that the building or structure or portion thereof is in violation of any ordinance or any regulation or any of the provisions of this code.

SECTION 111 SERVICE UTILITIES

111.1 Authority to disconnect service utilities. The building official shall have the authority to authorize disconnection of utility service to the building, structure or system regulated by this code and the codes referenced in case of emergency where necessary to eliminate an immediate hazard to life or property. The building official shall notify the serving utility, and wherever possible the owner and occupant of the building, structure or service system of the decision to disconnect prior to taking such action. If not notified prior to disconnection, the owner or occupant of the building, structure or service system shall be notified in writing, as soon as practical thereafter.

SECTION 112 BOARD OF APPEALS

112.1 General. The board of appeals hearing matters related to the building code shall be the board of appeals established by Article IV, Section 4.06 of the City Charter. The rules and regulations governing said board shall apply.

SECTION 113 VIOLATIONS

115.1 [113.1] Unlawful acts. It shall be unlawful for any person, firm, or corporation to

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erect, construct, alter, extend, repair, remove, demolish, use, or occupy any building or structure or equipment regulated by this code, or cause same to be done, in conflict with or in violation of any of the provisions of this code.

113.2 Notice of violation. The building official is authorized to serve a notice of violation or order on the person responsible for the erection, construction, alteration, extension, repair, moving, removal, demolition, or occupancy of a building or structure in violation of the provisions of this code, or in violation of a detail statement or a plan approved thereunder, or in violation of a permit or certificate issued under the provisions of this code. Such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.

113.2.1 Service of notice of violation. A notice of violation or order may be served in hand to the violator or left with a person of suitable age and discretion at the residence or place of business of the violator or mailed by certified mail, return receipt requested, to the last known address. If the return receipt is not returned, the notice shall be conclusively presumed to have been served if it is also sent by regular mail, postage prepaid, which is not returned as undeliverable by the postal service.

113.2.2 Request for appeal. Any person served an order, pursuant to this section, may request a hearing before the board of appeals by filing a written petition for said hearing at the code enforcement office within ten (10) days of the date of service for the order. The board of appeals may sustain, modify, or withdraw such order. The decision of the board of appeals may be further appealed pursuant to the provisions of Rule 80B of the Maine Rules of Civil Procedure.

113.3 Prosecution of violation. If the notice of violation is not complied with promptly, the building official is authorized to request the legal counsel of the jurisdiction to institute the appropriate proceeding at law or in equity to restrain, correct, or abate such violation, or to require the removal or termination of the unlawful occupancy of the building or structure in violation of the provisions of this code or of the order or direction made pursuant thereto.

113.4 Violation penalties. Any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof, or shall erect, construct, alter or repair a building or structure in violation of an approved plan or directive of the building official, or of a permit or certificate issued under the provisions of this Code, shall be liable for a fine as set forth in Chapter 1, Section 1-8 and Chapter 50, Section 50-36 of the Code of Ordinances of the City of Lewiston.

SECTION 114 STOP-WORK ORDER

114.1 Authority. Whenever the building official finds any work regulated by this code being performed in a manner contrary to the provisions of this code or in a dangerous or unsafe manner, the building official is authorized to issue a stop work order.

114.2 Issuance. The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work. Upon issuance of a stop work order, the cited work shall immediately cease. The stop work order shall state the reason for the order, and the conditions under which the cited work

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will be permitted to resume.

114.3 Unlawful continuance. Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to penalties as prescribed by law.

SECTION 115 UNSAFE STRUCTURES AND EQUIPMENT

115.1 Conditions. Structures or existing equipment that are or hereafter become unsafe, unsanitary or deficient because of inadequate means of egress facilities, inadequate light and ventilation, or which constitute a fire hazard, or are otherwise dangerous to human life or the public welfare, or which involve illegal or improper occupancy or inadequate maintenance, shall be deemed an unsafe condition. Unsafe structures shall be taken down and removed or made safe, as the building official deems necessary and as provided for in this section. A vacant structure that is not secured against entry shall be deemed unsafe.

115.2 Record. The building official shall cause a report to be filed on an unsafe condition. The report shall state the occupancy of the structure and the nature of the unsafe condition.

115.3 Notice. If an unsafe condition is found, the building official shall serve on the owner, agent or person in control of the structure, a written notice that describes the condition deemed unsafe and specifies the required repairs or improvements to be made to abate the unsafe condition, or that requires the unsafe structure to be demolished within a stipulated time. Such notice shall require the person thus notified to declare immediately to the building official acceptance or rejection of the terms of the order.

115.4 Method of service. Such notice shall be deemed properly served if a copy thereof is (a) delivered to the owner personally; (b) sent by certified or registered mail addressed to the owner at the last known address with the return receipt requested; or (c) delivered in any other manner as prescribed by local law. If the certified or registered letter is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the structure affected by such notice. Service of such notice in the foregoing manner upon the owner's agent or upon the person responsible for the structure shall constitute service of notice upon the owner.

115.5 Restoration. The structure or equipment determined to be unsafe by the building official is permitted to be restored to a safe condition. To the extent that repairs, alterations or additions are made or a change of occupancy occurs during the restoration of the structure, such repairs, alterations, additions or change of occupancy shall comply with the requirements of Section 105.2.2 and Chapter 34.

CHAPTER 2 DEFINITIONS

SECTION 201 GENERAL

Section 201.3 is hereby deleted:

Section 201.3 is hereby created as follows:

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201.3 Terms defined in other codes. Where conflicts exist regarding definitions of like terms in this chapter and other chapters of this code of ordinances, each definition shall be applied only within the scope of each chapter and shall not be construed to be contradictory. Terms not defined in this code and are defined in other codes shall have the meanings ascribed to them as in those codes.

305.2 Day care. The use of a building or structure, or portion thereof, for educational, supervision or personal care services for more than two children older than 2 1/2 years of age, which is not accessory to a residential use, shall be classified as a Group E occupancy.

308.2 Group I-1. This occupancy shall include buildings, structures or parts thereof housing more than eight persons, on a 24-hour bases, who because of age, mental disability or other reasons, live in a supervised residential environment that provides personal care services. The occupants are capable of responding to an emergency situation without physical assistance from staff. This group shall include, but not be limited to, the following:

- Residential board and care facilities

- Assisted living facilities

- Halfway houses

- Group homes

- Congregate care facilities

- Social rehabilitation facilities

- Alcohol and drug centers

- Convalescent facilities

A facility such as the above with eight or fewer persons shall be classified as a Residential Group R or shall comply with the International Residential Code on accordance with Section 101.2.

308.3 Group I-2. This occupancy shall include buildings and structures used for medical, surgical, psychiatric, nursing or custodial care on a 24-hour basis of more than five persons who are not capable of self-preservation. This group shall include, but not be limited to, the following:

- Hospitals

- Nursing homes (both intermediate-care facilities and skilled nursing facilities)

- Mental hospitals

- Detoxification facilities

A facility such as the above with eight or fewer persons shall be classified as Group R-3 or shall comply with the International Residential Code in accordance with Section 101.2.

308.5 Group I-4, day care facilities. This group shall include buildings and structures occupied by persons of any age who receive custodial care for less than 24 hours by

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individuals other than parents or guardians, relatives by blood, marriage or adoption, and in a place other than the home of the person cared for. A facility such as the above with twelve or fewer persons accessory to a dwelling unit shall be classified as a residential use or shall comply with the International Residential Code in accordance with Section 101.2. Places of worship during religious functions are not included.

308.5.1 Adult care facility. A facility that provides accommodations for less than 24 hours for more than eight unrelated adults and provides supervision and personal care services shall be classified as Group I-4.

Exception: A facility where occupants are capable of responding to an emergency situation without physical assistance from the staff shall be classified as Group A-3.

308.5.2 Child care facility. A facility that provides supervision and personal care on less than a 24-hour basis for more than two children 15 years of age or less shall be classified as Group I-4.

Exception: A child day care facility that provides care for more than two but no more than 100 children 15 years or less of age, when the rooms where such children are cared for are located on the level of exit discharge and each of these child care rooms has an exit door directly to the exterior, shall be classified as Group E.

SECTION 310 RESIDENTIAL GROUP R

310.1 Residential Group R. Residential Group R includes, among others, the use of a building or structure, or a portion thereof, for sleeping purposes when not classified as an Institutional Group I. Residential occupancies shall include the following:

R-1 Residential occupancies where the occupants are primarily transient in nature including:

Boarding houses (transient)

Hotels (transient)

Motels (transient)

R-2 Residential occupancies containing sleeping units or more than two dwelling units where the occupants are primarily permanent in nature, including:

Apartment houses

Boarding houses (not transient)

Convents

Dormitories

Fraternities and sororities

Monasteries

Vacation timeshare properties

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Hotels (not transient)

Motels (not transient)

R-3 Residential occupancies where the occupants are primarily permanent in nature and not classified as R-1, R-2, R-4, or I and where buildings do not contain more than two dwelling units as applicable in Section 101.2, or adult and child care facilities that provide accommodations for twelve or fewer persons of any age for less than 24 hours. Adult and child care facilities that are within a single-family home are permitted to comply with the International Residential Code in accordance with Section 101.2.

R-4 Residential occupancies shall include buildings arranged for occupancy as residential care/assisted living facilities including not more than eight occupants, excluding staff.

Group R-4 occupancies shall meet the requirements for construction as defined in Group R-3 except as otherwise provided for in this code or shall comply with the International Residential Code in accordance with Section 101.2.

SECTION 312 UTILITY AND MISCELLANEOUS GROUP U

312.1 General. Buildings and structures of an accessory character and miscellaneous structures not classified in any specific occupancy shall be constructed, equipped and maintained to conform to the requirements of this code commensurate with the fire and life hazard incidental to their occupancy. Group U shall include, but not be limited to, the following:

Agricultural buildings

Aircraft hangars, accessory to a one- or two-family residence (see Section 412.3)

Barns

Carports

Fences

Grain silos, accessory to a residential occupancy

Greenhouses

Livestock shelters

Private garages

Retaining walls

Sheds

Stables

Swimming pools

Tanks

Towers

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CHAPTER 11 ACCESSIBILITY is hereby deleted.

CHAPTER 11 ACCESSIBILITY

SECTION 1101 GENERAL

1101.1 Applicable standard. The standard for accessible buildings and facilities shall be the Maine Human Rights Act, Title 5 MRSA Section 4551 et seq., and applicable building and facilities shall be constructed in accordance with ANSI A117.1 - 1986 for residential uses and the Americans with Disabilities Act Accessibility Guidelines for non-residential uses.

CHAPTER 12 INTERIOR ENVIRONMENT

SECTION 1204 TEMPERATURE CONTROL is hereby deleted.

CHAPTER 13 ENERGY EFFICIENCY is hereby deleted.

CHAPTER 18 SOILS AND FOUNDATIONS

SECTION 1805 FOOTINGS AND FOUNDATIONS

1805.2 Depth of footing. The minimum depth of footings below the undisturbed ground surface shall be 12 inches (305 mm). Where applicable, the depth of footings shall also conform to Sections 1805.2.1 through 1805.2.3.

1805.2.1 Frost protection. Except where otherwise protected from frost, foundation walls, piers and other permanent supports of buildings and structures shall be protected from frost by one or more of the following methods:

1. Extending at least four feet to the bottom of the footing/ pier;
2. Constructing in accordance with ASCE-32; or
3. Erecting on solid rock.

Footing shall not bear on frozen soil unless such frozen condition is of a permanent character.

Exception: Free-standing buildings meeting all of the following conditions shall be permitted to be constructed on a monolithic slab with integral footing:

1. Classified in Importance Category I or II;
2. Classified as Use Group B, F, M, H, S, or U;
3. Be of Type V construction;
4. Be one story and not more than 20 feet in height, measured to the eave; and
5. Be not more than 2500 square feet in area.

Where permitted, the slab installation shall conform to the

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following:

- a. Structural loads shall be uniformly distributed along the length of the slab. Point loads shall be supported in accordance with Section 1805.2.1;
- b. Unless the existing soil is of a similar porosity as the required fill, original soil shall be removed and replaced with structural fill material that is a minimum depth of 24 inches of uniform, compacted, permeable aggregate such as crushed stone or gravel.
- c. The minimum width of the integral footing shall be 12 inches and exterior footings shall extend at least 12 inches below grade. Mid-span footings shall be a minimum of 12 inches wide and 8 inches thick.
- d. The minimum slab thickness shall be 4 inches.
- e. A row of # 4 rebar shall be placed in the lower and upper third of the exterior footing, not less than 3 inches from the surface of the footing. The slab shall be reinforced with either 6" x 6" wire mesh or fiber reinforcement.
- f. Finish grade shall be a minimum of 6 inches below the top of the slab.

CHAPTER 27 ELECTRICAL is hereby deleted.

CHAPTER 28 MECHANICAL SYSTEMS is hereby deleted.

CHAPTER 29 PLUMBING SYSTEMS is hereby deleted.

CHAPTER 31 SPECIAL CONSTRUCTION

SECTION 3109 SWIMMING POOL ENCLOSURES AND SAFETY DEVICES

3109.2 Definition. The following word and term shall, for the purposes of this section and as used elsewhere in this code, have the meaning shown herein.

SWIMMING POOLS. Any structure intended for swimming, recreational bathing or wading that contains water over 36 inches (915) deep. This includes in-ground, above-ground and on-ground pools; hot tubs; spas and fixed-in-place wading pools.

CHAPTER 32 ENCROACHMENTS INTO THE PUBLIC RIGHT-OF-WAY is hereby deleted.

CHAPTER 33 SAFEGUARDS DURING CONSTRUCTION

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SECTION 3303 DEMOLITION

3304.4 Vacant lot. Where a structure has been demolished or removed, the vacant lot shall be filled to grade with sand, gravel, or other approved inert fill material and the entire site shall be stabilized to prevent wind and water erosion. Any existing curb cuts shall be barricaded to prevent vehicular access.

3303.7 Insurance coverage. No permit for the demolition, destruction, or wrecking of any building or structure shall be issued unless the building official shall have first been furnished with satisfactory evidence of the fact that the applicant has secured a policy of liability insurance indemnifying the applicant for any liability incurred arising out of said demolition, destruction, or wrecking of a building or structure.

3303.7.1 Insurance limits. This insurance policy shall be in the amount of five hundred thousand dollars (\$500,000.00) per occurrence and one million dollars (\$1,000,000.00) aggregate.

3303.7.2 Waiver. The building official may waive the insurance requirements hereunder, provided that after personal inspection, the building official determines that there exists no reasonable danger or likelihood of injury as the result of said demolition, destruction, or wrecking. In no event shall such a waiver be granted if the building or structure to be demolished, destroyed, or wrecked is located within twenty (20) feet of the public street or sidewalk.

SECTION 3305 SANITATION

3305.1 Facilities required. Sanitary facilities shall be provided during construction, remodeling or demolition activities in accordance with Title 29, Part 1926, Section 51 of the Code of Federal Regulations (29 CFR 1926.51).

SECTION 3401 GENERAL

3401.3 Compliance with other codes. Alterations, repairs, additions and changes of occupancy shall comply with the provisions for alterations, repairs, additions and changes of occupancy in the currently adopted editions of the following: National Fire Codes, State of Maine Internal Plumbing Rules, BOCA/ICC Property Maintenance Code, Maine Subsurface Waste Water Disposal Rules, and National Electrical Code.

SECTION 3409 ACCESSIBILITY FOR EXISTING BUILDINGS is hereby deleted.

SECTION 3409 ACCESSIBILITY FOR EXISTING BUILDINGS

3409.1 Applicable standard. Accessibility requirements for existing buildings and facilities shall be determined by the Maine Human Rights Act, Title 5 MRSA Section 4551 et seq., and applicable building and facilities shall be constructed in accordance with ANSI A117.1 - 1986 for residential uses and the Americans with Disabilities Act Accessibility Guidelines for non-residential uses.

(Ord. No. 92-15, § 7-2, 8-13-92; Ord. No. 05-01, 3-10-05)

Secs. 18-28--18-50. Reserved.

BUILDINGS AND BUILDING REGULATIONS

ARTICLE III. INTERNATIONAL PROPERTY MAINTENANCE CODE

Sec. 18-51. Adoption of International Property Maintenance Code.

An ordinance of the City of Lewiston adopting the 2009 edition of the *International Property Maintenance Code*, regulating and governing the conditions and maintenance of all property, buildings and structures; by providing the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupation and use; and the condemnation of buildings and structures unfit for human occupancy and use, and the demolition of such existing structures in the City of Lewiston; providing for the issuance of permits and collection of fees.

That a certain document, one (1) copy of which is on file in the office of the City Clerk of the City of Lewiston, being marked and designated as the *International Property Maintenance Code*, 2009 edition, as published by the International Code Council, be and is hereby adopted as the Property Maintenance Code of the City of Lewiston, in the State of Maine for regulating and governing the conditions and maintenance of all property, buildings and structures; by providing the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupation and use; and the condemnation of buildings and structures unfit for human occupancy and use, and the demolition of such existing structures as herein provided; and each and all of the regulations, provisions, penalties, conditions and terms of said Property Maintenance Code on file in the office of the City Clerk of the City of Lewiston are hereby referred to, adopted, and made a part hereof, as if fully set out in this ordinance, with the additions, insertions, deletions and changes prescribed in Section 18-52 of this ordinance.

That if any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

That nothing in this ordinance or in the International Property Maintenance Code hereby adopted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this ordinance.

(Ord. No. 92-8, § 15-1, 5-7-92; Ord. No. 11-07, 9-15-11)

Sec. 18-52. Amendments to the property maintenance code.

The property maintenance code adopted in section 18-51 is amended and changed as follows:

**CHAPTER 1
SCOPE AND ADMINISTRATION**

PM-100.1 Title: These regulations shall be known as the International Property Maintenance Code of the City of Lewiston, hereinafter referred to as "this code."

PM-102.3 Application of other codes: Repairs, additions or alterations to a structure, or changes of Lewiston Code

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occupancy, shall be done in accordance with the procedures and provisions of the Code of Ordinances of the City of Lewiston and any other applicable laws, rules or regulations.

102.6 Historic buildings are hereby deleted.

SECTION 103 DEPARTMENT OF PLANNING AND CODE ENFORCEMENT

103.1 General. The Director of Planning and Code Enforcement and his designees shall be known as the *code official*.

103.2 Appointment is hereby deleted.

103.3 Deputies is hereby deleted.

103.4 Liability. The *code official* while acting for the jurisdiction, in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be rendered liable personally, and is hereby relieved from all personal liability for any damage accruing to persons or property as a result of an act or by reason of an act or omission in the discharge of official duties. Any suit instituted against the code official or any subordinate because of an act performed by that official or subordinate in the lawful discharge of duties and under the provisions of this code shall be defended by the legal representative of the jurisdiction until the final termination of the proceedings. The *code official* or any subordinate shall not be liable for costs in an action, suit or proceeding that is instituted in pursuance of the provisions of this code.

103.5 Fees is hereby deleted.

104.3 Right of entry. In order to safeguard the safety, health and welfare of the public, the *code official* is authorized to enter any structure or premises at any reasonable time for the purpose of making inspections and performing duties under this code.

106.3 Prosecution of violation. Any person failing to comply with a notice of violation or order served in accordance with Section 107 shall be deemed guilty of a civil infraction and the violation shall be deemed a *strict liability offense*. If the notice of violation is not complied with, the *code official* shall institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful *occupancy* of the structure in violation of the provisions of this code or of the order or direction made pursuant thereto. Any action taken by the *code enforcement official* on such *premises* shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.

106.4 Violation penalties. Any person who shall violate a provision of this code, or fail to comply therewith, or with any of the requirements thereof, shall be prosecuted within the limits provided by the Code of Ordinances of the City of Lewiston or state laws. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

106.5 Abatement of violation. The imposition of the penalties herein prescribed shall not preclude the *code official* from instituting appropriate action to restrain, correct or abate a violation, or to prevent illegal *occupancy* of a building, structure or *premises*, or to stop an illegal act, conduct, business or utilization of the building, structure or *premises*.

107.2 Form. Such notice prescribed in Section 107.1 shall be in accordance with all of the following:

1. Be in writing.

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2. Include a description of the real estate sufficient for identification.
3. Include a statement of the violation or violations and why the notice is being issued.
4. Include a correction order allowing a reasonable time to make the repairs and improvements required to bring the *dwelling unit* or structure into compliance with the provisions of this code.
5. Inform the property *owner* of the right to appeal.
6. Include a statement of the right to issue citations in accordance with Chapter 50, Article II and/or to take any other legal action available by the Code of Ordinances of the City of Lewiston or by State law and to file a lien in accordance with Section 106.3.

107.3 Method of service. Such notice shall be deemed to be properly served if a copy thereof is:

1. Delivered personally;
2. Sent by certified and first-class mail addressed to the last known address; or
3. If the notice is returned showing that the first class letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the structure affected by such notice.

109.2 Temporary safeguards. Notwithstanding other provisions of this code, whenever, in the opinion of the *code official*, there is *imminent danger* due to an unsafe condition, the *code official* may order the necessary work to be done, including the boarding up of openings, to render such structure temporarily safe whether or not the legal procedure herein described has been instituted; and may cause such other action to be taken as the *code official* deems necessary to meet such emergency.

109.4 Emergency repairs. For the purposes of this section, the *code official* may employ the necessary labor and materials to perform the required work as expeditiously as possible.

109.5 Costs of emergency repairs. Costs incurred in the performance of emergency work shall be paid by the jurisdiction. The legal counsel of the jurisdiction may institute appropriate action against the *owner* of the *premises* where the unsafe structure is or was located for the recovery of such costs.

110.3 Failure to comply. If the *owner* of a *premises* fails to comply with a demolition order within the time prescribed, the *code official* may cause the structure to be demolished and removed, either through an available public agency or by contract or arrangement with private persons, and the cost of such demolition and removal shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.

110.4 Salvage materials. When any structure has been ordered demolished and removed, the governing body or other designated officer under said contract or arrangement aforesaid shall have the right to sell the salvage and valuable materials. The net proceeds of such sale, after deducting the expenses of such demolition, legal fees and removal, shall be promptly remitted with a report of such sale or transaction, including the items of expense and the amounts deducted, for the person who is entitled thereto, subject to any order of a court. If such a surplus does not remain to be turned over, the report shall so state.

111.1 Application for appeal. Any person directly affected by a decision of the *code official* or a notice or order issued under this code shall have the right to appeal to the board of appeals, provided that a written application for appeal is filed within 10 days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted hereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or the requirements of this code are adequately satisfied by other means.

111.2 Application for appeal is hereby deleted.

111.2.1 Alternate members is hereby deleted.

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111.2.2 Chairman is hereby deleted.

111.2.3 Disqualification of member is hereby deleted.

111.2.4 Secretary is hereby deleted.

111.2.5 Compensation of members is hereby deleted.

111.3 Notice of meeting is hereby deleted.

111.4 Open hearing is hereby deleted.

111.4.1 Procedure is hereby deleted.

111.5 Postponed hearing is hereby deleted.

111.6 Board decision is hereby deleted.

111.6.1 Records and copies is hereby deleted.

111.6.2 Administration is hereby deleted.

111.7 Court review is hereby deleted.

111.8 Stay of enforcement is hereby deleted.

112.4 Failure to comply. Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of not less than 1,000.00 dollars for each day that work activity occurs.

201.3 Terms defined in other codes. Where terms are not defined in this code and are defined in the Maine Uniform Building Code, the Code of Ordinances of the City of Lewiston, and any other duly adopted codes, such terms shall have the meanings ascribed to them as stated in those codes.

CHAPTER 2 DEFINITIONS

SECTION 202 GENERAL DEFINITIONS

INOPERABLE MOTOR VEHICLE. A vehicle which cannot be driven upon the public streets for reason including but not limited to being unregistered, uninsured, uninspected, wrecked, abandoned, in a state of disrepair, or incapable of being moved under its own power.

CHAPTER 3 GENERAL REQUIREMENTS

302.4 Weeds. All *premises* and *exterior property* located in the riverfront district, neighborhood conservation "B" district, downtown residential district and in the centreville district shall be maintained free from weeds or plant growth in excess of 12". All noxious weeds shall be prohibited. Weeds shall be defined as all grasses, annual plants and vegetation, other than trees or shrubs provided, however, this term shall not include cultivated flowers and gardens, and areas within 25', horizontal distance, of the normal high water mark of the Androscoggin River.

BUILDINGS AND BUILDING REGULATIONS

302.8 Motor vehicles. Except as provided for in other regulations, not more than one inoperative, or unregistered, or uninsured or uninspected motor vehicle shall be parked, kept or stored on any *premises*, and no vehicle shall at any time be in a state of major disassembly, disrepair, or in the process of being stripped or dismantled. Painting of vehicles is prohibited unless conducted inside an *approved* spray booth.

Exception: A vehicle of any type is permitted to undergo major overhaul, including body work, provided that such work is performed inside a structure or similarly enclosed area designed and *approved* for such purposes.

303.2 Enclosures. Private swimming pools, hot tubs and spas, designed for a water depth of 36 inches (900 mm) or more shall be completely surrounded by a fence or barrier at least 48 inches (1219 mm) in height above the finished ground level measured on the side of the barrier away from the pool. Gates and doors in such barriers shall be self-closing and self-latching. Where the self-latching device is less than 54 inches (1372 mm) above the bottom of the gate, the release mechanism shall be located on the pool side of the gate. Self-closing and self latching gates shall be maintained such that the gate will positively close and latch when released from an open position of 6 inches (152 mm) from the gatepost. No existing pool enclosure shall be removed, replaced or changed in a manner that reduces its effectiveness as a safety barrier.

Exception: Spas or hot tubs with a safety cover that complies with ASTM F 1346 shall be exempt from the provisions of this section.

304.14 Insect screens. Every door, window and other outside opening required for *ventilation* of habitable rooms, food preparation areas, food service areas or any areas where products to be included or utilized in food for human consumption are processed, manufactured, packaged or stored shall be supplied with *approved* tightly fitting screens of not less than 16 mesh per inch (16 mesh per 25 mm), and every screen door used for insect control shall have a self-closing device in good working condition.

Exception: Screens shall not be required where other *approved* means, such as air curtains or insect repellent fans, are employed.

308.3.1 Garbage facilities. The *owner* of every dwelling shall supply to the *occupants* in each *dwelling unit* an *approved* leak proof, covered, outside garbage container.

309.4 Multiple occupancy. The *owner* of a structure containing two or more *dwelling units* including *rooming houses* shall be responsible for *pest elimination* in the public or shared areas of the structure, the *exterior property* as well as the individual dwelling units, or rooming units.

CHAPTER 5 PLUMBING FACILITIES AND FIXTURE REQUIREMENTS

502.2 Rooming houses. At least one water closet, lavatory and bathtub or shower shall be supplied for each six *rooming units*.

502.5 Public toilet facilities. Public toilet facilities shall be maintained in a safe sanitary and working condition in accordance with the *Maine State Internal Plumbing Code*. Except for periodic maintenance or cleaning, public access and use shall be provided to the toilet facilities at all times during *occupancy* of the *premises*.

505.1 General. Every sink, lavatory, bathtub or shower, drinking fountain, water closet or other plumbing fixture shall be properly connected to either a public water system or to an *approved* private water system.

BUILDINGS AND BUILDING REGULATIONS

All kitchen sinks, lavatories, laundry facilities, bathtubs and showers shall be supplied with hot or tempered and cold running water in accordance with the *Maine State Internal Plumbing Code*.

CHAPTER 6 MECHANICAL AND ELECTRICAL REQUIREMENTS

602.2 Residential occupancies. Dwellings shall be provided with heating facilities capable of maintaining a room temperature of 66°F (19°C) in all habitable rooms, *bathrooms* and *toilet rooms*. Cooking appliances shall not be used to provide space heating to meet the requirements of this section.

602.3 Heat supply. Every *owner* and *operator* of any building who rents, leases or lets one or more *dwelling units* or *sleeping units* on terms, either expressed or implied, to furnish heat to the *occupants* thereof shall supply heat during the period from September 15 to May 15 to maintain a temperature of not less than 66°F (19°C) in all habitable rooms, *bathrooms* and *toilet rooms*.

CHAPTER 7 FIRE SAFETY REQUIREMENTS

702.1 General. A safe, continuous and unobstructed path of travel shall be provided from any point in a building or structure to the *public way*. Means of egress shall comply with the applicable National Fire Protection Association Codes as per Chapter 38, Article II, Section 30-26(a) of the Code of Ordinances of the City of Lewiston.

702.2 Aisles. The required width of aisles in accordance with the applicable National Fire Protection Association Codes as per Chapter 38, Article II, Section 30-26(a) of the Code Ordinances of the City of Lewiston shall be unobstructed.

704.1 General. All systems, devices and equipment to detect a fire, actuate an alarm, or suppress or control a fire or any combination thereof shall be maintained in an operable condition at all times in accordance with the applicable National Fire Protection Association Codes as per Chapter 38, Article II, Section 30-26(a) of the Code Ordinances of the City of Lewiston.

704.1.1 Automatic sprinkler systems. Inspection, testing and maintenance of automatic sprinkler systems shall be in accordance with applicable National Fire Protection Association Codes as per Chapter 38, Article II, Section 30-26(a) of the Code Ordinances of the City of Lewiston.

704.2 Smoke alarms and carbon monoxide detectors. Single- or multiple-station smoke alarms shall be installed and maintained in accordance with Chapter 38, Section 38-26 (c) of the Code of Ordinances of the City of Lewiston. Carbon monoxide detectors shall be installed and maintained in accordance with Title 25 M.R.S.A. § 2468.

(Ord. No. 92-8, § 15-2, 5-7-92; Ord. No. 92-22, § 15-2, 10-1-92; Ord. No. 11-07, 9-15-11)

Secs. 18-53--18-75. Reserved.

ARTICLE IV. PLUMBING CODE

Sec. 18-76. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

BUILDINGS AND BUILDING REGULATIONS

Minor plumbing work or minor installation means:

- (1) The cleaning of stoppages and/or repairing of leaks in all water distributing and drainage pipes, valves and faucets, provided the work does not require the replacement or relocation of any pipes.
- (2) The direct replacement of all existing faucets, valves and plumbing fixtures, except hot water storage tanks and hot water heaters including tankless water heaters.

(Ord. No. 93-18, § 22-8, 11-4-93)

Cross references: Definitions generally, § 1-2.

Sec. 18-77. Compliance with state law.

All plumbing installed in the city and all permits issued shall conform to the rules and regulations of the state department of human services in relation to plumbing within the state issued under authority conferred by state law, except as amended in this article.

(Code 1982, § 22-1; Ord. No. 93-18, § 22-1, 11-4-93)

Sec. 18-78. Compliance with water division regulations.

All work done on the water services in the city shall conform to the rules and regulations set forth by the water division of the department of public works.

(Code 1982, § 22-2)

Sec. 18-79. Removal of contents of privies, cesspools or septic tanks.

No person shall remove the contents of any privy, vault, cesspool or septic tank except in a manner approved by the plumbing inspector.

(Code 1982, § 22-3)

State law references: Cleaning of privies, septic tanks, etc., 30 M.R.S.A. § 4359.

Sec. 18-80. House trap, when required.

A house trap is required only where no storm drain is provided and the building is tied onto a combined sewer. Such house trap shall be located inside of the building as near the outside wall as possible. Such house trap shall have at least one cleanout four inches or larger in dimensions.

(Code 1982, § 22-4)

Sec. 18-81. Water tank heaters.

- (a) No water tank heaters shall be used in any dwelling house unless such water tank heater is equipped with a proper smoke or fume pipe connected with a chimney or flue affording an outlet to the open air, and unless such chimney or flue shall be maintained in good repair and free from all deposits.
- (b) No water tank heaters shall be installed in a bathroom.
- (c) The provisions of subsections (a) and (b) of this section shall not apply to electric hot

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water heaters.

(Code 1982, § 22-5)

Sec. 18-82. Special provisions for flood hazard areas.

The plumbing inspector shall require new and replacement water supply systems and sanitary sewer systems located within any A zone on the flood insurance rate map to be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters, and require on-site waste disposal systems to be located so as to avoid impairment of them or contamination from them during flooding.

(Code 1982, § 22-6)

Sec. 18-83. Permit fees.

The fees for plumbing permits shall be paid by the owner or his agent in accordance with the plumbing fee schedule established by the city council.

(Ord. No. 93-18, § 22-7, 11-4-93)

Sec. 18-84. Master oil burner technicians.

A plumbing permit shall be required for the installation of domestic water heating appliances by master oil burner technicians.

(Ord. No. 93-18, § 22-9, 11-4-93)

Secs. 18-85--18-105. Reserved.

ARTICLE V. ELECTRICAL CODE

DIVISION 1. GENERALLY

Sec. 18-106. Liability established.

The provisions of this article shall not be construed to relieve from or to lessen the responsibility of any person owning, operating, controlling or installing any electrical fixtures, appliances, devices, equipment or wiring, for damage or injury to any person or property, nor shall it be construed to impose on the city any liability by reason of the inspection provided for in this article or by reason of any certificate or license issued under this article.

(Code 1982, § 10-1)

Sec. 18-107. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Board means the board of electrical appeals provided for in section 18-125.

Electrical inspector means the electrical inspector of the city or any deputy, assistant or acting inspector designated by the city administrator.

Journeyman electrician means any person who customarily performs the work of

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installing or repairing electrical wires, conduits, fixtures, equipment and other appliances in the employment of a master electrician and who holds a valid journeyman electrician's license issued to him by the electricians examining board pursuant to 32 M.R.S.A. § 1101 et seq., as amended.

Limited license means a limited electrician's license to install and service the electrical work related to a specific type of electrically operated equipment or to specific electrical installations issued by the electricians examining board pursuant to 32 M.R.S.A. § 1101 et seq., as amended.

Master electrician means any person engaging in or about to engage in the business of installing electrical wires, conduits, apparatus, fixtures and other electrical equipment and holding a valid master electrician's license issued by the electricians examining board pursuant to 32 M.R.S.A. § 1101 et seq., as amended.

(Code 1982, § 10-2; Ord. No. 92-9, § 10-2, 5-7-92)

Cross references: Definitions generally, § 1-2.

State law references: Similar definitions, 32 M.R.S.A. § 1101.

Secs. 18-108--18-120. Reserved.

DIVISION 2. ADMINISTRATION AND ENFORCEMENT

Sec. 18-121. Enforcement officer.

The electrical inspector shall enforce the provisions of this article so that wires, conduits, fixtures, apparatus, equipment and other appliances carrying or using electricity for light, heat, power, transmission of sound and communications purposes shall be so installed, constructed and guarded as to reduce as far as practicable the danger there from to life and property.

(Code 1982, § 10-21)

State law references: Municipal authority to appoint an electrical inspector, 30 M.R.S.A. § 2555.

Sec. 18-122. Entry for inspections.

The electrical inspector may enter any building with the permission of any person having control of such building or may apply to a court for process to do so in order to discharge his official duties, for the purpose of making any inspection, reinspection or test of the installation or maintenance of electric wiring, devices, appliances and equipment contained therein.

(Ord. No. 92-9, § 10-22, 5-7-92)

Sec. 18-123. Emergency orders.

- (a) Whenever the electrical inspector determines that:
- (1) An existing electrical service, conductors, fixtures, equipment and any other aspects of electrical systems poses a danger to life or property because of defectiveness or defective installation; or
 - (2) Upon making an inspection required under this article, an addition or alteration to existing lighting, heating or power systems is defective;

he may require that the electrical service be discontinued to the building or premises or that the

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electrical current be discontinued to such addition or alteration. The electrical service or current shall not be reconnected until such defects are remedied or corrected to the satisfaction of the electrical inspector.

- (b) Any person aggrieved by a decision of the electrical inspector to discontinue electrical service or current may appeal to the board of appeals pursuant to section 18-125. Such appeal shall in no way stay the decision to disconnect electrical service or current.

(Ord. No. 92-9, § 10-23, 5-7-92)

Sec. 18-124. Violation orders.

- (a) Whenever the electrical inspector determines that there has been a violation of any provision of this article, an order to correct such violation shall be issued to the person (hereinafter "violator") owning or having any control of any land, building, structure, sign, licensed or permitted business or operation which is in violation. Notice of the violation may be served in hand to the violator or left with a person of suitable age and discretion at the residence or place of business of the violator or mailed by certified mail, return receipt requested, to his last known address. If the return receipt is not returned, the notice shall be conclusively presumed to have been served if it is also sent by regular mail, postage prepaid, which is not returned as undeliverable by the postal service. If the electrical inspector finds that the violation is one which requires immediate correction to protect the public health or safety, he may provide notice under this article by means of telephone or facsimile transmission to the violator or to a person of suitable age and discretion at the residence or place of business of the violator. Any notice under this article shall describe the violation, including a reference to the ordinance section violated, specify that reasonable period within which the violation must be corrected, and state the potential consequence if the violation is not corrected. The notice shall also advise the violator of any right to appeal to the board of appeals with respect to the electrical inspector's determination that a violation exists for which the violator is responsible.
- (b) The electrical inspector may, upon evidence of noncompliance with an order or decision of the board of appeals pursuant to section 18-125, request that appropriate legal action be instituted.

(Ord. No. 92-9, § 10-24, 5-7-92)

Sec. 18-125. Appeals.

Any person served with an order pursuant to section 18-124 or aggrieved by the order of the electrical inspector condemning all or part of any electrical installation material or equipment or by his refusal to approve any electrical installation for which a permit was issued may request a hearing before the board of appeals by filing a written petition for such hearing at the office of the director of planning and code enforcement within ten days of the date of service of order. Such appeal shall be heard within 30 days of the receipt of a complete petition for appeal. The board of appeals may sustain, modify or withdraw such order. The decision of the board of appeals may be further appealed pursuant to the provisions of Rule 80B of the Maine Rules of Civil Procedure. To take advantage of this right, a petition for review must be filed with the superior court within 45 days of receipt of the decision of the board of appeals.

(Code 1982, § 10-25; Ord. No. 05-03, 3-10-05)

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Sec. 18-126. Stop work order.

Upon notice from the electrical inspector that any work on any building, structure, equipment, etc., is being prosecuted contrary to the provisions of this article or in an unsafe and dangerous manner, such work shall be immediately stopped. The stop work order shall be in writing and shall be served in accordance with section 18-124 and shall state the conditions under which work may be resumed.

(Ord. No. 92-9, § 10-26, 5-7-92)

Sec. 18-127. Penalty for violation of article.

Any person or trust who shall violate or with property or equipment violate this article shall be subject to penalties and/or fines as set forth in section 1-8, and section 50-36 et seq. and/or as otherwise may be prescribed pursuant to 30-A M.R.S.A. § 4452 et seq., as amended and 32 M.R.S.A. § 1101 et seq., as amended. Each day that a violation continues after the notice has been served in accordance with section 18-124 shall be deemed a separate offense.

(Ord. No. 92-9, § 10-27, 5-7-92)

Sec. 18-128. Relief from personal liability.

The electrical inspector as well as any employee who acts in good faith in the discharge of duties of enforcement of this article is relieved of all personal liability for any damage accruing to persons or property as a result of such acts or alleged failure to act. Further, the electrical inspector shall not be held liable for any costs in any action, suit or proceeding that is instituted by or against the electrical inspector or any employee in the enforcement of this code. In any of these actions, the electrical inspector or employee shall be defended or represented by the city's attorney-at-law until the final termination of the proceedings. This section shall remain in effect regardless of the employment status of the electrical inspector or employee.

(Ord. No. 92-9, § 10-28, 5-7-92)

Secs. 18-129--18-140. Reserved.

DIVISION 3. PERMITS AND INSPECTIONS

Sec. 18-141. Permit required; exceptions.

- (a) No electrical wiring, devices, appliances or equipment shall be installed within or on any building, structure or premises nor shall alterations or additions be made in any such existing wiring, devices, appliances or equipment without first securing a permit therefor from the electrical inspector, except as otherwise provided in this division.
- (b) No permit shall be required for the replacement of lamps or the connection of portable devices to suitable receptacles which have been permanently installed. A "suitable receptacle" is hereby defined as one having the proper wiring and capacity to fulfill the electrical requirements of the portable device.
- (c) No permit shall be required for the installation, alteration or repair of wiring, devices, appliances or equipment for the operation of signals or the transmission of intelligence through the facilities of any duly chartered telephone, telegraph or radio company.
- (d) No permit shall be required for the installation, alteration or repairing of electric wiring,

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devices, appliances and equipment installed by a public utility for the use of such public utility in the generation, transmission, distribution or metering of electrical energy; nor for the work of such utilities in installing, maintaining and repairing on the premises of customers, service connections, meters and other apparatus and appliances remaining the property of such utilities after installation; nor for work by a public utility in connection with the lighting of public or private ways, alleys, parks or squares.

(Code 1982, § 10-36; Ord. No. 92-9, § 10-36, 5-7-92; Ord. No. 05-03, 3-10-05; Ord. No. 11-09, 10-20-11)

Sec. 18-142. Application for permit.

Application for a permit required by this article, describing the work to be done, shall be made in writing on standard forms provided by the city to the electrical inspector by the person installing the work. The application shall state the name and address of the person for whom the work is to be done and shall be accompanied by such plans and specifications as may be necessary to determine whether the installation as described will be in conformity with the requirements of this article, and if the applicant has complied with the provisions of this article, a permit for such installation shall be issued.

(Code 1982, § 10-37)

Sec. 18-143. Prerequisites to issuance of permit.

No permit for the installation or alteration of any electric wiring, devices, appliances or equipment shall be issued to any person other than a master electrician or a limited license electrician. Permits to limited license electricians shall be limited to the specific electrical installations authorized by such licenses. Notwithstanding the above provision, a permit may be issued to homeowners to do wiring in a single-family residence, provided the following conditions are met:

- (1) The homeowner must obtain a permit and have all work inspected as provided by section 18-151.
- (2) The single-family home must be owned by the individual doing the electrical work and be his permanent residence or it will be in the event that it is to be constructed.

(Code 1982, § 10-38; Ord. No. 92-9, § 10-38, 5-7-92; Ord. No. 05-03, 3-10-05)

Sec. 18-144. Fee required.

No electrical permit shall be issued until the proper fee has been paid. Any person who commences any work for which a permit is required without having first obtained a permit shall pay a belated fee in addition to the customary fee for the permit. A belated fee shall not be assessed for emergency work provided that an application is filed with the code enforcement division on the next day such division is open following commencement of such work.

(Code 1982, § 10-39; Ord. No. 92-9, § 10-39, 5-7-92)

Sec. 18-145. Installation limited to that described in application.

The electrical permit when issued shall be for the installation as described in the application and no deviation shall be made from the installation so described without the written

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approval of the electrical inspector.

(Code 1982, § 10-41; Ord. No. 05-03, 3-10-05)

Editor's note: Formerly § 16-146

Sec. 18-146. Transferability.

No permit issued under this article shall be transferable except with the written approval of the electrical inspector.

(Code 1982, § 10-42; Ord. No. 05-03, 3-10-05)

Editor's note: Formerly § 16-147

Sec. 18-147. Suspension of permits.

Any permit issued under this article shall become invalid if the authorized work is not commenced within six months after the issuance of the permit, if the authorized work is suspended or abandoned for a period of six months after the time of commencing the work, or if the authorized work is not completed within 12 months. The electrical inspector shall have the authority to extend a permit for the commencement of authorized work beyond the six months or the completion of authorized work beyond the 12 months when such a request is determined reasonable by the electrical inspector.

(Code 1982, § 10-43; Ord. No. 92-9, § 10-43, 5-7-92; Ord. No. 05-03, 3-10-05)

Editor's note: Formerly § 16-148

Sec. 18-148. Prerequisites for electrical installations.

One licensed apprentice electrician or one licensed helper electrician (licensed by the electricians examining board pursuant to 32 M.R.S.A. § 1101 et seq., as amended) may only perform electrical work covered under this article with, in the presence of, and under the supervision of each master electrician, journeyman electrician or limited license electrician. When the electrical inspector finds that electrical work is being performed contrary to this requirement he shall issue a stop work order pursuant to section 18-126 and shall notify the permit holder that future violations of this section shall result in the issuance of a citation pursuant to section 50-36 et seq. and/or the initiation of a land use complaint pursuant to rule 80-K of the Maine Rules of Civil Procedure and 30-A M.R.S.A. § 4452 et seq., as amended.

(Code 1982, § 10-44; Ord. No. 92-9, § 10-44, 5-7-92; Ord. No. 05-03, 3-10-05)

Editor's note: Formerly § 16-149

Sec. 18-149. Proof of licensure.

Any person performing electrical work as regulated by this article except as otherwise provided for in section 18-143 and 32 M.R.S.A. § 1101 et seq., as amended, shall carry his electrical license issued by the electricians examining board and upon request shall display it to the electrical inspector. Failure to display a license upon a request shall be conclusive deemed a violation of this article.

(Code 1982, § 10-45; Ord. No. 92-9, § 10-45, 5-7-92; Ord. No. 05-03, 3-10-05)

Editor's note: Formerly § 16-150

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Sec. 18-150. Installations without a permit.

Whenever any electrical work or wiring is found to have been installed without a proper permit having first been secured, or not to be in accordance with the provisions of this article, the electrical inspector is hereby authorized and empowered to render such system inoperative until a permit has been secured, or the defective work corrected, and the work of wiring reinspected and approved.

(Code 1982, § 10-46; Ord. No. 92-9, § 10-46, 5-7-92; Ord. No. 05-03, 3-10-05)

Editor's note: Formerly § 16-151

Sec. 18-151. Inspection of wiring before concealment; responsibility.

- (a) It shall be unlawful for any person to cover or conceal, or cause to be so covered or concealed, any wiring for which a permit has been issued or is required, before such wiring has been inspected by the electrical inspector.
- (b) All new work shall be inspected before it is concealed by wall or ceiling paneling. The electrical permit holder or owner, or both, shall be held responsible if the inspector has not been notified for an inspection. The inspector may insist on exposing such concealed work.

(Code 1982, § 10-47; Ord. No. 92-9, § 10-47, 5-7-92; Ord. No. 05-03, 3-10-05)

Editor's note: Formerly § 16-152

Sec. 18-152. Application for inspection; examination of work.

Upon application being made for the inspection of any electrical work for which a permit has been issued, the electrical inspector shall make a careful examination of all such work in order to determine whether it has been done in conformity with the provisions of this article.

(Code 1982, § 10-48; Ord. No. 92-9, § 10-48, 5-7-92; Ord. No. 05-03, 3-10-05)

Editor's note: Formerly § 16-153

Sec. 18-153. Statement of defects.

In any case where defective work is found, the electrical inspector shall furnish the person to whom the permit for the work was issued a verbal statement indicating the defective work and the nature of such defects. When required in writing by the permit holder, a written statement indicating the defective work and nature of such defects shall be provided by the inspector.

(Code 1982, § 10-49; Ord. No. 92-9, § 10-49, 5-7-92; Ord. No. 05-03, 3-10-05)

Editor's note: Formerly § 16-154

Sec. 18-154. Certificate of inspection required.

When the electrical inspector finds the work for which a permit was issued done in conformity with the provisions of this article, where required he shall issue in writing a certificate of inspection therefor, which shall identify the premises and the work covered by the permit and shall show that such work has been properly done.

(Code 1982, § 10-50; Ord. No. 92-9, § 10-50, 5-7-92; Ord. No. 05-03, 3-10-05)

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Editor's note: Formerly § 16-155

Sec. 18-155. Schedule of fees for electrical permits.

The fees for permits under this article shall be paid by the applicant for such permits in accordance with a fee schedule established by the city council.

(Code 1982, § 10-51; Ord. No. 92-9, § 10-51, 5-7-92; Ord. No. 05-03, 3-10-05)

Editor's note: Formerly § 16-156

Secs. 18-156--18-170. Reserved.

DIVISION 4. STANDARDS

Sec. 18-171. Installations.

All electrical installations shall be in conformity with the provisions of this article and the approved standards for safety to life and property. Unless otherwise provided by this article, conformity with NFPA 70 (National Fire Protection Association), National Electrical Code, 2011 Edition shall be deemed as conforming with approved standards for safety to life and property with the following amendments:

200.6 Means of Identifying Grounded Conductors.

- (D) Grounded Conductors of Different Systems. Where grounded conductors of different systems are installed in the same raceway, cable box, auxiliary gutter, or other type of enclosure, each grounded conductor shall be identified by system. Identification that distinguishes each system grounded conductor shall be permitted by one of the following means:
- (1) One system grounded conductor shall have an outer covering conforming to 200.6(A) or 200.6(B).
 - (2) The grounded conductor(s) of other systems shall have a different outer covering conforming to 200.6(A) or 200.6(B) or by an outer covering of white or gray with a readily distinguishable colored strip other than green running along the insulation.
 - (3) Other and different means of identification as allowed by 200.6(A) or (B) that will distinguish each system grounded conductor.

The means of identification shall be permanently posted where the conductors of different systems originate.

210.5 Identification for Branch Circuits.

- (C) Identification of Underground Conductors. Underground conductors shall be identified in accordance with 210.5(C)(1), (2) and (3).
- (3) Posting of Identification Means. The method utilized for conductors originating within each branch-circuit panelboard or similar branch-circuit distribution equipment shall be permanently posted at each branch-circuit panelboard or similar branch-circuit distribution equipment.

215.12 Identification of Feeders.

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- (C) Ungrounded Conductors. Where the premises wiring system has feeders supplied from more than one nominal voltage system, each ungrounded conductor of a feeder shall be identified by phase or line and system at all termination, connection, and splice points. The means of identification shall be permitted to be by separate color coding, marking tape, tagging, or other approved means. The method utilized for conductors originating within each feeder panelboard or similar feeder distribution equipment or shall be permanently posted at each feeder panelboard or similar feeder distribution equipment.

334.10 Uses Permitted

- (3) Other structures permitted to be of Types III, IV, and V construction except as prohibited in 334.12.

334.12 Uses Not Permitted.

- (A) Types NM, NMC, and NMS cables shall not be permitted as follows:

- (2) *Exposed in dropped or suspended ceilings I other than one and two family and multifamily dwelling* is hereby deleted.

338.12 Uses Not Permitted.

- (B) Underground Service-Entrance Cable.

- (1) For interior wiring of branch circuits and feeders originating and terminating within the same building.
- (2) For aboveground installations except where USE cable emerges from the ground and is terminated in an enclosure at a location acceptable to the Authority Having Jurisdiction and the cable is protected in accordance with 300.5(D).

702.4 Capacity and Rating.

- (B) System Capacity.

- (2) Automatic Transfer Equipment. For other than single-family dwellings, where automatic transfer equipment is used, an optional standby system shall comply with (2)(a) or (2)(b).

Code 1982, § 10-66; Ord. No. 92-9, § 10-66, 5-7-92; Ord. No. 01-10, 7-5-01; Ord. No. 05-03, 3-10-05; Ord. No. 11-09, 10-20-11)

Sec. 18-172. Aluminum wire.

No copper-clad aluminum wire smaller than size no. 6 A.W.G. may be used to conduct electricity. Sizes larger than no. 6 A.W.G. may be used with mechanical lugs and connectors approved for this purpose by the electrical inspector.

(Code 1982, § 10-67; Ord. No. 92-9, § 10-67, 5-7-92)

Sec. 18-173. Service entrance equipment; switches, conduit.

- (a) All new single-family residences shall have an entrance switch rated no smaller than 100-

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ampere capacity.

- (b) For more than one family or multiple residences, an entrance switch conforming with the National Electrical Code requirements shall be considered the minimum.
- (c) In cases of multiple apartments where the main switch is deemed inaccessible by the fire or electrical inspector, an accessible location will be required.

(Code 1982, § 10-68; Ord. No. 92-9, § 10-68, 5-7-92)

Sec. 18-174. Fustat plugs or circuit breakers required.

- (a) It is required on all new and alteration work to use tamperproof fustat plugs or circuit breakers. This will eliminate overfusing on branch circuits.
- (b) The electrical inspector shall be authorized in cases of oversized fusing to require that fustat or circuit breaker panels replace existing plug fuse panels.

(Code 1982, § 10-70; Ord. No. 92-9, § 10-69, 5-7-92)

Sec. 18-175. Installation of rigid conduit.

Rigid metallic or rigid nonmetallic conduit shall be installed for service entrances and for any wiring installed to conduct electricity near surfaces of metal, masonry, brick, cement or cinder blocks, stucco, stone or similar synthetics and must be approved by the electrical inspector.

(Code 1982, § 10-72; Ord. No. 92-9, § 10-70, 5-7-92)

Sec. 18-176. Reserved.

Editor's note: Ord. No. 05-03, effective March 10, 2005, repealed § 18-176 in its entirety. Formerly, said section pertained to spring type backwired snap switches and receptacles as enacted by Code 1982, § 10-1; as amended.

Sec. 18-177. Reserved.

Editor's note: Ord. No. 05-03, effective March 10, 2005, repealed § 18-177 in its entirety. Formerly, said section pertained to Article 110-26(F)(1)(B) of the 1999 NEC--Foreign systems as enacted by Ord. No. 01-10, adopted July 5, 2001.

Secs. 18-178--18-185. Reserved.

DIVISION 5. POLES AND WIRES

Sec. 18-186. Supports required; owner's consent when buildings are used.

- (a) All wires when placed above the surface of the ground shall be suspended from poles or buildings, or other supports to be maintained by the persons using such wires.
- (b) No wire shall be suspended from or attached to any building for the purpose of conducting electricity, unless by permission of the owner of such building.

(Code 1982, § 10-93)

Sec. 18-187. Safe carrying of wires required.

Every person owning, leasing or operating wires as described in this division shall, within

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48 hours after notice served by the inspector, make such substitution or repairs of posts, supports, crossarms, or stays for the safe carrying of such wires as may be required by the inspector.

(Code 1982, § 10-94)

Sec. 18-188. Disposition of scraps, unused coils, loose ends regulated.

No person shall permit pieces of wires to be left on the surface of any street or sidewalk; nor permit unused coils or loose ends of wires to remain attached to any crossarm or posts more than 24 hours. (Code 1982, § 10-95; Ord. No. 05-03, 3-10-05)

Secs. 18-189--18-199. Reserved.

ARTICLE VI. RESIDENTIAL CODE

Sec. 18-200. Adoption of residential code.

There is hereby adopted by the city for the purpose of establishing rules and regulations for the construction, alteration, removal, demolition and insurance coverage, use and occupancy, equipment, location and maintenance of building and structures, including permits and penalties, that certain residential building code known as the 2003 International Residential Code for One- and Two-Family Dwellings, save and except such portions as are in this article deleted, modified or amended. No fewer than three copies of such code have been and now are filed in the office of the city clerk and such copies are hereby adopted and incorporated as fully as if set out at length in this article.

(Ord. No. 05-02, 3-10-05)

Sec. 18-201. Amendments to the residential code.

The residential code adopted in section 18-200 is amended and changed as follows:

Chapter 1 is repealed in its entirety.

Chapter 1 Administration, is enacted to read as follows:

Part 1--Administrative

CHAPTER 1 ADMINISTRATION

SECTION R101 GENERAL

R101.1 Title. These provisions shall be known as the Residential Code for One- and Two-Family Dwellings of the City of Lewiston, Maine, and shall be cited as such and will be referred to herein as "this code."

R101.2 Scope. The provisions of the International Residential Code for One- and Two-Family Dwellings shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use, and occupancy, location,, removal, and demolition of detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height with a separate means of egress and their accessory structures.

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R101.3 Purpose. The purpose of this code is to provide minimum requirements to safeguard the public safety, health and general welfare, through affordability, structural strength, means of egress facilities, stability, sanitation, light and ventilation, energy conservation, and safety to life and property from fire and other hazards attributed to the built environment..

SECTION R102 APPLICABILITY

R102.1 General. Where, in any specific case, different sections of this code specify different materials, methods of construction or other requirements, the most restrictive shall govern. Where there is a conflict between a general requirement and a specific requirement, The specific requirement shall be applicable.

R102.2 Other Laws. The provisions of this code shall not be deemed to nullify any provisions of local, state and federal law.

R102.3 Application of references. References to chapter or section numbers, or to provisions specifically identified by number, shall be construed to refer to such chapter, section or provision of this code.

R102.4 Referenced codes and standards. The codes and standards referenced in this code shall be considered part of the requirements of this code to be prescribed extent of each such reference. Where differences occur between provisions of this code and referenced codes and standards, the provisions of this code shall apply.

R101.4 Referenced codes. The other codes listed in Section 101.4.1 through 101.4.7 and referenced elsewhere in this code shall be considered part of the requirements of this code to the prescribed extent of each such reference.

Exception: Where the enforcement of a code provision would violate the conditions of the listing of the equipment or appliance, the conditions of the listing and manufacturer's instructions shall apply.

R101.4.1 Electrical. The provisions of the Chapter 18, Article V. ELECTRICAL CODE of the Code of Ordinances of the City of Lewiston shall apply to the installation of electrical systems, including alterations, repairs, replacement, equipment, appliances, fixtures, fittings and appurtenances thereto. All references to the ICC Electrical Code are hereby deleted in favor of the applicable section(s) of the National Electrical Code as adopted.

R101.4.2 Gas. The provisions of Chapter 38, Article II FIRE PREVENTION CODE of the aforementioned Code of Ordinances shall apply to the installation of gas piping from the point of delivery, gas appliances and related accessories as covered in this code. All references to the International Gas Code are hereby deleted in favor of the applicable section(s) of the National Fire Codes as adopted.

R101.4.3 Mechanical. The provisions of the International Mechanical Code shall apply to the installation, alterations, repairs and replacement of mechanical systems, including equipment, appliances, fixtures, fittings and/or appurtenances, including ventilating, heating, cooling, air-conditioning and refrigeration systems, incinerators and other energy-related systems.

R101.4.4 Plumbing. The provisions of Chapter 18, Article IV. PLUMBING

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CODE of the aforementioned Code of Ordinances shall apply to the installation, alteration, repair and replacement of plumbing systems, including equipment, appliances, fixtures, fittings and appurtenances, and where connected to a water or sewerage system. The provisions of the Maine Subsurface Waste Water Disposal Rules shall apply to private sewage disposal systems. All references to the International Plumbing Code and International Private Sewage Disposal Code are hereby deleted in favor of the applicable section(s) of these regulations.

R101.4.5 Energy. The provisions of the Maine Guide to Energy Efficient Construction: A Manual of Accepted Practice (third edition) shall apply to all habitable residential buildings and structures. The provisions of ASHRAE 90B shall be applicable to all occupiable nonresidential buildings and structures. All references to the International Energy Conservation Code are hereby deleted.

R102.5 Appendices. Provision in the appendices shall not apply unless specifically referenced on the adopting ordinance.

R102.6 Partial invalidity. In the event any part or provision of this code is held to be illegal or void, this shall not have the effect of making void or illegal any of the other parts of the provisions.

R102.7 Existing structures. The legal occupancy of any structure existing on the date of adoption of this code shall be permitted to continue without change, except as is specifically covered in this code, the currently adopted Property Maintenance Code, or as is deemed necessary by the building official for the general safety and welfare of the occupants and the public.

R102.7.1 Additions, alterations, or repairs. Additions, alterations, or repairs to any structure shall conform to that required for a new structure without requiring the existing structure to comply with all the requirements to this code, unless otherwise stated. Additions, alterations, and repairs shall not cause an existing structure to become unsafe or adversely affect the performance of the building.

SECTION R103 DEPARTMENT OF PLANNING AND CODE ENFORCEMENT

R103.1 Building official. The department of planning and code enforcement is hereby charged with the administration and enforcement of this code. The director of planning and code enforcement and the building inspector, acting under the direction of the director of planning and code enforcement, shall be designated as the municipal building officials for the purpose of administration and enforcement of the code.

R103.2 Qualifications of building official. To be eligible for appointment, the candidate for the position shall have had experience as an architect, structural engineer, building inspector, foreman or superintendent of building construction. He shall be in good health, physically capable of making the necessary examinations and inspections. He shall not have any interest whatever, directly or indirectly, in the sale or manufacture of any material, process, or device entering into or used in or in connection with building construction, alteration, removal and demolition.

R103.3 Deputies. In accordance with the prescribed procedures of this jurisdiction and with the concurrence of the appointing authority, the director of planning and code enforcement shall have the authority to appoint a deputy building official, the related

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technical officers, inspectors, plan examiners and other employees. Such employees shall have powers as delegated by the building official.

SECTION R104 DUTIES AND POWERS OF BUILDING OFFICIALS

R104.1 General. The building official is hereby authorized and directed to enforce the provisions of this code. The building official shall have the authority to render interpretations of this code and to adopt policies and procedures in order to clarify the applications of its provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of this code. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this code.

R104.2 Applications and permits. The building officials shall receive applications, review construction documents and issue permits for the erection, and alteration, demolition and moving of building and structures, inspect the premises for which such permits have been issued and enforce compliance with the provisions of this code.

R104.3 Notices and orders. The building official shall issue all necessary notices and orders to ensure compliance with this code.

R104.4 Inspections. The building official shall make all of the required inspections, or the building official shall have the authority to accept reports of inspection by approved agencies or individuals. Reports of such inspections shall be in writing and be certified by a responsible officer of such approved agency or by the responsible individual. The building official is authorized to engage such expert opinion as deemed necessary to report upon unusual technical issues that arise, subject to the approval of the appointing authority.

R104.5 Identification. The building official shall carry proper identification when inspecting structures or premises in the performance of duties under this code.

R104.6 Right of entry. Where it is necessary to make an inspection to enforce the provisions of this code, or where the building official has reasonable cause to believe that there exists in a structure or upon premises a condition which is contrary to or in violation of this code which makes the structure or premises unsafe, dangerous or hazardous, the building official is authorized to enter the structure at reasonable times to inspect or to perform the duties imposed by this code, provided that if such structure or premises be occupied that credentials be presented to the occupant and entry requested. If such structure or premises be unoccupied, the building official shall first make reasonable effort to locate the owner or other person having charge or control of the structure or premises and request entry. If entry is refused, the building official shall have recourse to the remedies provided by the law to secure entry.

R104.7 Department records. The building official shall keep official records of applications received, permits and certificates issued, fees collected, reports of inspections, and notices and orders issued. Such records shall be retained in the official records for the period required for retention of public records.

R104.8 Liability. The building official or other employee or appointee charged with the enforcement of this code, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be rendered liable personally and is hereby relieved from

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personal liability for any damage accruing to persons or property as a result of any act or by reason of act or omission in the discharge of official duties. Any suit instituted against an officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be defended by legal representative of the jurisdiction until the final termination of the proceedings. The building official or any subordinate shall not be liable for cost in any action, suit or proceeding that is instituted in pursuance of the provisions of this code. This section shall remain in effect regardless of the employment status of the building official or other employee or appointee charged with the enforcement of this code.

R104.9 Approved materials and equipment. Materials, equipment and devices approved by the building official shall be constructed and installed in accordance with such approval.

R104.9.1 Used materials and equipment. The use of used materials which meet the requirements of this code for new materials is permitted. Used equipment and devices shall not be reused unless approved by the building official.

R104.10 Modifications. Wherever there are practical difficulties involved in carrying out the provisions of this code, the building official shall have the authority to grant modifications for individual cases, upon application of the owner or the owner's representative, provided the building official shall first find that special individual reason makes the strict letter of this code impractical and the modification is in compliance with the intent and purpose of this code at that such modification does not lessen health, accessibility, life and fire safety, or structural requirements. The details of action granting modifications shall be recorded and entered in the files of the department of building safety.

R104.10.1 Areas prone to flooding. The building official shall not grant modifications to any provision related to areas prone to flooding as established by Table R301.2(1) without the granting of a variance to such provisions by the board of appeals.

R104.11 Alternative materials, design and methods of construction and equipment. The provisions of this code are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by this code, provided that any such alternative has been approved. An alternative material, design or method of construction shall be approved where the building official finds the proposed design is satisfactory and complies with the intent of the provisions of this code, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code in quality, strength, effectiveness, fire resistance, durability and safety.

R104.11.1 Test. Whenever there is insufficient evidence of compliance with the provisions of this code, or evidence that a material or method does not conform to the requirements of this code, or in order to substantiate claims for alternative materials or methods, the building official shall have the authority to require tests as evidence of compliance to be made at no expense to the jurisdiction. Test methods shall be as specified in this code or by other recognized and accepted test standards. In the absence of recognized and accepted test methods, the building official shall approve the test procedures. Tests shall be performed by an

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approved agency. Reports of such tests shall be retained by the building official for the period required for retention of public records.

SECTION R105 PERMITS

R105.1 Required. Any owner or authorized agent who intends to construct, enlarge, alter, repair, remove, move, demolish, or change the occupancy of a building or structure, or erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permits.

R105.2 Work exempt from permit. Exemptions from permit requirements for this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction. Permits shall not be required for the following:

1. Repairs, in accordance with Section 105.2.2.
2. Re roofing, where no structural repairs or improvements are involved.
3. Siding of existing buildings or structures, where no structural repairs or improvements are involved.
4. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.
5. Prefabricated swimming pools, accessory to one- and two-family dwellings, which have less than 36 inches (915 mm) of water depth capacity and are installed entirely above ground.
6. Swings and other playground equipment accessory to one- and two-family dwellings.
7. Window awnings supported by an exterior wall of one- and two-family dwellings

R105.2.1 Emergency repairs. When equipment replacement and building repairs must be performed in an emergency situation, the permit application shall be submitted within the next working business day to the building official.

R105.2.2 Repairs. Application or notice to the building official is not required for ordinary repairs to structures, replacement of lamps or the connection of approved portable electrical equipment to approved permanently installed receptacles. Such repairs shall not include the cutting away of any structural beam or load-bearing support, or the removal or change of any required means of egress, or rearrangement of parts of a structure affecting the egress requirements.

R105.3 Application for permit. To obtain a permit, the applicant shall first file an application thereof in writing on a form furnished by the department of building safety for that purpose. Such application shall:

1. Identify and describe the work to be covered by the permit for which application is made.

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2. Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.
3. Indicate the use and occupancy for which the proposed work is intended.
4. Be accompanied by construction documents and other information as required in Section 106.1.
5. State the valuation of the proposed work.
6. Be signed by the applicant, or the applicant's authorized agent.
7. Give such other data and information as required by the building official.

R105.3.1 Action on application. The building official shall examine or cause to be examined applications for permits and amendments thereto within a reasonable time after filing. If the application or the construction documents do not conform to the requirements of pertinent laws, the building shall reject such application in writing, stating the reasons therefor. If the building official is satisfied that the proposed work conforms to the requirements of this code and laws and ordinances applicable thereto, the building official shall issue a permit therefor as soon as practicable.

R105.3.1.1 Substantially improved or substantially damaged existing buildings and structures. For applications for reconstruction, rehabilitation, addition or other improvement of existing buildings or structures located in a area prone to flooding as established by Table R301.2(1), the building official shall examine or cause to be examined the construction documents and shall prepare a finding with regard to the value of the proposed work. For buildings that have sustained damage of any origin, the value of the proposed work shall include the cost to repair the building or structure to its predamage condition. If the building official finds that the value of the proposed work equals or exceeds 50 percent of the market value of the building or structure, the building or structure shall be brought into conformance with the requirements of Article XII, Section 4 of Appendix A - Zoning and Land Use Code of the City of Lewiston.

R105.3.2 Time limitation of application. An application for a permit for any proposed work shall be deemed to have been abandoned 180 days after the date of filing, unless such application has been pursued in good faith or a permit has been issued; except that the building official is authorized to grant one or more extensions of time for additional periods not exceeding 90 days each. The extension shall be requested in writing and justifiable cause demonstrated.

R105.4 Validity of permit. The issuance or granting of a permit shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this code or of any other ordinance of the jurisdiction. Permits presuming to give authority to violate or cancel the provisions of this code or other ordinances of the jurisdiction shall not be valid. The issuance of a permit based on construction documents and other data shall not prevent the building official from requiring the correction of errors in the construction documents and other data. The building official is also authorized to prevent occupancy

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or use of a structure where in violation of this code or of any other ordinances of this jurisdiction.

R105.5 Expiration. Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The building official is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.

R105.6 Suspension or revocation. The building official is authorized to suspend or revoke a permit issued under the provisions of this code wherever the permit is issued in error or on the basis of incorrect, inaccurate or incomplete information, or in violation of any ordinance or regulation or any of the provisions of this code or other municipal ordinance.

R105.7 Placement of permit. The building permit or copy shall be kept on the site of the work until the completion of the project.

R105.8 Responsibility. It shall be the duty of every person who performs work for the installation, construction, or repair of a building or structure, for which this code is applicable, to comply with this code.

SECTION R106 CONSTRUCTION DOCUMENTS

R106.1 Submittal documents. Construction documents, special inspection and structural observation programs, and other data shall be submitted in one or more sets with each application for a permit. The construction documents shall be prepared by a registered design professional where required by the statutes of the jurisdiction in which the project is to be constructed. Where special conditions exist, the building official is authorized to require additional construction documents to be prepared by a registered design professional.

Exception: The building official is authorized to waive the submission of construction documents and other data not required to be prepared by a registered design professional if it is found that the nature of the work applied for is such that reviewing of construction documents is not necessary to obtain compliance with this code.

R106.1.1 Information on construction documents. Construction documents shall be dimensioned and drawn upon suitable material. Electronic media documents are permitted to be submitted when approved by the building official. Construction documents shall be of sufficient clarity to indicate the location, nature and extent of the work proposed and show in detail that it will conform to the provisions of this code and relevant laws, ordinances, rules and regulations, as determined by the building official.

R106.1.2 Manufacturer's installation instructions. Manufacturer's installation instructions, as required by this code, shall be available on the job site at the time of inspection.

R106.1.3 Information for construction in areas prone to flooding. For buildings

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and structures in the flood hazard areas as established by Table 301.2(1), construction documents shall include:

1. Delineation of flood hazard areas, floodway boundaries, and flood zones, and the design flood elevation, as appropriate;
2. The elevation of the proposed lowest floor, including basement; in areas of shallow flooding (AO zones), the height of the proposed lowest floor, including basement, above the highest adjacent grade; and
3. If design flood elevations are not included on the community's Flood Insurance Rate Map (FIRM), the building official and the applicant shall obtain and reasonably utilize any design flood elevation and floodway data available from other sources.

R106.2 Site plan. The construction documents submitted with the application for permit shall be accompanied by a site plan showing to scale the size and location of new construction and existing structures on the site and distances from lot lines. In the case of demolition, the site plan shall show construction to be demolished and the location and size of existing structures and construction that are to remain on the site or plot. The building official is authorized to waive or modify the requirement for a site plan when the application for permit is for alteration or repair or when otherwise warranted.

R106.3 Examination of documents. The building official shall examine or cause to be examined construction documents for code compliance.

R106.3.1 Approval of construction documents. When the building official issues a permit, the construction documents shall be approved, in writing or by stamp, as "Reviewed for Code Compliance." One set of construction documents so reviewed shall be retained by the building official. The other set shall be returned to the applicant, shall be kept at the site of work and shall be open to inspection by the building official or his authorized representative.

R106.3.2 Previous approvals. The code shall not require changes in the construction documents, construction or designated occupancy of a structure for which a lawful permit has been heretofore issued or otherwise lawfully authorized, and the construction of which has been pursued in good faith within 180 days after the effective date of this code and has not been abandoned.

R106.3.3 Phased approval. The building official is authorized to issue a permit for the construction of foundations or any other part of a building or structure before the construction documents for the whole building or structure have been submitted, provided the adequate information and detailed statements have been filed complying with pertinent requirements of this code. The holder of such permit for the foundation or other parts of a building or structure shall proceed at the holder's own risk with the building operation and without assurance that a permit for the entire structure will be granted.

R106.4 Amended construction documents. Work shall be installed in accordance with the reviewed construction documents, and any changes made during construction that are not in compliance with the approved construction documents shall be resubmitted for approval as an amended set of construction documents.

BUILDINGS AND BUILDING REGULATIONS

R106.5 Retention of construction documents. One set of approved construction documents shall be retained by the building official as required by state or local laws.

SECTION R107 TEMPORARY STRUCTURES AND USES

R107.1 General. The building official is authorized to issue a permit for temporary structures and temporary uses. Such permits shall be limited as to time of service, but shall not be permitted for more than 180 days. The building official is authorized to grant extensions for demonstrated cause.

R107.2 Conformance. Temporary structures and uses shall conform to the structural strength, fire safety, means of egress, accessibility, light, ventilation and sanitary requirements of this code as necessary to ensure the public health, safety and general welfare.

R107.3 Temporary power. The building official is authorized to give permission to temporarily supply and use power in part of an electric installation before such installation has been fully completed and the final certificate of completion has been issued. The part covered by the temporary certificate shall comply with the requirements specified for temporary lighting, heat or power in the ICC Electrical Code.

R107.4 Termination of approval. The building official is authorized to terminate such permit for a temporary structure or use and to order the temporary structure or use to be discontinued.

SECTION R108 FEES

R108.1 Payment of fees. A permit shall not be valid until the fees prescribed by law have been paid. Nor shall an amendment to a permit be released until the additional fee, if any, has been paid.

R108.2 Schedule of permit fees. On buildings, structures, or alterations requiring a permit, a fee for each permit shall be paid as required, in accordance with the schedule as established by the applicable governing authority.

R108.3 Building permit valuations. The applicant for a permit shall provide an estimated permit value at time of application. Permit valuations shall include total value of work, including materials and labor, for which the permit is being issued, such as electrical, gas, mechanical, plumbing equipment and permanent systems. If, in the opinion of the building official, the valuation is underestimated on the application, final building permit valuation shall be set by the building official utilizing Means Square Foot Costs or similar documents, unless the applicant can show detailed estimates to meet the approval of the building official.

R108.4 Work commencing before permit issuance. Any person who commences any work on a building or structure, before obtaining the necessary permit, shall be subject to an additional fee established by the building official that shall be in addition to the required permit fees.

R108.5 Related fees. The payment of the fee for the construction, alteration, removal or demolition for work done in connection with or concurrently with the work authorized by a building permit shall not relieve the applicant or holder of the permit from the payment

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of other fees that are prescribed by law.

R108.6 Refunds. The building official is authorized to establish a refund policy.

SECTION R109 INSPECTIONS

R109.1 Types of construction. For on-site Construction, from time to time the building official, upon notification from the permit holder or hid agent, shall make or cause to be made any necessary inspections and shall either approve that portion of the construction as completed or shall notify the permit holder or his or her agent wherein the same fails to comply with this code.

R109.1.1 Foundation inspection. Inspection of the foundation shall be made after poles or piers are set or trenches or basement areas are excavated and any required forms erected and any required reinforcing steel is in place and prior to the placing of concrete. The foundation inspection shall include excavations for thickened slabs for the support of bearing walls, partitions, structural supports, or equipment and special requirements for wood foundations.

R109.1.2 Plumbing, mechanical, gas, and electrical systems inspection. Rough inspection of plumbing, mechanical, gas, and electrical systems shall be made prior to covering and concealment, before fixtures or appliances are set or installed, and prior to framing inspections.

Exception: Ground-source heat pump loop systems tested in accordance with Section M2105.1 shall be permitted to be backfilled prior to inspection.

R109.1.3 Floodplain inspection. For construction permitted in areas prone to flooding as established by Table R301.2(1), upon placement of the lowest floor, including basement, and prior to further vertical construction, the building official shall require submission of documentation, prepared and sealed by a registered design professional, of the elevation of the lowest floor, including basement, as required in Section R323.

R109.1.4 Frame and masonry inspection. Inspection of framing and masonry construction shall be made after the roof, masonry, all framing, firestopping, draftstopping, and bracing are in place and after the plumbing, mechanical, and electrical rough inspections are approved.

R109.1.5 Other inspections. In addition to the called inspections above, the building department may make or require any other inspections to ascertain compliance with this code and other laws enforced by the building department.

R109.1.5.1 Fire-resistance-rated construction inspections. Where fire-resistance-rated construction is required between dwelling units or due to location on property, the building official shall require an inspection of such construction after all lathing and /or wallboard is in place, but before any plaster is applied, or before wallboard joints and fasteners are taped and finished.

R109.1.6 Final inspection. Final inspection shall be made after all the permitted work is complete and prior to occupancy.

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R109.2 Inspection agencies. The building official is authorized to accept reports of approved inspection agencies, provided such agencies satisfy the requirements as to qualifications and reliability.

R109.3 Inspection requests. It shall be the duty of the person doing the work authorized by a permit to notify the building official that such work is ready for inspection. It shall be the duty of the person requesting any inspections required by this code to provide access to and means for inspection of such work for any inspections that are required by this code.

R109.4 Approval required. Work shall not be done beyond the point indicated in each successive inspection without first obtaining the approval of the building official. The building official, upon notification, shall make the requested inspections and shall either indicate the portion of the construction that is satisfactory as completed, or shall notify the permit holder or an agent of the permit holder wherein the same fails to comply with this code. Any portions that do not comply shall be corrected and such portion shall not be covered or concealed until authorized by the building official.

SECTION R110 CERTIFICATE OF OCCUPANCY

R110.1 Use and occupancy. No building or structure shall be used or occupied, and no change in the existing occupancy classification of a building or structure or portion thereof shall be made until the building official has issued a certificate of occupancy there for as provided herein. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction.

R110.2 Change in use. Changes in the character or use of an existing structure shall not be made except as specified in Sections 3405 and 3406 of the International Building Code.

R110.3 Certificate issued. After the building official inspects the building or structure and finds no violations of the provisions of this code or other laws that are enforced by the department of building safety, the building official shall issue a certificate of occupancy that shall contain the following:

- A. The building permit number.
- B. The address of the structure.
- C. The name and address of the owner.
- D. A description of that portion of the structure for which the certificate is issued.
- E. A statement that the described portion of the structure has been inspected for compliance with the requirements of this code for the occupancy and division of occupancy and the use for which the proposed occupancy is classified.
- F. The name of the building official.
- G. The edition of the code under which the permit was issued.

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- H. The use and occupancy
- I. The type of construction
- J. Any special stipulations and conditions of the building permit.

R110.4 Temporary occupancy. The building official is authorized to issue a temporary certificate of occupancy before the completion of the entire work covered by the permit, provided that such portion or portions shall be occupied safely. The building official shall set a time period during which the temporary certificate of occupancy is valid.

R110.5 Revocation. The building official is authorized to, in writing, suspend or revoke a certificate of occupancy or completion issued under the provisions of this code wherever the certificate is issued in error, on the basis of incorrect information supplied, or where it is determined that the building or structure or portion thereof is in violation of any ordinance or any regulation or any of the provisions of this code.

SECTION R111 SERVICE UTILITIES

111.1 Authority to disconnect service utilities. The building official shall have the authority to authorize disconnection of utility service to the building, structure or system regulated by this code and the codes referenced in case of emergency where necessary to eliminate an immediate hazard to life or property. The building official shall notify the serving utility, and wherever possible the owner and occupant of the building, structure or service system of the decision to disconnect prior to taking such action. If not notified prior to disconnection, the owner or occupant of the building, structure or service system shall be notified in writing, as soon as practical thereafter.

SECTION R112 BOARD OF APPEALS

112.1 General. The board of appeals hearing matters related to the residential code shall be the board of appeals established by Article IV, Section 4.06 of the City Charter. The rules and regulations governing said board shall apply.

SECTION R113 VIOLATIONS

R113.1 Unlawful acts. It shall be unlawful for any person, firm, or corporation to erect, construct, alter, extend, repair, move, remove, demolish, or occupy any building, structure, or equipment regulated by this code, or cause same to be done, in conflict with or in violation of any of the provisions of this code.

R113.2 Notice of violation. The building official is authorized to serve a notice of violation or order on the person responsible for the erection, construction, alteration, extension, repair, moving, removal, demolition, or occupancy of a building or structure in violation of the provisions of this code, or in violation of a detail statement or a plan approved thereunder, or in violation of a permit or certificate issued under the provisions of this code. Such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.

R113.2.1 Service of notice of violation. A notice of violation or order may be served in hand to the violator or left with a person of suitable age and discretion at

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the residence or place of business of the violator or mailed by certified mail, return receipt requested, to the last known address. If the return receipt is not returned, the notice shall be conclusively presumed to have been served if it is also sent by regular mail, postage prepaid, which is not returned as undeliverable by the postal service.

R113.2.2 Request for appeal. Any person served an order, pursuant to this section, may request a hearing before the board of appeals by filing a written petition for said hearing at the code enforcement office within ten (10) days of the date of service for the order. The board of appeals may sustain, modify, or withdraw such order. The decision of the board of appeals may be further appealed pursuant to the provisions of Rule 80B of the Maine Rules of Civil Procedure.

R113.3 Prosecution of violation. If the notice of violation is not complied with in the time prescribed by such notice, the building official is authorized to request the legal counsel of the jurisdiction to institute the appropriate proceedings at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the building or structure in violation of the provisions of this code or of the order or direction made pursuant thereto.

R113.4 Violation penalties. Any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof, or shall erect, construct, alter or repair a building or structure in violation of an approved plan or directive of the building official, or of a permit or certificate issued under the provisions of this Code, shall be liable for a fine as set forth in Chapter 1, Section 1-8 and Chapter 50, Section 50-36 of the Code of Ordinances of the City of Lewiston.

SECTION R114 STOP WORK ORDER

R114.1 Notice to owner. Upon notice from the building official that work on any building or structure is being prosecuted contrary to the provisions of this code or in an unsafe and dangerous manner, such work shall be immediately stopped. The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work; and shall state the conditions under which work will be permitted to resume.

R114.2 Unlawful continuance. Any person who shall continue any work in or about the structure after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to penalties as prescribed by law.

CHAPTER 2 DEFINITIONS

R201.3 Terms defined in other codes. Where conflicts exist regarding definitions of like terms in this chapter and other chapters of this code of ordinances, each definition shall be applied only within the scope of each chapter and shall not be construed to be contradictory. Terms not defined in this code that are defined in other referenced codes shall have the meanings ascribed to them as in those codes.

CHAPTER 3 BUILDING PLANNING

BUILDINGS AND BUILDING REGULATIONS

Climatic and Geographic Design Criteria

Ground Snow Load	70 psf
Wind Speed	90mph
Seismic Design Category	B
Subject to Damage from:	
Weathering	Severe
Frost Line Depth	4''-0''
Termites	None to Slight
Decay	None to Slight
Winter Design Temperature	-5
Ice Shield Underlayment Required	Yes
Flood Hazards	
a.	Date of adoption of 1st flood management ordinance . . . 10/31/1972
b.	Date of currently effective FIRM map . . . 9/28/1979
Air Freezing Index	1500
Mean annual temperature	45.8

Part IV--Energy Conservation

Chapter 11 ENERGY EFFICIENCY is hereby deleted.

Part VI--Fuel Gas

Chapter 24 FUEL GAS is hereby deleted.

Part VII--Plumbing

Chapter 25 PLUMBING ADMINISTRATION is hereby deleted.

Chapter 26 GENERAL PLUMBING REQUIREMENTS is hereby deleted.

Chapter 27 PLUMBING FIXTURES is hereby deleted.

Chapter 28 WATER HEATERS is hereby deleted.

Chapter 29 WATER SUPPLY AND DISTRIBUTION is hereby deleted.

Chapter 30 SANITARY DRAINAGE is hereby deleted.

Chapter 31 VENTS is hereby deleted.

Chapter 32 TRAPS is hereby deleted.

Part VIII--Electrical

CHAPTER 33 GENERAL REQUIREMENTS is hereby deleted.

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E3301.1 Applicability. The provisions of the currently adopted edition of the National Electrical Code (NFPA 70) shall cover the installation of electrical systems, equipment and components indoors and outdoors that are within the scope of the aforementioned Electrical Code, including services, power distribution systems, fixtures, appliances, devices and appurtenances.

CHAPTER 34 ELECTRICAL DEFINITIONS is hereby deleted.

CHAPTER 35 SERVICES is hereby deleted.

CHAPTER 36 BRANCH CIRCUIT AND FEEDER REQUIREMENTS is hereby deleted.

CHAPTER 37 WIRING METHODS is hereby deleted.

CHAPTER 38 POWER AND LIGHTING DISTRIBUTION is hereby deleted.

CHAPTER 39 DEVICES AND LUMINAIRES is hereby deleted.

CHAPTER 40 APPLIANCE INSTALLATION is hereby deleted.

CHAPTER 41 SWIMMING POOL is hereby deleted.

CHAPTER 42 CLASS 2 REMOTE-CONTROL, SIGNALING AND POWER-LIMITED CIRCUITS is hereby deleted.

(Ord. No. 05-02, 3-10-05)

Chapter 2

ADMINISTRATION*

*Cross references: Civil emergencies, ch. 30; elections, ch. 32; general assistance, ch. 46; personnel, ch. 58.

Article I. In General

- Sec. 2-1. Seal described.
- Sec. 2-2. Preservation of records.
- Sec. 2-3. Lettering required on official vehicles.
- Sec. 2-4. Council may enter into mutual aid pacts.
- Sec. 2-5. Authority of police or fire departments to assist other municipalities.
- Sec. 2-6. Form of bond, approval required.
- Sec. 2-7. Signatures required on bonds.
- Sec. 2-8. Notice of meetings.
- Secs. 2-9--2-30. Reserved.

Article II. City Council Division 1. Generally

- Sec. 2-31. Council action on budget increase.
- Sec. 2-32. Alternative financing.
- Sec. 2-33. Public notice.
- Sec. 2-34. Council action on bond issue authorization.
- Sec. 2-35. Exception.
- Sec. 2-36. Unassigned fund balance.
- Sec. 2-37. Target amounts.
- Sec. 2-38. Use of unassigned fund balance.
- Secs. 2-39--2-45. Reserved.

Division 2. Investigations

- Sec. 2-46. Institution of investigation proceedings.
- Sec. 2-47. Instituting investigation; report.
- Sec. 2-48. Notice.
- Sec. 2-49. Presiding officer.
- Sec. 2-50. Conduct of hearing.
- Sec. 2-51. Witnesses.
- Sec. 2-52. Deliberation.
- Sec. 2-53. Record of hearings.
- Secs. 2-54--2-75. Reserved.

Article III. Officers and Employees Division 1. Generally

- Sec. 2-76. Salaries of elected and appointed officials.
- Sec. 2-77. Conflict of interest.

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Sec. 2-78. City employees prohibited from striking.
Secs. 2-79--2-90. Reserved.

Division 2. City Administrator

Sec. 2-91. Chief executive and general powers.
Secs. 2-92--2-100. Reserved.

Division 3. City Clerk

Sec. 2-101. Appointment; residency.
Sec. 2-102. Recordkeeping; reports; custodian of bonds, other evidence of indebtedness; notice to appointees.
Sec. 2-103. Duties as to licenses and permits.
Sec. 2-104. Animal control functions.
Sec. 2-105. Functions as to elections.
Sec. 2-106. Custodian of city seal.
Secs. 2-107--2-120. Reserved.

Division 4. Assessor

Sec. 2-121. Office created.
Sec. 2-122. Primary assessing unit.
Sec. 2-123. Appointment.
Sec. 2-124. Qualification.
Sec. 2-125. Tenure.
Sec. 2-126. Duties.
Sec. 2-127. Removal.
Secs. 2-128--2-150. Reserved.

Article IV. Boards, Commissions, Committees and Bureaus

Division 1. Generally

Sec. 2-151. Parliamentary procedure.
Secs. 2-152--2-160. Reserved.

Division 2. Board of Appeals

Sec. 2-161. Purpose.
Sec. 2-162. Authority.
Sec. 2-163. Organization and rules.
Sec. 2-164. Hearings.
Sec. 2-165. Record of proceedings; notice of decision.
Sec. 2-166. Jurisdiction and manner of taking appeals.
Sec. 2-167. Administration.
Sec. 2-168. Appeals from decisions of board.
Secs. 2-169--2-180. Reserved.

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Division 3. Finance Committee

- Sec. 2-181. Purpose.
- Sec. 2-182. Authority.
- Sec. 2-183. Organization and rules.
- Sec. 2-184. Powers and duties.
- Sec. 2-185. Administration.
- Secs. 2-186--2-195. Reserved.

Division 4. Energy Saving Committee

- Sec. 2-196. Purpose.
- Sec. 2-197. Appointment.
- Sec. 2-198. Compensation.
- Sec. 2-199. Duties.
- Sec. 2-200. Rules of procedure.
- Secs. 2-201--2-210. Reserved.

Division 5. Voter Registration Appeals Board

- Sec. 2-211. Purpose.
- Sec. 2-212. Authority; powers.
- Sec. 2-213. Compensation of members.
- Sec. 2-214. Organization; rules.
- Secs. 2-215--2-219. Reserved.

Division 6. Board of Assessment Review

- Sec. 2-220. Appointment; vacancies.
- Sec. 2-221. Qualifications.
- Sec. 2-222. Powers and duties.
- Sec. 2-223. Hearings and appeals/quorum.
- Sec. 2-224. Burden of proof.

Division 7. Garcelon Bog Advisory Committee

- Sec. 2-225. Membership.
- Sec. 2-226. Powers and duties.
- Secs. 2-227--2-230. Reserved.

Division 8. Downtown Advisory Board

- Sec. 2-231. Purpose.
- Sec. 2-232. Authority.
- Sec. 2-233. Organization and rules.
- Sec. 2-234. Powers and duties.
- Sec. 2-235. Administration.

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Article V. Departments

Division 1. Generally

- Sec. 2-236. Departments designated.
- Sec. 2-237. Oaths of office.
- Sec. 2-238. Administrative policy and procedures.
- Secs. 2-239--2-250. Reserved.

Division 2. Department of Economic and Community Development

- Sec. 2-251. Created.
- Sec. 2-252. Duties of the director of economic and community development.
- Sec. 2-253. Duties of the department.
- Secs. 2-254--2-265. Reserved.

Division 3. Department of Education

- Sec. 2-266. Created.
- Sec. 2-267. Program divisions.
- Secs. 2-268--2-279. Reserved.

Division 4. Department of Finance

- Sec. 2-280. Created.
- Sec. 2-281. Director of finance/controller.
- Sec. 2-282. Divisions.
- Sec. 2-283. Award of contracts.
- Secs. 2-284--2-294. Reserved.

Division 5. Department of Fire

- Sec. 2-295. Created.
- Sec. 2-296. Duties of fire chief.
- Sec. 2-297. Divisions.
- Secs. 2-298--2-324. Reserved.

Division 6. Department of Human Resources

- Sec. 2-325. Created.
- Sec. 2-326. Duties of director of human resources.
- Secs. 2-327--2-335. Reserved.

Division 7. Department of Law

- Sec. 2-336. Powers and duties of city attorney.
- Secs. 2-337--2-344. Reserved.

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Division 8. Department of Library

- Sec. 2-345. Created.
- Sec. 2-346. Duties of library director.
- Secs. 2-347--2-355. Reserved.

Division 9. Department of Management Information Services

- Sec. 2-356. Created.
- Sec. 2-357. Duties of the MIS director.
- Secs. 2-358--2-364. Reserved.

Division 10. Department of Planning and Code Enforcement

- Sec. 2-365. Created.
- Sec. 2-366. Duties of the director of planning and code enforcement.
- Sec. 2-367. Duties of the department.
- Secs. 2-368--2-379. Reserved.

Division 11. Department of Police

- Sec. 2-380. Created.
- Sec. 2-381. Duties of chief of police.
- Sec. 2-382. Duties of deputy police chief.
- Sec. 2-383. Divisions.
- Sec. 2-384. Powers of officers.
- Sec. 2-385. Appointment of constables and officers.
- Sec. 2-386. Certain fees to be accounted for.
- Secs. 2-387--2-399. Reserved.

Division 12. Department of Public Services

- Sec. 2-400. Created; divisions.
- Sec. 2-401. Duties of director of public services.
- Sec. 2-402. Divisions.
- Secs. 2-403--2-424. Reserved.

Division 13. Department of Public Works

- Sec. 2-425. Created.
- Sec. 2-426. Duties of director of public works.
- Sec. 2-427. Divisions.
- Secs. 2-428--2-434. Reserved.

Division 14. Department of Recreation and Parks

- Sec. 2-435. Created.
- Sec. 2-436. Duties of director of recreation and parks.

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Sec. 2-437. Division of recreation.

Sec. 2-438. Division of public parks and cemeteries.

Secs. 2-439--2-444. Reserved.

Division 15. Department of Social Services

Sec. 2-445. Department created.

ADMINISTRATION

ARTICLE I. IN GENERAL

Sec. 2-1. Seal described.

The corporate seal shall be a circular disc with the words "Lewiston, Incorporated 1795" and "Became a City 1863" on the periphery, and shall be as follows:



City Seal

(Code 1982, § 2-1)

Sec. 2-2. Preservation of records.

Each department head shall be held responsible for the preservation of all public records under his jurisdiction and shall provide a system of filing and indexing such records. No public records, reports, correspondence or other data relative to the business of any department shall be destroyed or removed permanently from the files without the knowledge and approval of the local government records board.

(Code 1982, § 2-2)

State law references: Municipal Records Law, 30-A M.R.S.A. § 1704 et seq.

Sec. 2-3. Lettering required on official vehicles.

- (a) All motor vehicles, namely automobiles, cars, trucks, trailers and the like, owned and operated for and by the city shall bear on both the right and left doors or on both the right and left sides of the vehicle, painted letters designating that such vehicles are the city's property, except for certain vehicles used by the city police department and the city administrator.
- (b) Each of the vehicles referred to in subsection (a) of this section shall be lettered by the appropriate words designating which particular department or agency of the city operates such vehicle.
- (c) Each of the vehicles referred to in subsection (a) of this section shall bear the words "for official use only."

(Code 1982, § 2-4)

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Sec. 2-4. Council may enter into mutual aid pacts.

The city, by and through the city council, may enter into mutual aid pacts with surrounding municipalities which would regulate the activities described in section 2-5 of this Code.

(Code 1982, § 2-5)

Sec. 2-5. Authority of police or fire departments to assist other municipalities.

The chief of the police department or the chief of the fire department with the officer in charge of the respective department is authorized to issue such orders as may be necessary for the use of city police or fire department personnel outside the boundaries of the city and to direct such personnel to place themselves under the operational control of the superior officer in charge of the police or fire department of the city or town requesting assistance from this city.

(Code 1982, § 2-6)

Sec. 2-6. Form of bond, approval required.

The bonds issued in behalf of the city may be either coupon or registered. The form of the bond shall be any particular bond in general use as may be recommended by the fiscal agent employed by the city to handle the particular bond issue. The form of the bond, however, shall be subject to the approval of the council.

(Code 1982, § 2-28)

Charter references: Bond issues, § 6.14.

Sec. 2-7. Signatures required on bonds.

All notes and bonds given in behalf of the city shall be signed by the treasurer and by the mayor, or if the mayor is absent or fails to sign such bonds, by any member of the council when duly authorized by such council, and the coupons attached to such bonds shall be signed by the treasurer or shall have his lithographed or facsimile signature thereon and a copy of the same attested by the treasurer and the mayor or president of the council as provided in this section, together with the date of the resolution of the council by the authority of which such notes or bonds are given, shall be preserved in the treasurer's office in a book kept for that purpose.

(Code 1982, § 2-9)

Charter references: Temporary borrowing of money, § 6.13; bond issues, § 6.14.

Sec. 2-8. Notice of meetings.

Notice of the time and place of all meetings of the city council and of all city boards and commissions shall be kept conspicuously posted in the city hall.

(Code 1982, § 2-11)

Secs. 2-9--2-30. Reserved.

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ARTICLE II. CITY COUNCIL

DIVISION 1. GENERALLY

Sec. 2-31. Council action on budget increase.

The percent budget increase, beginning in fiscal year 1985, when compared to the preceding fiscal year budget, shall not exceed the percent increase of the Gross National Product-Implicit Price Deflator (Source: Survey of Current Business, Department of Labor) as compiled for the 12-month period ending September 30 of the previous year.

(Code 1982, §§ 2-12, 2-13; Ord. No. 95-17, 11-8-95)

Sec. 2-32. Alternative financing.

Financing of the purchase, acquisition or development of real estate or the construction of buildings, of more than ten years, shall be subject to article VI, section 6.14, of the Charter.

(Code 1982, § 2-14)

Sec. 2-33. Public notice.

Whenever by statute or ordinance, general public notice or individualized notice is required to be given by the municipal officers, except where the statute or ordinance expressly requires such notice to be given upon vote of the municipal officers, the city clerk is authorized to effectuate such notice on behalf of the municipal officers. Whenever an item or matter is requested by a city councilor, the mayor or city administrator to be placed upon the agenda of the city council, the city clerk shall take such steps as are reasonably necessary to post or otherwise provide timely notice of such item or matter to the public and to parties who are by statute or ordinance entitled to notice.

(Ord. No. 02-18, 10-17-02)

Sec. 2-34. Council action on bond issue authorization.

The amount of debt to be authorized for issuance, in any fiscal year, shall not exceed 80% of the average amount of annual debt being retired over the 3 previous fiscal years unless the debt is financed through sources other than general property taxes, such as Tax Increment Financing, State or Federal subsidy opportunities or enterprise funds which are paid from user fees.

(Ord. No. 09-04, 10-22-09; Ord. No. 11-14, 01-19-12)

Sec. 2-35. Exception.

When deemed necessary by the City Council, the provisions of section 2-34 may be waived by five votes of the City Council.

(Ord. No. 09-04, 10-22-09)

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Sec. 2-36. Unassigned fund balance.

Unassigned Fund Balance is that portion of the City's resources which cannot be properly classified in one of the other four categories of fund balance as established by Generally Accepted Accounting Principles. The other four categories are: non-spendable; restricted; committed; and assigned. (Ord. No. 11-05, 08-18-11)

Sec. 2-37. Target amounts.

The City shall seek to maintain a targeted minimum unassigned fund balance in the General Fund of 8% of general fund revenues and a targeted maximum of 12% of said revenues to be measured on a Generally Accepted Accounting Principles basis. (Ord. No. 11-05, 08-18-11)

Sec. 2-38 Use of unassigned fund balance.

Five affirmative votes of the City Council shall be required to approve any action that temporarily reduces unassigned fund balance below the minimum target level. Amounts in excess of the targeted maximum of 12% of unassigned fund balance may be used in accordance with a policy adopted by the City Council. (Ord. No. 11-05, 08-18-11)

Secs. 2-39--2-45. Reserved.

DIVISION 2. INVESTIGATIONS*

Sec. 2-46. Institution of investigation proceedings.

Investigative proceedings may be instituted under this article by adoption of a resolution at a regular meeting of the city council in accordance with section 2.09 of the Charter. The resolution which institutes investigation proceedings shall:

- (1) State the name of the department, office or agency against whom the proceedings are to be instituted;
- (2) Enumerate one or more of the grounds as a basis for institution of the proceedings;
- (3) Name the person or persons who will be conducting the investigation; and
- (4) Set a date for a hearing on the charges, which date shall not be less than 30 nor more than 60 days from the date of the resolution.

(Code 1982, § 2-601)

Sec. 2-47. Instituting investigation; report.

Upon the adoption of a resolution instituting investigation proceedings, the person or persons named in section 2-46(3) shall investigate all alleged grounds and shall prepare a written report thereon. The report shall include the names of all witnesses available to testify at the hearing and shall set forth the matters which are expected to be proven. Copies of the report shall be provided to the city clerk, all members of the city council, the city administrator and the head

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of the department, office or agency being investigated at least seven days prior to the hearing.

(Code 1982, § 2-602)

Sec. 2-48. Notice.

The city clerk shall publish a notice of the hearing under this division in a newspaper of general circulation in the city at least seven days in advance of the investigative hearing.

(Code 1982, § 2-603)

Sec. 2-49. Presiding officer.

The mayor shall be the presiding officer in all investigative proceedings under this division, except in cases wherein the mayor's office is being investigated. In those cases wherein the mayor's office is being investigated, then the council president shall be the presiding officer. The presiding officer shall have authority to compel employees to testify and to produce books, papers, titles or documents in their possession which may be necessary to the matter or matters under investigation.

(Code 1982, § 2-604)

Sec. 2-50. Conduct of hearing.

The presiding officer shall preside at hearings held pursuant to the provisions of this division, and he shall administer the oath to all witnesses, rule on the admissibility of evidence, set the order for the hearing and maintain order throughout. The city attorney, or other counsel named by the city council if the department of law is being investigated, shall act as prosecutor and shall conduct the examination of all witnesses. The head of the department, office or agency being investigated may be represented by counsel, may cross examine all witnesses, and may present witnesses of his own. No formal rules of evidence need be followed, and the ruling of the presiding officer shall be final, unless overruled by a majority of those council members constituting the hearing panel. No person shall refuse to obey a lawful order of the presiding officer given during the course of the hearing.

(Code 1982, § 2-605)

Sec. 2-51. Witnesses.

Witnesses who are compelled to give testimony at a hearing under this division shall be entitled to the same privileges and immunities as are allowed witnesses in civil cases before the courts.

(Code 1982, § 2-606)

Sec. 2-52. Deliberation.

At the conclusion of the evidence, the council members who are conducting the hearing under this division shall meet in closed session for a discussion of the merits of the investigation. Following the closed session, the council shall be reconvened for the purpose of introducing and acting upon a resolution, which shall be prepared by the prosecutor named in section 2-50. The resolution shall outline the findings of the council and action, if any, to be taken as a result of the

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investigation. No such resolution shall be adopted except upon the concurring vote of five members of the council.

(Code 1982, § 2-607)

Sec. 2-53. Record of hearings.

A verbatim record shall be made of all hearings held pursuant to this article.

(Code 1982, § 2-608) *Charter references: Investigations, § 2.09.

Secs. 2-54--2-75. Reserved.

ARTICLE III. OFFICERS AND EMPLOYEES*

DIVISION 1. GENERALLY

Sec. 2-76. Salaries of elected and appointed officials.

Elected and appointed officials shall receive the following annual salaries, payable monthly:

- (1) *Mayor.* The mayor shall receive an annual salary of \$4,500.00, payable monthly.
- (2) *City council.* Each of the councilors shall receive an annual salary of \$2,700.00, payable monthly.
- (3) *School committee.* Each member of the school committee shall receive a salary at the rate of \$1,200.00 per year, payable monthly.
- (4) *Planning board.* Each member of the planning board shall receive a salary at the rate of \$600.00 per year, payable monthly.
- (5) *Board of appeals.* Each member of the board of appeals shall receive a salary at the rate of \$600.00 per year, payable monthly.
- (6) *Personnel board.* Each member of the personnel board shall receive a salary at the rate of \$600.00 per year, payable monthly.

(Code 1982, § 2-15; Ord. No. 11-13, 12-15-11) *Cross references: Personnel, ch. 58.

Sec. 2-77. Conflict of interest.

The city shall not enter into any contract for the purchase or sale of goods, labor or services with an elected or appointed official, officer or employee of the city who has a ten percent or greater financial interest in the transaction or in the company or corporation which he represents, except when the purchase or sale is through a competitive bid process with a minimum of one other person participating, providing that, in the event that the nature of the goods, labor or services are such that, but for the provisions of this section, the finance committee, acting pursuant to the duly adopted purchasing policy, would be authorized to waive competitive bidding, and the official, officer or employee discloses his or her interest and abstains from participating in any official action in connection with the contract, the city may

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proceed to enter into such a contract.

(Code 1982, § 2-10; Ord. No. 00-13, 6-15-00)

Sec. 2-78. City employees prohibited from striking.

No city employee, whether a member of any municipal employee organization or not, shall directly or indirectly participate, assist, cooperate in or consent to any strike, work stoppage, walkout or slow-down against the city.

(Code 1982, § 2-7)

State law references: Similar provisions, 26 M.R.S.A. § 964(2)(c).

Secs. 2-79--2-90. Reserved.

DIVISION 2. CITY ADMINISTRATOR*

Sec. 2-91. Chief executive and general powers.

The city administrator shall be the chief administrative officer of the city government, shall enforce the laws of the city and require the faithful performance of all administrative duties, and shall, in addition to the powers and duties granted by the Charter:

- (1) Appoint competent, qualified officers and employees to the administrative service and shall have the power to dismiss, suspend and discipline, in accordance with the personnel system, all officers and employees in the administrative service under his control. He shall also have the power to authorize a department head or officer responsible to him to appoint and remove subordinates serving under that department head or officer.
- (2) Designate himself or some other officer or employee to perform the duties of any office or position in the administrative service under his control which is vacant or which lacks administration due to the absence or disability of the incumbent.
- (3) Prepare and present to the council an annual report of the city's affairs, including a summary of reports of department heads, and such other reports as the council shall require.
- (4) Assemble estimates of the financial needs and resources of the city for each ensuing year, and shall prepare a program of activities within the financial power of the city, embodying in it a budget document with proper supporting schedules and analyses.
- (5) Have the power to assign any employee of the city to any department or branch thereof requiring services appropriate to the personnel system classification of the employee so assigned.
- (6) Have the power to prescribe such rules and regulations as he shall deem necessary or expedient for the conduct of administrative agencies subject to his authority, and he shall have the power to revoke, suspend or amend any rule or regulation of the administrative service by whomever prescribed, and safeguard those adopted

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by the city council.

- (7) Have the power, either by himself or by any officer or person designated for the purpose by him, to investigate and to examine or inquire into the affairs or operation of any department, division, bureau or office; and when so authorized by the consultants and professional counsel to aid in such investigations, examinations or inquiries.
- (8) Have the power to set aside any action taken by a department head and may supersede him in the functions of his office except in those cases where the authority is specifically vested by state law or ordinance to a particular department or head thereof.
- (9) Have the power to direct any department, division or bureau to perform the work for any other department, division or bureau.
- (10) Have the power to designate from the administrative service such committees and the officers thereof as he shall find necessary for the proper consideration of administrative problems. Such committees shall meet at the request of the city administrator and shall make such recommendation on matters referred to them as they shall find necessary for the best interest of the city.

(Code 1982, § 2-31) ***Charter references:** City administrator generally, art. III.

Secs. 2-92--2-100. Reserved.

DIVISION 3. CITY CLERK

Sec. 2-101. Appointment; residency.

The city clerk shall be appointed by the city administrator and confirmed by the city council. He need not be a resident of the city or state at the time of appointment, but may reside outside the city while in office only with the approval of the council.

(Code 1982, § 2-76)

Sec. 2-102. Recordkeeping; reports; custodian of bonds, other evidence of indebtedness; notice to appointees.

- (a) The city clerk shall keep full records of the doings of the city council and of the municipal officers. The city clerk shall perform all duties and exercise all powers by law incumbent upon or vested in town and city clerks generally and shall perform such other duties as the city council or the municipal officers may prescribe.
- (b) The city clerk shall:
 - (1) Record in full, uniformly and permanently, all ordinances and shall authenticate such ordinances.
 - (2) Publish, when required, ordinances and resolutions of the council, and all legal notices required by law or ordinance.
 - (3) Prepare, attest and report on the vital statistics of the city.

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- (4) Be charged with the custody of the official bonds of city employees and with the custody of all deeds, mortgages, contracts, judgments, notes, debts and choses in actions.
- (5) Make and keep a record of the qualification of all such city officers as qualify before him and shall require and record certificates from the proper magistrates of the qualification of all such officers as qualify before them.
- (6) Cause all persons appointed to office by the mayor seasonably to be notified of their appointment; seasonably notify each member of the city council of all meetings of the council.
- (7) Notify the appointing authority of the impending expiration of the term of office of a member of any board or commission, such notice to be given at least 30 days before such expiration.

(Code 1982, § 2-77) **Charter references:** Clerk to be secretary of council, § 2.08.

Sec. 2-103. Duties as to licenses and permits.

- (a) The city clerk shall countersign and issue all permits and licenses which shall be duly granted and signed by any other officer or board of the city and make and keep a record of such permits and licenses. Any duly authorized license or permit shall be deemed to be properly issued if it shall bear the signature of the city clerk and shall recite the source of its authority.
- (b) The city clerk shall be responsible for the proper administration and issuance of all licenses required by state law.

(Code 1982, § 2-78)

Sec. 2-104. Animal control functions.

The city clerk shall be responsible for the enforcement of all dog licensing and animal control laws.

(Code 1982, § 2-79) **Cross references:** Animals, ch. 14.

Sec. 2-105. Functions as to elections.

The city clerk shall be the supervisor of all state and municipal elections held in the city, and shall keep and maintain all election records and have custody of all property used in connection with elections. The city clerk shall appoint, subject to confirmation of the council, the chairman of the board of voter registration, and a warden and ward clerk for each of the voting precincts.

(Code 1982, § 2-80) **Charter references:** Elections, art. VII.

Sec. 2-106. Custodian of city seal.

The city clerk shall be the custodian of the seal of the city.

(Code 1982, § 2-82)

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Secs. 2-107--2-120. Reserved.

DIVISION 4. ASSESSOR

Sec. 2-121. Office created.

The office of municipal tax assessor is hereby created pursuant to the provisions of 36 M.R.S.A. § 471.

(Code 1982, § 2-61)

Sec. 2-122. Primary assessing unit.

Upon city council petition and by order of the state tax assessor, Lewiston, a body corporate and the municipal officers as the governing board, is designated a primary assessing unit pursuant to the provisions of 36 M.R.S.A. § 304.

(Code 1982, § 2-62)

Sec. 2-123. Appointment.

The chief assessor shall be appointed by the city administrator and confirmed by the city council.

(Code 1982, § 2-63)

Sec. 2-124. Qualification.

No person shall be eligible to perform the duties of a chief assessor of the city, being a primary assessing unit, unless such person shall have been issued a certificate of eligibility by the state tax assessor.

(Code 1982, § 2-64) **State law references:** Similar provisions, 36 M.R.S.A. § 312.

Sec. 2-125. Tenure.

- (a) A certified chief assessor shall serve a probationary period of two years. Thereafter, the certified chief assessor shall have tenure and may only be removed as provided in this division.
- (b) A chief assessor having tenure in any primary assessing area, upon moving from another primary assessing area to the city, a primary assessing unit, shall serve a probationary period of no longer than one year, but such probationary period may be waived by agreement of the parties.

(Code 1982, § 2-65) **State law references:** Similar provisions, 36 M.R.S.A. § 313.

Sec. 2-126. Duties.

The chief assessor shall supervise the assessor's office and shall:

- (1) Supervise personnel engaged in gathering information for assessment purposes,

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recording and filing information concerning property ownership; measuring and photographing buildings; estimating building replacement costs based on prescribed formulas and pricing schedules, and allowing for depreciation; and analyzing reports of real estate and personal property sales information for purposes of modifying or establishing value-determining factors.

- (2) Prepare all work in connection with assessment of property and the preparation of all assessment and tax rolls and tax notices.
- (3) Discuss values with property owners and explain appraisal methods and local and state laws governing taxation.
- (4) Assist other city departments and offices by providing information which is readily available to the assessors on the public purchase or rental value of real estate.
- (5) Perform all other duties and responsibilities required by statute or ordinance.

(Code 1982, § 2-66)

Sec. 2-127. Removal.

The chief assessor may be removed from office as follows:

- (1) A chief assessor serving a probationary term may be removed by the city administrator upon council confirmation upon 30 days' written notice stating the reason therefor.
- (2) A chief assessor having tenure may be removed for cause by the city administrator upon council confirmation on the form and manner provided in 30-A M.R.S.A. § 2633. The chief assessor shall hold office for an indefinite term unless otherwise specified by contract.
- (3) A chief assessor whose certification is revoked by the state tax assessor shall be immediately removed from office.

(Code 1982, § 2-67) **State law references:** Similar provisions, 36 M.R.S.A. § 314.

Secs. 2-128--2-150. Reserved.

ARTICLE IV. BOARDS, COMMISSIONS, COMMITTEES AND BUREAUS*

DIVISION 1. GENERALLY

Sec. 2-151. Parliamentary procedure.

- (a) All boards of the city government shall conduct their meetings by parliamentary procedure.
- (b) In all cases where parliamentary procedure questions arise in the conduct of municipal affairs, the newly revised edition of Robert's Rules of Order shall be taken as the source of authority to decide the orderly course of the proceedings.

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(Code 1982, § 2-3) *Charter references: Planning board, § 4.05; school committee, § 5.01.

Cross references: Library board of trustees, § 48-21 et seq. *Charter references: Board of appeals, § 4.06.

State law references: Board of appeals, 30-A M.R.S.A. § 2691.

Secs. 2-152--2-160. Reserved.

DIVISION 2. BOARD OF APPEALS*

Sec. 2-161. Purpose.

The purpose of this division is to establish the organization, authority and responsibilities of the city board of appeals.

(Code 1982, § 2-516)

Sec. 2-162. Authority.

The board of appeals is established under authority of article VIII, part 2, of the Maine Constitution.

(Code 1982, § 2-517)

Sec. 2-163. Organization and rules.

- (a) A quorum necessary to conduct an official meeting of the board of appeals shall consist of at least four members.
- (b) The board shall elect annually a chairperson, and other officers deemed necessary from its membership, and a secretary who need not be a member. All seven members enjoy the same rights and privileges regardless of any board of appeals office that they may hold.
- (c) The chairperson shall call meetings of the board as required. The chairperson shall also call meetings of the board when requested to do so by a majority of the members, the mayor, or the municipal officers.
- (d) The secretary shall maintain a permanent record of all meetings of the board of appeals 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 and may be inspected at reasonable times.
- (e) Except as otherwise provided by the ordinance governing the matter subject to appeal, the following voting requirements shall apply:
 - (1) The concurring vote of at least four members is required to constitute an action on any matter requiring a public hearing.
 - (2) The concurring vote of a majority of the members present at an official meeting is required to constitute an action on any matter not requiring a public hearing.
- (f) No member of the board of appeals shall participate in the hearing or disposition of any matter in which he has an interest. Any questions of whether a member has a conflict of

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interest sufficient to disqualify the member shall be decided by a majority vote of the members presents, except the member whose possible conflict is being examined; where such vote results in a tie, the subject member shall be disqualified.

- (g) The chairperson shall appoint an associate member to act for a full member who is disqualified from voting, unable to attend the hearing, or absent from a substantial portion of the hearing due to late arrival. The associate member will act for the full member until the appeal(s) is/are heard.
- (h) Upon appointment by the chairperson, an associate member acting for a full member shall enjoy the same rights and privileges as the full members for the duration of appointment.
- (i) Associate members shall attend all scheduled hearings and, if called upon by the chairperson, be prepared to act for a full member.
- (j) The board of appeals may adopt statements of policy, along with its rules of procedure, consistent with the Charter and any applicable ordinance, to enable it to perform its function.
- (k) In addition to other provisions for amending the board's rules of procedure, any rule adopted by the board of appeals relating to the conduct of any hearing may be waived by the chairman upon good cause shown.

(Code 1982, § 2-518; Ord. No. 96-1, 2-22-96)

Sec. 2-164. Hearings.

- (a) Except as otherwise provided by the ordinance governing the matter subject to appeal, all public hearings shall be posted in the office of the city clerk at least seven days before the date of the hearing. The board of appeals, at its discretion, may determine that a given matter is of particular importance or interest to the community such that, in addition to posting as required in this section, it may insert a paid notice of the public hearing in one or more newspapers of general circulation in the city.
- (b) 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.

(Code 1982, § 2-519)

Sec. 2-165. Record of proceedings; notice of decision.

The transcript of testimony, if any, and exhibits, together with all papers and requests filed in the proceedings before the board of appeals, 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 therefor, 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 or hand delivered to the petitioner, his representative or agent, the planning office and the city clerk within seven days of its decision.

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(Code 1982, § 2-520)

Sec. 2-166. Jurisdiction and manner of taking appeals.

The board of appeals may hear an appeal from a decision, order, rule or failure of any municipal entity to act relating to the following matters, except as otherwise specifically provided for in the ordinance or codes:

- (1) Actions of the director of code enforcement regarding appendix A, zoning, of this Code.
- (2) Actions of the director of code enforcement regarding section 18-26 et seq. of this Code.
- (3) Actions of the electrical inspector regarding chapter 18, article V, of this Code.
- (4) Actions of the director of fire prevention regarding chapter 38, fire protection and prevention, of this Code.
- (5) Actions of the health officer regarding chapter 34.
- (6) Actions of the code official regarding section 18-51 et seq.
- (7) Actions of the city council regarding the issuance of special amusement permits for dancing and entertainment in accordance with section 10-61 et seq.
- (8) Actions of the police chief regarding applications to purchase handguns in accordance with section 50-121 of this Code.
- (9) Any other duty which may be delegated by ordinance or state law.
- (10) Actions of the code enforcement official regarding appendix A to this Code.
- (11) Actions of the Department of Public Service pertaining to requests for the installation or removal of street lighting according to the Streetlight Policy.

Any person who requests a hearing before the board of appeals shall file a written petition for appeals at the office of the director of code enforcement. Unless otherwise required by ordinance or code, the petition shall include a statement of the reason(s) why the petitioner believes the appeal should be granted, the petitioner's proposal of what is intended to be done and, if applicable, a plan of work to be done. The fee for filing an appeal shall be set by the city council on the recommendation of the director of code enforcement.

(Code 1982, § 2-521; Ord. No. 09-06, 12-31-09)

Sec. 2-167. Administration.

The director of code enforcement shall provide for the administration of the affairs of the board of appeals, including preparing agendas and minutes, posting public hearings, handling correspondence, and maintaining all official records.

(Code 1982, § 2-502)

Sec. 2-168. Appeals from decisions of board.

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An appeal may be taken, within 30 days after the decision is rendered by the board of appeals, by any party to superior court from any order, relief or denial in accordance with the Maine Rules of Civil Procedure, rule 80B. The hearing before the superior court shall be without a jury. The chairman of the board of appeals shall advise all parties who have been denied an appeal to the board of their rights to a hearing before the superior court. The city attorney shall notify the board of the hearing, be present at the hearing, and represent the city's interest at the hearing.

(Code 1982, § 2-523)

Secs. 2-169--2-180. Reserved.

DIVISION 3. FINANCE COMMITTEE*

Sec. 2-181. Purpose.

The purpose of this division is to establish the organization, authority and responsibilities of the city finance committee.

(Code 1982, § 2-551)

Sec. 2-182. Authority.

The finance committee is established under authority of article VIII-A of the Maine Constitution, and section 6.15 of the Charter.

(Code 1982, § 2-552)

Sec. 2-183. Organization and rules.

- (a) A quorum necessary to conduct an official meeting of the finance committee shall consist of at least three members and at least three concurring votes shall be necessary to constitute an action on any matter.
- (b) All five members of the finance committee shall enjoy the same rights and privileges regardless of any finance committee office that they may hold.
- (c) The mayor or chairman may call special meetings of the finance committee.
- (d) Any request for a recommendation by the city council shall be acted upon by the finance committee within 30 days of the city council action, except as otherwise provided for by statute or ordinance or unless a longer period is specified by the city council.
- (e) The finance committee may adopt statements of policy, along with its rules of procedure, consistent with the Charter and this division, to enable it to perform its function.
- (f) No member of the finance committee shall participate in the hearing or disposition of any matter in which such member has an interest. Any questions of whether a member has a conflict of interest sufficient to disqualify the member shall be decided by a majority vote of the members present, except the member whose possible conflict is being examined; where such vote results in a tie, the subject member shall be disqualified.

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(Code 1982, § 2-553)

Sec. 2-184. Powers and duties.

- (a) The finance committee shall approve contracts for the purchase of materials and services procured through the competitive bid process in accordance with purchasing ordinances and policies which may be adopted by the city council.
- (b) The finance committee shall require all city officers, agents, appointees and employees whose duties require the receiving, handling or disbursement of monies belonging to the city to give bond to the city in a penal sum and with surety or sureties acceptable to the committee, conditioned for the true accounting for and proper disposition of all such monies. Premium charges for such bonds shall be paid by the city.
- (c) The finance committee, upon receiving the proposed budget and accompanying message from the city administrator, shall review and comment upon the documents and shall seasonably forward its recommendations to the mayor and council and city administrator. In any event, the finance committee shall submit a comprehensive analysis of the budget program no later than May 1 of each fiscal year.
- (d) The city administrator shall refer to the finance committee, no later than January 15, the capital improvement program for its review and comments upon the document. The finance committee shall seasonably forward its recommendations to the mayor and council and city administrator. In any event, the finance committee shall submit a comprehensive analysis of the capital improvement program no later than February 15 of each fiscal year.
- (e) The finance committee shall serve as the pension board of the city pursuant to provisions contained in this chapter.

(Code 1982, § 2-554)

Sec. 2-185. Administration.

The finance director shall be responsible to provide for the administration of the affairs of the finance committee, including preparing agendas and minutes, posting public hearings, handling correspondence, and maintaining all official records.

(Code 1982, § 2-555) *Charter references: Finance committee, § 6.15.

Secs. 2-186--2-195. Reserved.

DIVISION 4. ENERGY SAVING COMMITTEE

Sec. 2-196. Purpose.

The purpose of the energy saving committee will be to serve as an energy and environmental sustainability advocacy committee for Lewiston, and its recommended initiatives shall be directed at all energy use within the city - municipal, residential, commercial and industrial.

(Ord. No. 08-05, 6-19-08)

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Sec. 2-197. Appointment.

- (a) The energy saving committee shall consist of 12 members: one member of the planning board, one member of the city council, and ten other members who shall have knowledge and an interest in the purpose of the committee, such potential members could be: The sustainability coordinator of Bates College, a representative from the Androscoggin Valley Council of Governments, a Lewiston real estate developer, a Lewiston business owner, a Lewiston energy supplier and citizens at large.
- (b) The city council shall appoint the council member to the committee, who shall serve a two-year term which shall coincide with their council term. All other members of the committee shall be appointed by the mayor. Initially, six of the committee members shall be appointed for a one-year term and six for a two-year term. Thereafter, the terms of office of members of the committee shall be for two years.

(Ord. No. 08-05, 6-19-08)

Sec. 2-198. Compensation.

Each member of the committee shall serve without compensation.

(Ord. No. 08-05, 6-19-08)

Sec. 2-199. Duties.

The energy saving committee shall serve as a forum to review, recommend and suggest environmental projects and sustainability initiatives and develop a sustainability plan for the city, working to reduce the city's environmental footprint by minimizing its energy use while reducing greenhouse gas emissions, reducing the volume of waste generated, promoting the local economy and protecting its environment.

(Ord. No. 08-05, 6-19-08)

Sec. 2-200. Rules of procedure.

The committee may adopt appropriate rules of procedure consistent with the provisions of the City Charter and City Code of Ordinances to enable it to carry out its functions.

(Ord. No. 08-05, 6-19-08)

Secs. 2-201--2-210. Reserved.

DIVISION 5. VOTER REGISTRATION APPEALS BOARD

Sec. 2-211. Purpose.

The purpose of this division is to establish the organization, authority and responsibilities of the city voter registration appeals board.

(Code 1982, § 2-576; Ord. No. 95-14, 10-19-95)

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Sec. 2-212. Authority; powers.

The voter registration appeals board is established under authority of 21-A M.R.S.A. §§ 103, 104, and shall have all the powers and duties prescribed for voter registration appeals boards by the general law of the state.

(Code 1982, § 2-577; Ord. No. 95-14, 10-19-95)

Sec. 2-213. Compensation of members.

The two regular members of the voter registration appeals board shall receive compensation for each meeting as determined by the city council. The salary of the chairman of the board shall be set by the municipal officers. Members of the board, when employed by the city, shall be paid an hourly rate to be set by the city council.

(Code 1982, § 2-578; Ord. No. 95-14, 10-19-95)

Sec. 2-214. Organization; rules.

- (a) The voter registration appeals board shall meet at such times and places as the chairman of the board may prescribe. Special meetings of the board may be held on the call of the chairman.
- (b) The voter registration appeals board shall, annually and in writing, adopt rules necessary to carry out its proper functions.

(Code 1982, § 2-579; Ord. No. 95-14, 10-19-95)

Secs. 2-215--2-219. Reserved.

DIVISION 6. BOARD OF ASSESSMENT REVIEW

Sec. 2-220. Appointment; vacancies.

There shall be a board of assessment review to consist of five members, who shall be appointed by the mayor to serve for terms as follows: Following adoption of this division, two members shall be appointed to serve for one year; two members shall be appointed to serve for two years, and one member shall be appointed to serve for three years; thereafter all subsequent appointees shall be appointed for a term of three years. Compensation, if any, to such members shall be determined from time to time by resolution of the city council. Vacancies in the membership of the board shall be filled by appointment from the mayor for the unexpired term.

(Ord. No. 96-13, 11-14-96; Ord. No. 07-03, 5-17-07)

Sec. 2-221. Qualifications.

All members of such board shall be selected upon the basis of their good judgment and knowledge of the subject of taxation, appraisal of property values and shall at the time of their appointment be residents of the city and shall continue as residents during their terms of office. If a member of such board shall cease to be a resident, his office shall thereby become vacant. No elected official of the city shall serve as a member of the board.

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(Ord. No. 96-13, 11-14-96)

Sec. 2-222. Powers and duties.

The board of assessment review shall have conferred upon it such powers of review and abatement as are conferred upon boards of assessment review by statute. The board may adopt such rules of procedure, consistent with law, as shall seem appropriate. Such board shall annually choose from its membership a chair and secretary, except that in lieu of one of the members of such board serving as secretary, the council may authorize such board to appoint either a full-time or part-time nonmember secretary and to fix his or her compensation. Such board shall have power within the limits of its budget appropriation to employ such other necessary clerical assistance as may be necessary from time to time in the performance of its duties. The board shall be required to keep an accurate record of all its proceedings, which shall be available for public inspection.

(Ord. No. 96-13, 11-14-96)

Sec. 2-223. Hearings and appeals/quorum.

All hearings and appeals therefrom shall be in such manner as prescribed by statute. A quorum of the board shall consist of three members. In addition to the certification of abatement to the director of finance, the board, through its secretary, shall notify the chief assessor of such determination, who shall make such correction upon the assessment roll and duplicate.

(Ord. No. 96-13, 11-14-96)

Sec. 2-224. Burden of proof.

In all proceedings the burden of proof shall be upon the applicant to establish that the applicant is entitled to the abatement sought.

(Ord. No. 96-13, 11-14-96)

DIVISION 7. GARCELON BOG ADVISORY COMMITTEE

Sec. 2-225. Membership.

There is hereby established the Garcelon Bog Advisory Committee (hereinafter sometimes referred to as "committee"), to consist of seven voting members, appointed by the mayor, and confirmed by the city council, as follows: (a) One member of the city council; (b) One member nominated by the Trustees of the Androscoggin Land Trust; (c) two members of city staff, selected by the city administrator; and (d) three at-large members, who shall be residents of the City of Lewiston, at least one of whom shall reside in the vicinity of the Garcelon Bog, as determined by the mayor. The member of the city council shall be appointed by the mayor to serve during such city council member's then-existing term in office; the member nominated by the Androscoggin Land Trust shall be appointed for an initial term of three years, and thereafter for successive three-year terms; the members who are city staff shall serve until the city administrator shall designate a successor; one of the at-large members shall be shall be appointed for an initial term of one year, and thereafter for successive three-year terms; one of the at-large member shall be appointed for an initial term of two years, and

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thereafter for successive three-year terms; the other at-large member shall be appointed for an initial term of three years, and thereafter for successive three-year terms. The mayor may appoint and the council may confirm up to three additional ex-officio members of the committee.

(Ord. No. 02-19, 10-17-02)

Sec. 2-226. Powers and duties.

The committee shall have the responsibility to manage the Garcelon Bog (the "Bog") in accordance with the terms of a certain conservation easement (the "easement") to be granted to the Androscoggin Land Trust. It shall have the power to:

- (1) Promulgate reasonable rules for the utilization of the Bog by the public and others, which rules shall become effective on the sixtieth day following the filing of such rules with the city clerk. The city clerk shall send a copy of such rules to members of the city council within ten days after receipt of such rules;
- (2) Commence actions in the name of the city, through the city attorney, for the enforcement of such rules, or the enforcement of the terms of the easement, and in such case, to the extent that the rules of court or statutes require that an initiating pleading be signed or executed by an authorized municipal official, any member of the committee may sign or execute such pleading;
- (3) Advise the council with respect to proposals for the amendment of this division, or proposed ordinances or other official action that may impact the Bog or the administration and enforcement of the easement;
- (4) Elect a chair, vice-chair and a recording secretary, adopt reasonable rules of procedure and maintain records of the proceedings of the committee; and
- (5) Apply for grants from governmental and non-governmental agencies and institutions.

(Ord. No. 02-19, 10-17-02)

Secs. 2-227--2-230. Reserved.

DIVISION 8. DOWNTOWN ADVISORY BOARD*

Sec. 2-231. Purpose.

The purpose of this division is to establish the organization, authority, and responsibilities of the downtown advisory board.

(Ord. No. 99-21, 1-13-00; Ord. No. 02-10, 6-6-02)

Sec. 2-232. Authority.

The downtown advisory board is established under authority of Section 2.11 of the Charter.

(Ord. No. 99-21, 1-13-00; Ord. No. 02-10, 6-6-02)

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Sec. 2-233. Organization and rules.

- (a) The downtown advisory board shall consist of no more than 15 members. Of those 15 members, three shall be ex-officio members: Two councilors, and a representative from L/A Excels. All 15 members of the downtown advisory board shall be appointed by the mayor and confirmed by the vote of the city council and they shall enjoy the same rights and privileges regardless of any downtown advisory board office that they may hold.
- (b) The downtown advisory board shall have two officers: Chairman and vice-chairman. The chairman of the board shall preside over all meetings of the board, shall supervise the affairs of the board, and shall perform such other duties as may be assigned to the office by the board or city council. The vice-chairman shall assist the chair in carrying out the latter's duties and shall preside at meetings in the chairman's absence. The chairman and vice-chairman shall be elected by the members of the board.
- (c) A quorum necessary to conduct an official meeting of the downtown advisory board shall consist of at least eight members and at least eight concurring votes shall be necessary to constitute an action on any matter.
- (d) Of the non ex-officio membership of the board as of April 2002, the terms of four members of the board shall expire at the time of the January 2003 meeting of the board, the terms of another four members of the board shall expire at the time of the January 2004 meeting of the board, and the terms of the remaining three members of the board shall expire at the time of the January 2005 meeting of the board. Beginning with new board members appointed after April 2002 and thereafter, all non ex-officio members shall serve a term of three years. In the event any board member has three unexcused consecutive absences from regularly scheduled meetings, the board shall have the option of asking for the resignation of that member.
- (e) The mayor or chairman may call special meetings of the downtown advisory board.
- (f) Any request for a recommendation by the city council shall be acted upon by the downtown advisory board within 30 days of the city council action, except as otherwise provided for by statute or ordinance or unless a longer period is specified by the city council.
- (g) The downtown advisory board may adopt and amend bylaws and rules of procedure, consistent with the Charter and this division, to enable it to perform its function.
- (h) No member of the downtown advisory board shall participate in the hearing or disposition of any matter in which such member has a financial interest. Any questions of whether a member has a conflict of interest sufficient to disqualify the member shall be decided by a majority vote of the members present, except the member whose possible conflict is being examined; where such vote results in a tie, the subject member shall be disqualified.

(Ord. No. 99-21, 1-13-00; Ord. No. 02-10, 6-6-02; Ord. No. 05-26, 2-16-06)

Sec. 2-234. Powers and duties.

- (a) The downtown advisory board shall yearly review and make recommendations to update, as necessary, the downtown master plan.

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- (b) The downtown advisory board shall work with other responsible individuals and entities to implement overall and district specific actions, as recommended in the downtown master plan.
- (c) The downtown advisory board shall assist in working with local banks to establish a low-interest-loan pool for acquisition and redevelopment of property in the downtown.
- (d) The downtown advisory board shall work with the city council to establish a matching city grant program for building improvements in the downtown.
- (e) The downtown advisory board shall work with the other responsible individuals and entities to develop and implement an overall marketing program for the downtown.
- (f) The downtown advisory board shall work with the city council, the planning board, historic preservation review board, and the public works department to establish and administer design review guidelines for the downtown.
- (g) The downtown advisory board shall work with the city council and the planning board to ensure that the city undertakes the necessary studies as recommended in the district specific actions of the master plan.
- (h) The downtown advisory board shall work with other individuals and entities to seek the involvement and resources of private foundations, institutions, local charities, civic organizations, as well as state and federal agencies in the implementation of various aspects of the plan.
- (i) The downtown advisory board shall work with the city council and the planning board to develop flexible land use regulations, including zoning, parking requirements, space and bulk standards, and an expedited review and approval process to encourage the development and adaptive reuse of downtown sites.
- (j) The downtown advisory board shall review and make recommendations to the city council with respect to funding initiatives within the downtown, including the annual Community Development Block Grant Program (CDBG) and the Lewiston Capital Improvement Program (LCIP).

(Ord. No. 99-21, 1-13-00; Ord. No. 02-10, 6-6-02)

Sec. 2-235. Administration.

The development director shall be responsible to provide for the administration of the affairs of the downtown advisory board, including preparing agendas and minutes, posting public hearings, handling correspondence, and maintaining all official records.

(Ord. No. 99-21, 1-13-00; Ord. No. 02-10, 6-6-02) ***Editor's note:** Ord. No. 02-10, effective June 6, 2002 renumbered div. 7 as div. 8 to read as herein set out. Former said division pertained to the Mayor's Downtown Renaissance Advisory Board.

ARTICLE V. DEPARTMENTS*

***Editor's note:** Ord. No. 03-05, effective July 3, 2003, amended art. V in its entirety to read as herein set out. Formerly, art. V pertained to similar subject matter as enacted by the 1982 Code, as amended. See the Code Comparative Table for a detailed analysis of inclusion.

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Charter references: Administrative organization, art. IV.

DIVISION 1. GENERALLY

Sec. 2-236. Departments designated.

The administrative service of the city shall be divided under the administrator into the following departments and heads thereof:

<i>Department</i>	<i>Head</i>
Department of assessment	Chief assessor
Department of city clerk	City clerk
Department of economic and community development	Director of economic and community development
Department of education	School committee
Department of finance	Finance director/controller
Department of fire	Fire chief
Department of human resources	Human resources director
Department of law	City attorney
Department of library	Library director
Department of management information services	MIS director
Department of planning and code enforcement	Director of planning and code enforcement
Department of police	Chief of police
Department of public services	Director of public services
Department of public works	Director of public works
Department of recreation	Director of recreation
Department of social services	Director of social services

(Ord. No. 03-05, 7-3-03)

Sec. 2-237. Oaths of office.

Each of the following officers and employees in the administrative service shall be required to take an oath of office before entering upon the discharge of his duties, which oath shall be subscribed by the person taking it and shall be filed and preserved in the office of the city clerk:

- (1) The city administrator and each officer.
- (2) Every member of the department of police, including any private, special, temporary or substitute police officers which the city might find it necessary to appoint.
- (3) Every member of the department of fire who serves on a full-time basis.

(Ord. No. 03-05, 7-3-03)

Sec. 2-238. Administrative policy and procedures.

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- (a) Each officer shall perform all duties required of his office by state law, the Charter, this Code and the ordinances of the city, and such other duties not in conflict therewith as may be required by the administrator.
- (b) The head of each city department shall:
 - (1) Be immediately responsible to the administrator for the effective administration of their respective departments and all activities assigned thereto.
 - (2) Keep informed as to the latest practices in their particular field and shall inaugurate, with the approval of the administrator, such new practices as appear to be of benefit to the service and to the public.
 - (3) Submit reports of the activities of his department to the administrator as may be required.
 - (4) Establish and maintain a system of filing and indexing records and reports in sufficient detail to furnish all information necessary for proper control of departmental activities and to form a basis for the periodic reports to the administrator.
 - (5) Have power, when authorized by the administrator, to appoint and remove, subject to personnel system regulations for personnel, all subordinates under him.
 - (6) Be responsible for the proper maintenance of all city property and equipment used in his department.
- (c) Each department shall furnish, upon the direction of the administrator, any other department such service, labor and materials as may be requisitioned by the head of such department and as its own facilities permit, through the same procedure and subject to the same audit and control as other expenditures are incurred.
- (d) All units in the administrative service shall:
 - (1) Be open between the hours of 8:00 a.m. and 4:30 p.m. on weekdays and shall be closed Saturdays, Sundays and legal holidays, except as otherwise provided.
 - (2) Make a daily deposit with the city treasurer of any monies received directly from the public.
 - (3) Pay out monies belonging to the city only in the manner in this Code.

(Ord. No. 03-05, 7-3-03)

Secs. 2-239--2-250. Reserved.

DIVISION 2. DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT

Sec. 2-251. Created.

The department of economic and community development is hereby created.

(Ord. No. 03-05, 7-3-03)

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Sec. 2-252. Duties of the director of economic and community development.

The director of economic and community development shall:

- (1) Administer comprehensive economic development, community development and grant-in-aid programs in the interest of the entire community.
- (2) Exercise all the powers and perform all the duties conferred on and imposed by law on the city for purposes of its development program.
- (3) Advise the city administrator and city council and planning board of all matters affecting the physical growth and development of the city.
- (4) Provide information to the public on the economic and community development programs and problems.
- (5) Integrate and coordinate all individual projects and programs relating to the economic development and community development of the city.
- (6) Coordinate the relationship between the city, urban renewal authority, housing authority and other special purpose entities involved with the development of the city.
- (7) Perform such other duties as are prescribed by the city administrator.

(Ord. No. 03-05, 7-3-03)

Sec. 2-253. Duties of the department.

Under the supervision of the director of economic and community development, the department shall promote the development of a viable community by expanding economic opportunity, by providing public facilities, decent housing and suitable living environments.

The department shall direct its activities toward the following specific objectives:

- (1) Assist with the development of planning projects
- (2) Conduct economic analysis for the city
- (3) Provide direct technical assistance to businesses
- (4) Provide support in the retention and recruitment of city-wide businesses
- (5) Develop tax increment financing proposals
- (6) Work with representatives from regional, state and federal agencies to match available business assistance with Lewiston businesses
- (7) The elimination of slums and blight and the prevention of blighting influences and the deterioration of property in neighborhoods and community facilities of importance to the welfare of the community.
- (8) The elimination of conditions which are detrimental to health, safety and public welfare, through code enforcement, demolition, interim rehabilitation assistance and related activities.
- (9) The conservation and expansion of the city's housing inventory to provide a

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decent home and a suitable living environment for all persons.

- (10) The expansion and improvement of the quantity and quality of community services which are essential for sound community development in the city.
- (11) Promotion of an increase in the diversity and vitality of the city's neighborhoods.
- (12) The restoration and preservation of properties of special value for historic, architectural or aesthetic reasons.
- (13) The performance of all other related functions as may be required by the city council or by the Housing and Community Development Act of 1974, Public Law 93-383.
- (14) Perform such other duties as the city administrator or director of development may require.

(Ord. No. 03-05, 7-3-03)

Secs. 2-254--2-265. Reserved.

DIVISION 3. DEPARTMENT OF EDUCATION

Sec. 2-266. Created.

A department of education is hereby created pursuant to the provisions of Article V of the Charter, under the supervision of the school committee, which shall have all the powers and duties prescribed for superintending school committees by the general laws of the state except as otherwise provided by the Charter.

(Ord. No. 03-05, 7-3-03)

Sec. 2-267. Program divisions.

The department of education shall be divided into the following program divisions:

- (1) Division of administration, supervised by the superintendent of schools, which shall be responsible for overall departmental operations and programs. It shall also be the location for the operation of business and maintenance functions, nutrition, transportation and attendance requirements, personnel administration for the department of education, and general control and supervision of federal and state programs.
- (2) Division of common schools, supervised by the director of elementary education and building principals, which consists of all elementary schools of grades kindergarten through grade six. This division is responsible for basic elementary instruction in the major areas of reading, mathematics, language arts and all other curricular areas, to include social studies, science, foreign language, art, music and physical education.
- (3) Division of junior high school, supervised by a principal, consists of grades seven and eight. This division is responsible for instruction in the major areas of language arts, mathematics, science, social studies, foreign languages, and all

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other curricular areas of home economics, industrial arts, physical education, art and music.

- (4) Division of senior high school, supervised by a principal, consists of grades nine through 12. This division is responsible for instruction in the areas of English, mathematics, science, social studies, foreign languages, home economics, industrial arts, business, physical education, fine arts, and maintains and encourages active student participation in a varied extracurricular program.
- (5) Division of special education, supervised by a director of special education, is responsible to provide for instructional programs to meet the needs of exceptional children between the ages of five and 20 years.
- (6) Division of vocational education, supervised by a director of vocational education, consists of vocational programs for residents and regional students in grades 11 and 12. This division is responsible to provide entry level skills in many vocational areas.
- (7) Division of adult education, supervised by a director of adult education and summer school, which is responsible to provide for diploma programs, basic education, vocational programs and general education to meet the needs of the adult community.

(Ord. No. 03-05, 7-3-03)

Secs. 2-268--2-279. Reserved.

DIVISION 4. DEPARTMENT OF FINANCE

Sec. 2-280. Created.

The department of finance is hereby created. The department shall be divided into four divisions: The division of the treasury, the division of accounts, the division of purchasing and the division of central services.

(Ord. No. 03-05, 7-3-03)

Sec. 2-281. Director of finance/controller.

In all cases where the duty is not expressly charged to any other department or office, it shall be the duty of the director of finance/controller to plan, organize, direct, promote, secure and preserve the financial and property interests and activities of the city. The director of finance/controller shall serve as the city treasurer. The director of finance/controller shall:

- (1) Exercise general supervision over all officers of the city regarding the proper management of the fiscal concerns of their respective offices.
- (2) Advise the city administrator on fiscal policy and supervise all financial activities. In providing budget assistance, the director of finance/controller shall:
 - a. Make departmental work measurement studies for development and administration of performance budget systems;

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- b. Prepare and assemble budget estimates and assist the city administrator in preparing budget documents;
 - c. Act as agent of the administrator in controlling the administration of the budget;
 - d. Conduct studies relative to improvements in administrative organization and procedures;
 - e. Direct the city's risk management program and administer the insurance programs;
 - f. Direct and administer the city's debt management program;
 - g. Coordinate the accounting and financial systems; and
 - h. Represent the city on designated committees.
- (3) Provide direct supervision over the internal audit program and shall:
- a. Conduct independent protective and constructive audits to review effectiveness of controls, financial records and operations;
 - b. See that officers receiving money pay such monies into the city treasury, when thereto required, and that all necessary financial reports are submitted on a timely basis; and
 - c. Report the default of any officer of the city to the administrator.

(Ord. No. 03-05, 7-3-03)

Sec. 2-282. Divisions.

The department of finance shall be divided into the following divisions and supervisors thereof:

- (1) A division of the treasury supervised by the city treasurer, who shall:
- a. Keep, in proper books, a full and accurate account of all the monies received and disbursed by the treasurer in behalf of the city.
 - b. Receive and have custody of all monies paid to the city and shall disburse city funds upon proper warrant of the city auditor.
 - c. Pay city employees upon presentation of the properly certified payrolls.
 - d. Collect all taxes, special assessments and property tax liens in the manner authorized and required by law and collect all utility bills and other revenues.
 - e. Demand and receive all monies and fees owing to the city whenever any person is indebted to the city in any manner. When any claims shall not be collectible, he shall report such claims to the city attorney for collection or prosecution.
 - f. Manage the city's investment program. Deposit the proceeds of all sales of bonds immediately after the city treasurer shall have received the same,

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and, until such deposit, the city treasurer shall be responsible for the amount thereof. Keep and administer all securities, bonds or other forms of negotiable instruments owned by or belonging to the city.

- g. Make a daily settlement with the city auditor of the amounts received and paid out during the day.
- (2) The division of accounts headed by the city auditor, who shall:
- a. Keep the city's financial records in accordance with generally accepted accounting principles and applicable legal requirements.
 - b. Pre-audit all claims for correctness of amount and authorization of expenditures; check, verify and transmit payroll data for processing; prepare and issue all vouchers and checks; maintain or supervise cost accounting and accounting for grant-in-aid programs; and reconcile bank statements.
 - c. Bill city accounts receivables, journal entries, and other financial recordkeeping activities.
 - d. Prescribe the form of accounts and reports to be rendered to him.
 - e. Render assistance in the preparation of the budget as may be required.
 - f. Maintain inventory records of all municipal property.
 - g. Transmit to the finance director interim and annual financial reports and statements of cash on hand of classified unencumbered appropriation balances in any city fund, and such other financial statements as the finance director may from time to time require. Keep all departments currently informed of their classified unencumbered appropriation balances.
- (3) A division of purchasing headed by the director of purchasing who shall:
- a. Perform all duties and functions required for the procurement, lease or sale of contractual services, supplies, materials, equipment, land and buildings for city departments, divisions or agencies and authorize issuance of purchase orders.
 - b. Establish standards and supervise preparation of specifications and tests and inspect materials and supplies sold to the city and evaluate contractual services rendered to city departments, divisions and agencies.
 - c. Provide staff services to the finance committee as directed by director of finance/controller.
 - d. Assist the finance director/controller in assembling and supervising the printing of the budget document.
- (4) A division of central services headed by the tax collector/investment officer who shall be responsible to supervise central services such as duplicating, printing, central supply room, central switchboard, the office clerical pool, etc.

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Sec. 2-283. Award of contracts.

Upon giving due consideration of the recommendation of the director of purchasing, the finance committee shall award all contracts for the purchase of materials and services procured through the formal competitive bid process.

(Ord. No. 03-05, 7-3-03)

Secs. 2-284--2-294. Reserved.

DIVISION 5. DEPARTMENT OF FIRE

Sec. 2-295. Created.

The department of fire is hereby created. The department shall be divided into three divisions: The firefighting division, the fire alarm division and the training and fire prevention division.

(Ord. No. 03-05, 7-3-03)

Sec. 2-296. Duties of fire chief.

The fire chief shall be charged with the prevention of fires and the protection of life and property against fire and shall:

- (1) Report all fire losses to the assessor.
- (2) Be responsible for the maintenance and care of all property and equipment used by his department.

(Ord. No. 03-05, 7-3-03)

Sec. 2-297. Divisions.

The department of fire shall be divided into the following divisions thereof:

- (1) A firefighting division supervised by a commissioned officer, who shall be responsible for:
 - a. The extinguishment of fires;
 - b. The saving of life and property from fire; and
 - c. The performance of various miscellaneous public services of an emergency nature.
- (2) A fire alarm division supervised by a superintendent of fire alarms, who shall be responsible for:
 - a. The installation, maintenance and repair of fire, police and ambulance radio call box systems;
 - b. The installation, maintenance and repair of fire and police emergency wire circuits;

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- c. The inspection of private fire alarm systems;
 - d. The maintenance of a jointly-owned and operated 911 emergency report system; and
 - e. The performance of other related work as required.
- (3) A training and fire prevention division supervised by a commissioned officer, who shall be responsible for:
- a. The inspecting of potential fire hazards;
 - b. The abatement of existing fire hazards;
 - c. The conducting of an educational fire prevention program; and
 - d. The training of fire personnel.

(Ord. No. 03-05, 7-3-03)

Secs. 2-298--2-324. Reserved.

DIVISION 6. DEPARTMENT OF HUMAN RESOURCES

Sec. 2-325. Created.

The department of human resources is hereby created.

(Ord. No. 03-05, 7-3-03)

Sec. 2-326. Duties of director of human resources.

- (a) The director of human resources shall be responsible for all matters relating to an equitable and uniform system of personnel administration for the city to attract the best and most competent persons available, and to assure that appointments and promotions of employees will be based on merit and fitness. The director of human resources shall:
- (1) Enforce the provisions of the federal and state non-discrimination laws in the recruitment, selection and placement of job applicants.
 - (2) Assist to negotiate labor agreements within the guidelines set forth by the city administrator and city council with employee organizations. He shall assist city departments in the administration of contract terms.
 - (3) Conduct wage and salary surveys to determine equitable salary ranges for specific classifications.
 - (4) Prepare, recommend and maintain a position classification plan; prepare job descriptions; and allocate positions to proper classifications.
 - (5) Administer wage supplement programs, including life and health insurance, educational programs, retirement, worker's compensation, unemployment compensation, sick leave and vacations.
 - (6) Develop and administer a citywide performance evaluation system during city

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employees' probationary periods.

- (7) Establish and maintain comprehensive central personnel records on all city employees.
 - (8) Develop and coordinate a citywide safety program and maintain records of all occupational injuries and illnesses.
 - (9) Consult with department heads and make recommendations regarding departmental organization and manpower utilization to the city administrator; administer manpower programs and provide technical assistance to the personnel board in its various capacities and to all departments, divisions and agencies in complying with appropriate federal, state and local laws and administrative policies.
- (b) The director of human resources shall be responsible to coordinate the administration of the personnel system with the director of finance to assure full integration of fiscal implications in the performance of assigned duties and responsibilities.

(Ord. No. 03-05, 7-3-03)

Secs. 2-327--2-335. Reserved.

DIVISION 7. DEPARTMENT OF LAW

Sec. 2-336. Powers and duties of city attorney.

The department of law shall be directed by the city attorney, who shall enforce all laws and act to protect the interests of the city and who shall:

- (1) Advise the council or its committees or any city officer in their official capacities, when thereto requested, upon all legal questions arising in the conduct of city business.
- (2) Prepare or revise ordinances when so requested by the council or any committee thereof.
- (3) Give his opinion upon any legal matter or question submitted to him by majority resolution of the council or any of its committees, or by any city officer. A copy of all opinions shall be filed with the city clerk within 72 hours of issuance.
- (4) Give his opinion upon legal matter or questions arising in the conduct of city business, submitted to him by a duly adopted resolution by any board or commission created pursuant to the provisions of the Charter.
- (5) Prepare for execution contracts and instruments to which the city is a party and shall approve, as to form, all bonds required to be submitted to the city.
- (6) In any prosecution for violation of any regulation adopted by any board or commission while acting in its official capacity or created under authority of the Charter, the city attorney shall act under the direction of such board or commission, subject to such paramount control as is given to the council by the Charter.

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- (7) Have the power to adjust, settle, compromise or submit to arbitration any action, causes of action, accounts, debts, claims, demands, disputes and matters of favor of or against the city or in which the city is concerned as debtor or creditor now existing or which may arise, not involving or requiring payment to exceed \$250.00, and with the permission of the administrator may do likewise in matters not involving or requiring payment to exceed \$1,000.00, provided the money to settle claims generally has been appropriated and is available therefor.
- (8) Make the following reports:
 - a. An immediate report of the outcome of any litigation in which the city has an interest, by issuing a copy of such report to the administrator and city clerk.
 - b. An annual report, to the administrator and council, as of December 31, of all pending litigation in which the city has an interest and the condition thereof.
- (9) Have charge of all legal services auxiliary to council action in connection with the appropriating of property to public use and in the levying of assessments.
- (10) Prepare and approve under direction and assistance of the appropriate department head all unemployment and worker's compensation litigation and shall investigate all cases in which unemployment or worker's compensation is involved and be responsible for the filing of all appropriate documents and papers required by the unemployment and worker's compensation acts of the state.
- (11) Keep the following records:
 - a. A complete record of all suits in which the city had or has an interest, giving the names of the parties, the court where brought, the nature of the action, the disposition of the case, or its condition if pending, and the briefs of counsel.
 - b. A complete record of all written opinions furnished by him and of all certificates or abstracts of titles furnished by him to the city, or any department or official thereof.
- (12) Deliver all records, documents and property of every description in his possession belonging to his office or to the city, to his successor in office.

(Ord. No. 03-05, 7-3-03)

Secs. 2-337--2-344. Reserved.

DIVISION 8. DEPARTMENT OF LIBRARY

Sec. 2-345. Created.

The department of library is hereby created.

(Ord. No. 03-05, 7-3-03)

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Sec. 2-346. Duties of library director.

The library director shall plan, direct, administer and supervise the operations of the public library; develop policies and procedures for the library; and act as a technical assistant to the board of library trustees.

(Ord. No. 03-05, 7-3-03)

Secs. 2-347--2-355. Reserved.

DIVISION 9. DEPARTMENT OF MANAGEMENT INFORMATION SERVICES

Sec. 2-356. Created.

The department of management information services is hereby created.

(Ord. No. 03-05, 7-3-03)

Sec. 2-357. Duties of the MIS director.

The director of MIS shall be responsible for:

- (1) Evaluate, design, implement and maintain the city's data processing systems;
- (2) Prepare analysis of applications and perform cost/benefit studies of various applications to resolve questions of program results; and
- (3) Compile documentation of program development and revisions.

(Ord. No. 03-05, 7-3-03)

Secs. 2-358--2-364. Reserved.

DIVISION 10. DEPARTMENT OF PLANNING AND CODE ENFORCEMENT

Sec. 2-365. Created.

The department of planning and code enforcement is hereby created.

(Ord. No. 03-05, 7-3-03)

Sec. 2-366. Duties of the director of planning and code enforcement.

The director of planning and code enforcement shall:

- (1) Administer comprehensive planning, code enforcement and land use regulation programs in the interest of the entire community.
- (2) Exercise all the powers and perform all the duties conferred on and imposed by law on the city for purposes of its development program.
- (3) Advise the city administrator and city council and planning board of all matters affecting the physical growth and development of the city.

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- (4) Provide information to the public on the planning and development programs and problems.
- (5) Integrate and coordinate all individual projects and programs relating to the planning and development of the city.
- (6) Administer the affairs of the historic preservation review board.
- (7) Perform such other duties as are prescribed by the city administrator.

(Ord. No. 03-05, 7-3-03)

Sec. 2-367. Duties of the department.

Under the supervision of the director of planning and code enforcement, the department's primary function shall be to promote and coordinate rational land use in the city in accordance with the comprehensive plan and all applicable laws and ordinances shall provide for an efficient, coordinated municipal inspection and code enforcement service. The department shall coordinate the following:

Planning:

- (1) Conduct research studies and prepare and maintain a comprehensive plan as defined in 30-A M.R.S.A. § 4301 et seq., including inventories and analyses of existing conditions, policies to address the issues raised in the inventories, including a future land use plan and strategies to implement the plan.
- (2) Promote a more rational utilization of land and other natural resources in the better arrangement of residential, commercial, industrial, recreational and other needed activity centers.
- (3) Review and prepare comments on all proposals to amend the zoning ordinance, subdivision ordinance, official map and other ordinances as may be referred to the division. From time to time, it shall make recommendations for the revision of ordinances relating to planning of the city.
- (4) Prepare and recommend, and assist other departments of the city in the planning of specific projects intended to complement the comprehensive plan.
- (5) Prepare recommendations on all proposals to acquire or dispose of municipally owned land.
- (6) Coordinate the preparation of the annual capital improvement program.
- (7) Serve as principal technical advisor and secretary to the planning board.
- (8) Perform such other duties as the city administrator may require.

Code Enforcement:

- (1) Provide the following capabilities:
 - a. Building inspection;
 - b. Property maintenance inspection;
 - c. Plumbing inspection;

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- d. Electrical inspection;
 - e. Fire inspection (in concert with the fire department);
 - f. Sanitary inspection (in concert with the health officer);
 - g. Zoning ordinance enforcement.
- (2) Provide for the cross qualification of inspectors to the extent feasible.
 - (3) Advise the public on applicable codes for all development activities.
 - (4) Provide staff services to the board of appeals as directed by the city administrator.
 - (5) Provide inspection services as required to support development programs.
 - (6) Perform such other duties as the city administrator may require.

Public Health:

- (1) The city health officer shall serve as the point of contact between the city and the state department-bureau of health. The city health officer shall serve as the hearing officer for dangerous dog declarations under this City Code and he shall execute all administrative responsibilities as directed by the city administrator.

(Ord. No. 03-05, 7-3-03)

Secs. 2-368--2-379. Reserved.

DIVISION 11. DEPARTMENT OF POLICE

Sec. 2-380. Created.

The department of police is hereby created.

(Ord. No. 03-05, 7-3-03)

Sec. 2-381. Duties of chief of police.

The chief of police shall direct the police department and shall issue such lawful orders as are necessary to assure the effective performance of the department. He shall assign officers to each division of the department. Reassignment from one division to another shall only be made by the chief of police.

(Ord. No. 03-05, 7-3-03)

Sec. 2-382. Duties of deputy police chief.

The deputy police chief shall be responsible for the planning, research and training in law enforcement and related activities of the department. He shall be responsible directly to the chief of police.

(Ord. No. 03-05, 7-3-03)

Sec. 2-383. Divisions.

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The department of police shall be divided into the following program divisions and supervisors thereof:

- (1) A patrol division supervised by a commissioned officer who shall have charge of:
 - a. The motor and foot patrol units; and
 - b. Related police investigations.
- (2) An investigation division supervised by a commissioned officer who shall have charge of:
 - a. The investigation of crimes;
 - b. The enforcement of federal, state and local laws and ordinances;
 - c. The preparation of evidence for the prosecution of criminal cases; and
 - d. The crime laboratory.
- (3) A narcotics division directed by the chief of police who shall have charge of:
 - a. The investigation of illegal drug trafficking;
 - b. Overseeing the investigation of undercover agents;
 - c. Coordinating the division's operations with the state division of special investigations; and
 - d. Receiving and transferring to the appropriate agencies all illegal drugs seized and confiscated.
- (4) A youth division directed by a supervisor who shall have charge of:
 - a. Controlling juvenile crimes and preventing juvenile delinquency;
 - b. Fostering cooperation between community and police matters concerning juveniles.
- (5) A records and traffic division directed by a supervisor who shall have charge of:
 - a. Conducting traffic studies;
 - b. The traffic educational program;
 - c. The school patrols;
 - d. The coordination of traffic accident reporting;
 - e. The issuance of various permits;
 - f. The maintenance of traffic signals and erection and maintenance of traffic signs;
 - g. The painting of street and crosswalk lanes; and
 - h. Providing direct supervision of the court officer.

(Ord. No. 03-05, 7-3-03)

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Sec. 2-384. Powers of officers.

All subordinate members of the police department, save the civilian employees, shall have and exercise within the limits of the city all the common law and statutory powers of constables, except service of civil process, and all powers given to police officers by the statutes of the state, by the Charter and by the ordinances, bylaws and regulations of the city, and such special powers as may be conferred upon them.

(Ord. No. 03-05, 7-3-03)

Sec. 2-385. Appointment of constables and officers.

The chief of police shall appoint such number of constables, who should be city residents, as he may determine for the term of one year and shall appoint all other officers for the performance of police duty as he may deem expedient.

(Ord. No. 03-05, 7-3-03)

Sec. 2-386. Certain fees to be accounted for.

All fees paid to the chief of police, lieutenants or any patrol officers in their respective capacities, from cases in the district court, and all fees received for serving subpoenas in cases involving criminal procedure in the superior court held in the county shall be accounted for by such officers, and turned into the treasury of the city when received by them.

(Ord. No. 03-05, 7-3-03)

Secs. 2-387--2-399. Reserved.

DIVISION 12. DEPARTMENT OF PUBLIC SERVICES

Sec. 2-400. Created; divisions.

The department of public services is hereby created. The department shall be divided into six divisions: The division of engineering, the division of water and sanitary sewer utilities, division of electrical, division of capital construction, the division of public buildings and the division of business and administration.

(Ord. No. 03-05, 7-3-03)

Sec. 2-401. Duties of director of public services.

The director of public services shall be responsible for all matters relating to the engineering, electrical, public buildings, capital projects team, business office and water and sanitary sewer utilities of the city.

(Ord. No. 03-05, 7-3-03)

Sec. 2-402. Divisions.

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- (1) A division of engineering which shall be supervised by the city engineer, who shall be a registered professional engineer licensed by the state. He shall be responsible to plan, design, coordinate and supervise engineering services, including construction oversight/inspection, for the department of public services and for such other departments, divisions or public agencies as may from time to time be required. He shall coordinate development of the capital plan and undertake capital planning for the department of public services and the department of public works. He shall perform other supervisory duties as may be delegated by the city administrator and director of public services.
- (2) A division of water and sanitary sewer utilities, which shall plan, coordinate and control the activities related to the operation and maintenance, and repair of water and sanitary sewers utilities including water quality, source of supply, pumping stations, treatment, reservoirs, transmission and distribution mains, collection system and assist with utility finances.
- (3) A division of electrical which shall coordinate and control the activities related to the operation and maintenance of all street lights, traffic signals, pumping stations, chemical feed facilities, SCADA, electrical inspection and other electrical issues of the city. It shall also be responsible to manage the electrical generation component of the division.
- (4) A division of capital construction which shall undertake the construction of major capital construction projects.
- (5) A division of public buildings which shall coordinate and control the activities related to the operation, maintenance, capital planning and construction of all public buildings, excluding those under the jurisdiction of the departments of education.
- (6) A division of business and administration which shall coordinate and control the activities related to the operation and maintenance of all accounts receivable, utility billing and collections, recordkeeping, accounts payable, inventory management, budget support, personnel support and issuance of permits for the department. This division shall also provide these same services to the department of public works.

(Ord. No. 03-05, 7-3-03)

Secs. 2-403--2-424. Reserved.

DIVISION 13. DEPARTMENT OF PUBLIC WORKS

Sec. 2-425. Created.

The department of public works is hereby created. The department shall be divided into four divisions: The division of highways, the division of solid waste, the division of landscaping and tree work, and the division of municipal garage.

(Ord. No. 03-05, 7-3-03)

Sec. 2-426. Duties of director of public works.

The director of public works shall be responsible for all matters relating to maintenance

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and operation of city infrastructure including highways, storm drainage, landscaping and urban forest, solid waste services and facility, and transportation and construction equipment.

(Ord. No. 03-05, 7-3-03)

Sec. 2-427. Divisions.

The department of public works shall be divided under the supervision of the director of public works into the following divisions:

- (1) A division of highways, which shall coordinate and control the activities related to the operation and maintenance of roads, streets and public ways, walks, storm drainage, bridges, street sweeping, and snow and ice control.
- (2) A division of solid waste management, which shall coordinate and control the activities related to the operation and maintenance of waste collection, processing, recycling and disposal.
- (3) A division of landscaping and tree work, which shall coordinate and control the activities related to the operation and maintenance of landscaping of city grounds and maintenance of trees and the urban forest.
- (4) A division of municipal garage, which shall coordinate and control the activities related to the operation and maintenance of transportation and construction equipment owned by city departments, divisions and agencies. It shall also assist in the acquisition of new or used public works automotive and construction equipment.

(Ord. No. 03-05, 7-3-03)

Secs. 2-428--2-434. Reserved.

DIVISION 14. DEPARTMENT OF RECREATION AND PARKS

Sec. 2-435. Created.

The department of recreation and parks is hereby created.

(Ord. No. 03-05, 7-3-03)

Sec. 2-436. Duties of director of recreation and parks.

The director of recreation and parks shall plan, promote, organize and supervise a comprehensive municipal recreation program and administer such program in the interest of the entire community, and shall:

- (1) Supervise the recreational use of playgrounds, playfields, recreation centers, swimming pools, ball diamonds and such other recreation areas and facilities as may be made available to carry out the city's recreational program.
- (2) Conduct and supervise any form of recreational, cultural or social activity that will employ the leisure time of the citizens in a wholesome and constructive

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manner.

- (3) Program and be responsible for the total operation and management of the Memorial Armory facilities.
- (4) Supervise and maintain all city athletic fields and playgrounds, under the jurisdiction of the department of recreation.

(Ord. No. 03-05, 7-3-03)

Sec. 2-437. Division of recreation.

Under the supervision of the director of recreation and parks, the division of recreation shall promote the development of a viable community by expanding recreational opportunities for all citizens of the city. (Ord. No. 03-05, 7-3-03)

Sec. 2-438. Division of public parks and cemeteries.

A division of public parks and cemeteries, which shall coordinate and control the activities related to the operation and maintenance of:

- (1) Public parks, athletic fields and playgrounds excluding those under the jurisdiction of the department of education;
- (2) All cemeteries under the jurisdiction of the city.

(Ord. No. 03-05, 7-3-03)

Secs. 2-439--2-444. Reserved.

DIVISION 15. DEPARTMENT OF SOCIAL SERVICES

Sec. 2-445. Department created.

A department of social services is hereby created under direction of the director of social services, who shall have general supervision of the interests of general assistance and social services of city residents. The department of social services shall perform all duties incidental to adequately provide for the public welfare, as overseers of the poor, and the administration of the general assistance program, and the city's immigrant and refugee services programs.

(Ord. No. 03-05, 7-3-03)

Chapter 22
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***Cross references:** Advertising, ch. 6; amusements and entertainments, ch. 10; vehicles for hire, ch. 82.

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ARTICLE I. IN GENERAL

Sec. 22-1. Purpose and intent of chapter.

In order to promote the health, safety and general welfare of its citizens, this chapter is enacted by the city to control the licensing and regulate the conduct of certain businesses and business practices.

(Code 1982, § 17-1)

Sec. 22-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Adult amusement device means any machine which, upon the insertion of a coin or the payment of consideration, operates or may be operated to depict, display, or project, directly or indirectly, pictures, photography or other visual images of specified anatomical areas or specified sexual activities.

- (1) *Specified anatomical areas* are defined as:
 - a. Less than completely and opaquely covered:
 1. Human genitals, pubic region;
 2. Buttock;
 3. Female breast below a point immediately above the top of the areola; and
 - b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
- (2) *Specified sexual activities* are defined as:
 - a. Human genitals in a state of sexual stimulation or arousal;
 - b. Acts of human masturbation, sexual intercourse, or sodomy;
 - c. Fondling of human genitals, pubic region, buttock or female breast.

Antiques means those items defined as antiques by the United States Tariff Act of 1930, as amended.

Billiard and pool halls means any place for the playing of any game of billiards, pool, bagatelle or similar game.

Blasting means the ignition, detonation or setting off of any charge or explosive or any solid, liquid or gaseous substance capable of any chemical reaction releasing energy or pressure in great force.

Bowling alley means any building, structure, enclosure or other place for the playing of bowls, candlepins, duckpins, tenpins or similar games, other than coin-operated amusement

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devices.

Business means any vocation, occupation, profession, enterprise, establishment or other kind of activity or matters, together with all devices, machines, equipment, vehicles and appurtenances used in connection therewith, any of which are conducted for profit or benefit, whether directly or indirectly, on any premises or location in this city or within its jurisdiction.

Carnival means any traveling amusement show, excluding circuses, with or without midway, rides, concessions or other specific attractions. For licensing purposes, the term "carnival" shall also include rodeos, thrill shows and freak shows.

Charitable purpose means any activity conducted without profit and for a public, medical, scientific, educational, fraternal or religious purpose.

Circus means any show in which feats of horsemanship, tumbling, strength, etc., are exhibited, excluding carnivals and harness or running horse races; any show with an enclosed ring for the exhibition of animals.

Class A lounge means any business establishment which holds a class A lounge license issued by the state bureau of alcoholic beverages for the sale of spirituous, vinous and malt liquors.

Coin-operated amusement device means any machine or device which upon the insertion of a coin may be operated by the public generally for use as a game, entertainment or amusement, whether or not registering a score, and which is operated for amusement only and does not dispense any form of payoff, prize or reward except free replays. For the purpose of licensing, the owner of the establishment where the device is located shall be the party responsible for obtaining the license.

Doing business means the selling of any goods or services, the soliciting of business or offering of goods or services for sale or hire, the maintenance or providing of any equipment or device, or the acquiring or using of any vehicle or other conveyance or any premises in the city for business purposes.

Fill-in means any goods, wares and merchandise not mentioned in the original inventory for a sale filed with the application for an auction license.

Flammable liquid means a class 1 flammable liquid as defined in the rules and regulations issued by the state insurance commissioner.

Food service establishment means any person who prepares, sells, serves or packages food for consumption on premises within the corporate limits of the city, including but not limited to restaurants, luncheonettes, diners, snackbars, drive-ins and concession stands. The term "food service establishment," for the purpose of licensing, shall include any caterer doing business within the corporate limits of the city, any lessee or subtenant of any premises, business or dominant lessor (such as recreation or amusement areas, drive-in theaters, sports arenas or public exhibition halls) who prepares, serves, sells or packages food for consumption on the premises of any such business or dominant lessor, and any person, club or other establishment offering for sale malt, spirituous or vinous liquors for consumption on the premises.

FSE--Class A means a food service establishment which holds a license issued by the state bureau of alcoholic beverages for the sale of spirituous, vinous and malt liquors, except a class A lounge.

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FSE--Class B means a food service establishment which holds a license issued by the state bureau of alcoholic beverages for the sale of malt and vinous liquors.

FSE--Class C means a food service establishment which holds a license issued by the state bureau of alcoholic beverages for the sale of malt liquor.

FSE--Class D means a food service establishment serving no malt, spirituous or vinous liquors.

FSE--Class E means a food service establishment which allows its patrons to bring their own spirituous, vinous or malt liquors for consumption on the premises.

FSE--Class F means a food service establishment operating for a period not to exceed 30 days.

FSE--Class G means a food service establishment operating for a period not to exceed three days.

Group care facility means a boarding care facility for more than eight individuals wherein children under 18 years of age or adults over 16 years of age and not legally related to the operator are provided personal care, supervision and social or rehabilitative services. Group care facilities within the meaning of this definition must be licensed by the State of Maine and may include, but are not limited to, group homes, half-way homes and congregate homes, but do not include foster family homes.

Innkeeper means anyone who operates a place where the public, for consideration, obtains sleeping accommodations and meals under one roof and which has a public dining room or rooms operated by the same management open and serving food during the morning, afternoon and evening, and a kitchen, apart from the public dining rooms, in which food is regularly prepared for the public on the same premises.

Jukebox means any machine or device which, upon the insertion of a coin, slug, token, plate or disc, may be operated by the public generally to play musical tapes or recordings or used as a musical entertainment or amusement device, and which does not dispense any payoff, prize or reward.

Junk means old iron, chains, brass, copper, tin, lead or other base metals, old rope, old bags, rags, wastepaper, paper clippings, scraps of woolens, clips, bagging, rubber and glass, and empty bottles of different kinds when less than one gross, and all articles discarded or no longer used, or a manufactured article composed of any one or more of the materials mentioned.

Junk collector means anyone dealing or trading in junk; anyone who engages in the collection, storage, transfer or sale of junk.

Licensee means any holder of a valid and current license or permit issued by the city.

Local means of or pertaining to this city.

Lodginghouse means a building or group of attached or detached buildings containing lodging and/or dwelling units for occupancy for daily or weekly periods by persons not within the second degree of kindred to the person conducting the lodginghouse with or without board, in which common kitchen or living facilities may or may not be provided. The term "lodginghouse" shall not be meant to include the dormitories of charitable, educational or philanthropic institutions or associations, or any house where lodgings are let to less than five lodgers. A

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boarding house shall be considered a type of lodging house.

Malt liquors means all kinds and types of liquors intended for human consumption produced by the fermentation of malt wholly or partially, or from any substitute therefor, which contain more than one-half of one percent of alcohol by volume.

Mobile home means a factory-fabricated structure meeting the standards of the U.S. Department of Housing and Urban Development which is built on a permanent chassis, is designed to be used as a dwelling unit and was constructed after June 15, 1976.

Mobile home park means a contiguous parcel of land with a minimum area of five acres designed and/or used to accommodate a minimum of three manufactured housing units on mobile home lots which are to be rented or leased, but not sold. The management and maintenance of a mobile home park shall be deemed to be the responsibility of a single owner or operator, with improved lots and/or services being available under a leasing arrangement.

Motion picture theater means any building or area, including drive-in parks, arenas, exhibition halls or public buildings, where commercial films, movies or motion pictures, including previews of motion pictures, closed circuit telecasts and videotape replays, are shown, or where any cinematograph or similar apparatus is kept, used or exhibited for any commercial use whatsoever.

Nursing home means a facility which is operated in connection with a hospital, or in which nursing care and medical services are prescribed by or performed under the general direction of persons licensed to practice medicine or surgery in the state, for the accommodation of convalescent or other persons who are not acutely ill and not in need of hospital care, but who do require skilled nursing care and related medical services.

Pawnbroker means any person engaged in the business of lending money on deposit or pledges of personal property or other valuable thing other than securities or printed evidence of indebtedness, or in the business of purchasing personal property, or choses in action, or other valuable thing, and selling or agreeing to sell the same back to the seller at a price other than the original price of purchase, or in the business of purchasing personal property such as articles containing gold, silver, platinum or other precious metals or jewels for the purpose of reducing or smelting them into a different form and reselling the product.

Peddler means any person traveling by foot, wagon, automotive vehicle or any other type of conveyance from place to place, from house to house, or from street to street carrying, conveying or transporting goods, wares and merchandise and offering or exposing the same or any service for sale; or who without traveling from place to place shall sell, expose or offer any goods, wares, merchandise or service for sale from any portable, mobile or temporary structure, or from a wagon, automotive vehicle or other vehicle or conveyance; or who without traveling from place to place shall sell, expose or offer for sale the same in the entrances to buildings or other premises or upon vacant lots or other tracts of land within the corporate limits of the city. The term "peddler" shall not be construed to include the following: vendors of food sold by wagon, automotive vehicle or any other type of conveyance, vendors of merchandise by sample, list or catalogue for future delivery, vendors of farm, dairy, orchard, fish and forest products of their own production, vendors of newspapers and religious literature, route salesmen while engaged in making deliveries to their regular customers, commercial travelers or selling agents who, in the usual and customary course of business, make sales to dealers, or persons duly authorized to conduct tag days, sell poppies or otherwise solicit.

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Plumbing means the art of installing in buildings the pipes, fixtures and other apparatus for bringing in the water supply and removing liquid and water-carried wastes, and shall include the necessary water piping and water connections to all types of heating apparatus using water.

Premises means all lands, buildings, structures, places and also the equipment and appurtenances connected or used therewith in any business, and also any personal property which is either affixed to, or is otherwise used in connection with, any such business conducted on such premises.

Racetrack means any fairgrounds, racetrack or field in the city which has on it any structure or grandstand with a capacity of over 100 persons and which is used by spectators at races.

Roving diner means any portable, mobile or temporary structure, and any vehicle, cart, wagon, conveyance or carrier of any kind, from which food is sold or caused to be sold, at retail, from house to house, store to store, building to building, or along or upon any sidewalk, street, park or other public property in the city; lunch wagons. The term "roving diner" shall not be construed to include caterers, vendors of dairy products, ice, bakery products, or similarly employed route salesmen while engaged in making deliveries to their regular customers or persons making deliveries on order from customers of retail stores in the city.

Secondhand dealer means any person who engages in the purchase, collection, transfer or storage for later resale, or who engages in the trading or selling, unless such sale is by auction of less than four days' duration, of any article, vehicle or material, or portion thereof, of which prior use has been made in any manner whatsoever. The term "secondhand dealer" shall not be construed to include pawnbrokers, junk collectors, used car dealers; nor shall it include any person primarily engaged in the retail sale of new and unused goods, who deals with used goods only incidentally, such as accepting such goods in trade as part of a transaction involving the sale of new goods, but only to the extent that such used goods are of the same type as the new goods sold by such person.

Shelter means a charitable facility operated by either a not-for-profit corporation or a religious organization providing free temporary overnight housing in a dormitory-style, barrack-style, or per-bed arrangement to homeless individuals.

Solicitor means any person using or upon any sidewalk, street park or other public place, or at any doorway or entranceway immediately abutting thereon, within the corporate limits of the city for the purpose of begging, collecting or soliciting alms for the poor or funds for any charitable, philanthropic, civic, musical, athletic, patriotic or related purposes.

Sound amplification means any private conveyance or carrier of any kind having, either mounted or unmounted, any electronic, mechanical or other appliance, apparatus, equipment or device used to broadcast or otherwise amplify any announcement, voice, advertisement, recording, tape or other sound for any purpose other than use during a public emergency, and traveling upon or using any street, sidewalk, park or other public place within the corporate limits of the city. The term "sound amplification" shall not be construed to include any private or public emergency vehicles used to perform a public service.

Special food handler means any person engaged in processing, storing, serving or selling food for consumption off premises.

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Spirituos liquor means any alcoholic beverage produced by distillation or if produced by any other process, strengthened or fortified by the addition of distilled spirits of any kind, intended for human consumption, which contains more than one-half of one percent of alcohol by volume.

Taxicab means a motor vehicle used for the conveyance of passengers for hire from place to place on the streets of the city, and shall include, in addition to such motor vehicles as are commonly known as taxicabs, all motor vehicles of every kind, character and description which are used as taxicabs, cabs, for-hire cars, or livery cars and engaged as such in the conveyance of passengers for hire. The term "taxicab" shall not be construed to include motor vehicles owned by undertakers and used for funeral services, motor vehicles for hire while being used for services at funerals or weddings or motorbuses.

Vinous liquor means wine.

Wrestling exhibition means any prize fight or wrestling match or event, other than boxing, exhibited publicly or open to the public, with or without an admission charge.

(Code 1982, § 17-2; Ord. No. 01-4, 4-7-01; Ord. No. 01-21, 1-10-02; Ord. No. 01-22, 1-10-02; Ord. No. 03-13, 9-4-03; Ord. No. 03-14, 9-4-03; Ord. No. 04-20, 9-9-04; Ord. No. 10-01, 3-4-10; Ord. No. 10-16, 2-3-11)

Cross references: Definitions generally, § 1-2.

Secs. 22-3--22-25. Reserved.

ARTICLE II. LICENSES

Sec. 22-26. Complying with rules and regulations, paying fee, obtaining license prerequisite to doing business.

Except as otherwise provided, no person shall engage in any business or activity, nor maintain any equipment or device, for which a license or permit is required, without having first complied with all applicable rules and regulations and having paid the proper fee and obtained a license therefor.

(Code 1982, § 17-3)

Sec. 22-27. Violations; penalty.

Each day that any person engages in any business or activity after the license fee therefor becomes due and payable, without paying such fee and securing a license as required in this chapter, shall constitute a separate offense. Each day that a person continues to operate a business in violation of any of the provisions of this chapter shall constitute a separate offense. Violators may have their licenses immediately suspended or revoked.

(Code 1982, § 17-25)

Sec. 22-28. License for each location required.

A license is required for each place or premises where a business regulated by this chapter, or any part thereof, including storage, is conducted. No licensee shall engage in such business in

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any manner at any place without first obtaining such license. The provisions of this section shall not apply to the following licenses, except that a separate license shall be required for each cart, vehicle, conveyance or other carrier employed by such licensees: peddler, solicitor, sound amplification and taxicab. (Code 1982, § 17-4; Ord. No. 01-22, 1-10-02)

Sec. 22-29. Procedure for application; payment of fees.

Except when otherwise provided by the ordinances of the city, every application for a license shall be made in writing to the city clerk upon a form to be provided by the clerk. Such application shall be signed by the applicant. The proper fee shall be paid to the clerk at the time of filing the application. (Code 1982, § 17-5)

Sec. 22-30. Business beginning after application date.

The license fee for any business shall be due and payable before such business is begun, provided, that when the licensee begins such business after the expiration of six months of the current license year, then such licensee shall be required to pay one-half the applicable yearly license fee prescribed, except as provisions otherwise require payment of the full license fee.

(Code 1982, § 17-6)

Sec. 22-31. Authority to waive fees.

The city clerk may waive fees which are prescribed by ordinance.

(Code 1982, § 17-7)

Sec. 22-32. Applicants required to furnish information.

Every applicant for a license shall furnish to the city clerk the following information:

- (1) Complete and exact name under which the business is proposed to be operated;
- (2) If the business is proposed to be operated by an individual under any assumed name, the name of such individual and his address;
- (3) If the business is a partnership, the name and address of each partner;
- (4) If the business is a corporation, the name and address of the officers of the corporation, and the location of the principal office;
- (5) Nature of the business for which a license is desired;
- (6) Proposed location;
- (7) In addition to the foregoing, the applicant shall furnish to the city clerk such other information as may be required by him in order to enable him to determine the proper classification of the applicant and the appropriate license fee.

(Code 1982, § 17-8)

Sec. 22-33. Investigation of applicants.

Wherever his approval is required or upon the request of the city clerk, the police chief may

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cause an investigation of any applicant for a license to be conducted prior to approval of such application for a license or permit. (Code 1982, § 17-9)

Sec. 22-34. Inspection of applicant's premises, merchandise.

Whenever required by the statutes of the state, the ordinances of the city or the regulations of any city department, or upon the request of the city clerk, an inspection may be made of the applicant's premises and/or merchandise by the city assessors, police chief, fire chief, health officer, building inspector or other duly authorized city official prior to approval of any application for a license or permit. In addition, the premises and/or merchandise of every licensee shall be subject to such inspection at any time during the current license year; and the results of such inspections may be grounds for the suspension or revocation of any license issued by the city. (Code 1982, § 17-10)

Sec. 22-35. Compliance with rules and regulations required; approval, disapproval by city officials, council.

- (a) All licensees and applicants for licenses are required to comply with the state statutes, city ordinances and rules and regulations of city departments which pertain to the business or activity for which a license is desired. In any case where the city requires the approval of the building inspector, health officer, police chief, fire chief or any other city official prior to issuance of the license, it shall be the duty of the city clerk to notify in writing the officials whose approvals are required. The officials so notified, or their duly delegated representatives, shall approve or disapprove the application without delay and shall note their approval or disapproval thereon, stating the reasons for any disapproval. When required by the city council, a hearing will be held at which time the council shall decide whether to approve or disapprove any application for a license or permit. It shall be the duty of the city clerk to notify the applicant of the time and place of the hearing. Such notice shall be mailed by the city clerk, postage prepaid, to the applicant at his last known address at least 48 hours prior to the date set for such hearing. The decision and order of the council on such hearing shall be final and conclusive.
- (b) Except as set forth in subsection (c) below, a license under this chapter shall be denied if the council makes a finding that:
 - (1) The applicant is a corporation which is not licensed to do business in the state;
 - (2) The applicant is a corporation, of which, at any time during the previous five years, a principal officer, or a person having an actual or beneficial ownership interest or management authority therein has been convicted of (a) any Class A, Class B, or Class C crime, or (b) a crime committed under the laws of the United States of America or of any other state or territory thereof, which is punishable (whether or not such punishment was actually imposed) by a sentence at least as harsh as that which is authorized for the commission of a Class C crime under Maine law; provided that such conviction was for an offense which is rationally related to the regulation of the business sought to be licensed;
 - (3) The applicant has been convicted of (a) any Class A, Class B or Class C crime, or (b) a crime committed under the laws of the United States of America or of any other state or territory thereof, which is punishable (whether or not such

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- punishment was actually imposed) by a sentence at least as harsh as that which is authorized for the commission of a Class C crime under Maine law; provided that such conviction was for an offense which is rationally related to the regulation of the business sought to be licensed;
- (4) The applicant has had his or her business license revoked within the five years preceding the date of the application;
 - (5) The applicant is a corporation, person or other business entity which does or will employ a person (a) who will be substantially in the ownership or management of the business and the employee's business license has been revoked within the five years preceding the application; or (b) who was a principal of any corporation whose business license has been revoked within the five years preceding the application;
 - (6) The applicant is a corporation, person or other business entity of which any person is a principal who will be substantially involved in the ownership or management of the business and the principal's business license has been revoked within the five years preceding the application;
 - (7) The proposed licensed premises or its use fails to comply with zoning or other land use ordinances;
 - (8) The proposed licensed premises or its use fails to comply with any municipal ordinance or regulation;
 - (9) There exist on or about the premises proposed to be licensed conditions such as waste disposal violations, health or safety violations or other such conditions that unreasonably disturb, interfere with, or affect the ability of persons or businesses residing or located in the vicinity of the licensed premises to use or enjoy their property in a reasonable manner;
 - (10) The applicant has knowingly furnished false or misleading information on his/her application.
- (c) In the event that the council, in an exercise of its sound discretion, determines that (a) there exist extenuating circumstances with respect to the grounds for denial of a license under subsection (b) above; or (b) that the circumstances giving rise to the denial under subsection (b) above can be ameliorated by the imposition of conditions or limitations to the grant of a license, the council may, notwithstanding the grounds set forth in subsection (b) above, grant a license to the applicant upon such conditions as the council in an exercise of its sound discretion deems to be just and appropriate.

(Code 1982, § 17-11; Ord. No. 96-5, 5-16-96)

Sec. 22-36. Licenses denied; appeal.

- (a) No license or permit shall be issued by the city clerk following a hearing at which the city council has disapproved any application for such license. The city clerk shall deny a license or permit to any person whose application was disapproved by any city official whose approval was required. No license or permit shall be issued to any person who is indebted to the city upon any claim, tax or account which is more than 60 days

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delinquent. The city treasurer shall be responsible for making available to the city clerk and any other license-issuing officers such information as is essential for compliance with this section. In case an application is disapproved, the city clerk shall then notify the applicant in writing of such denial and shall refund the fee paid in. The city clerk shall also notify the city council of such action at the next regularly scheduled meeting of the city council.

- (b) Except as otherwise provided, appeals shall be made to the council in writing, whereupon a hearing will be scheduled, at which time the applicant shall have the right to be heard. It shall be the duty of the city clerk to notify such applicants who have appealed, of the time and place of the hearing. Such notice shall be mailed by the city clerk, postage prepaid, to the applicant at the address furnished on the application form at least 48 hours prior to the date set for hearing. The city council may, at that time, approve any application previously denied by the affirmative vote of five or more members of the council.

(Code 1982, § 17-12)

Sec. 22-37. Issuance of licenses.

Except where the ordinances of the city require a license to be signed by some other official or where otherwise provided for by the city council, the city clerk shall issue all licenses for which an application has been submitted and approved.

(Code 1982, § 17-13)

Sec. 22-38. Display of licenses.

Every license shall be kept prominently displayed at the place of business of the licensee named in the license, or, in the case of equipment licenses, the license shall be affixed to such machines or equipment as required to allow such license to be inspected at any time by any proper city official.

(Code 1982, § 17-14)

Sec. 22-39. Change of location of licensed business.

No license issued in accordance with the provisions of this chapter for the conduct of any business at a fixed place designated in the license issued therefor shall be valid for the conduct of such business at any place other than that designated in such license.

(Code 1982, § 17-15)

Sec. 22-40. Nontransferability.

Every license issued by the city shall be a personal privilege and shall not be assignable or transferable.

(Code 1982, § 17-16)

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Sec. 22-41. Duration of licenses; expiration date.

All licenses, except when otherwise provided, shall be for 12 months' duration and shall expire according to the following schedule:

Adult amusement device.....	June
Billiard and pool rooms.....	November
Bowling alley.....	April
Class A lounge.....	One year from date of issuance
Coin-operated amusement devices.....	June
Flammable liquid.....	June
Food service establishment.....	April
Group care facility.....	February
Innkeepers.....	February
Junk collectors.....	November
Lodginghouse operator.....	February
Motion picture theater.....	April
Pawnbroker.....	September
Peddler.....	April
Roller skating rink.....	April
Roving diner.....	April
Secondhand dealer.....	September
Special food handlers.....	April
Taxicabs.....	February

(Code 1982, § 17-17; Ord. No. 98-11, 11-19-98; Ord. No. 01-21, 1-10-02; Ord. No. 03-13, 9-4-03)

Sec. 22-42. Licensees responsible for compliance with rules, regulations; duty to cooperate with city officials.

It shall be the responsibility of the licensee of establishments regulated by this chapter to make certain that all rules and regulations prescribed by this chapter and the statutes of the state are complied with, and each licensee shall cooperate fully with city officials to enforce such regulations.

(Code 1982, § 17-18)

Sec. 22-43. City officials to notify police of violators; prosecutions.

- (a) Any city official having knowledge of any person operating any business or activity regulated by this chapter without the required license, or violating any state or local

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regulations, shall furnish the chief of police the name of such person.

- (b) It shall be the duty of the chief of police to commence proceedings against the offenders under the provisions of this chapter.

(Code 1982, § 17-19)

Sec. 22-44. Suspensions and revocations; hearings.

- (a) Where provided, duly authorized city officials shall have the power to temporarily suspend licenses when continued operation of the licensed business or activity presents a danger to the health, safety or general welfare of the public. Any license issued by the city may be suspended or revoked by the city council and any license fees retained by the city, upon a finding by the council that the licensee has violated the ordinances of the city or the laws of the state, or has willfully or persistently failed to comply with any applicable rules and regulations. Any action to suspend or revoke a license may be commenced upon the initiative of the council, upon the recommendation of any city official charged with approving, inspecting or otherwise regulating the licensee's business or activity, or upon complaint from any resident of the city.
- (b) Prior to suspending or revoking a license, the city council shall hold a hearing at the regular meeting of the council or a special meeting thereof called for that purpose. At such a meeting, the licensee shall have the right to be heard. Notice of the hearing for suspension or revocation of a license shall be given in writing, setting forth specifically the grounds of the complaint and the time and place of the hearing. Such notice shall be mailed by the city clerk, postage prepaid, to the licensee at his last known address at least 48 hours prior to the date set for hearing. The decision and order of the city council at such hearings shall be final and conclusive.

(Code 1982, § 17-20)

Sec. 22-45. Exemptions to licensing provisions generally.

- (a) Persons acting pursuant to an order or process of a court of competent jurisdiction and persons acting in accordance with their powers and duties as public officers, such as sheriffs and marshals, shall not be required to secure a local license.
- (b) Orphanages and public and private hospitals, as defined in the ordinances of the city and the laws of the state, shall not be required to secure a local license to operate a children's home or day care facility.
- (c) Needy and disabled honorably discharged veterans shall be exempt from the payment of the fee for a peddler's license upon presenting proof of at least 50 percent disability.
- (d) Persons selling, exclusively, farm, dairy, orchard or fish products of their own production shall not be required to obtain a local license.
- (e) No charge shall be made for the issuance of a solicitor's license, blasting permit or chimney cleaner permit.
- (f) Persons licensed in accordance with state statutes to maintain an automobile graveyard or junkyard shall not be required to obtain a local license to also operate as a junk collector.

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- (g) Food service establishments and special food handlers operating more than one such business under the same roof and under the same management need obtain only one license, provided that where such person is engaged as both a food service establishment and a special food handler, a special food handler's license shall be insufficient to include the food service establishment's operation and the license required shall be that required for a food service establishment.
- (h) Persons traveling by foot, wagon, automotive vehicle or any other type of conveyance, from place to place, from house to house or from street to street selling magazines or other merchandise by sample, list or catalogue for future delivery shall not be required to obtain a local peddler's license, but such persons shall be required to register with the police department.
- (i) Persons who use their own homes to provide foster care to children shall not be required to obtain a local license.
- (j) Public or private school cafeterias and nursing homes shall not be required to obtain a local food service establishment license.

(Code 1982, § 17-21; Ord. No. 98-11, 11-19-98)

Sec. 22-46. Schedule of fees.

The fees for business licenses shall be paid by the owner or his agent in accordance with the business fee schedule established by the city council.

(Code 1982, § 17-22; Ord. No. 98-11, 11-19-98; Ord. No. 01-4, 4-7-01; Ord. No. 01-21, 1-10-02; Ord. No. 01-22, 1-10-02; Ord. No. 02-14, 8-29-02)

Sec. 22-47. Regulation of business days and hours of class E food service establishments.

- (a) No liquor shall be consumed in a class E food service establishment except as provided in this section.
 - (1) Liquor may be consumed in any class E food service establishment between the hours of 6:00 a.m. and 1:15 a.m. except as provided in this section.
 - (2) No liquor shall be consumed in any class E food service establishment between the hours of 1:15 a.m. and 6:00 a.m. and between 1:15 a.m. and 12:00 noon on Sundays.
 - (3) Licensees of class E food service establishments may permit the consumption of liquor on their premises on January 1 of any year until 2:15 a.m.
 - (4) Liquor may be consumed in class E food service establishments on the day of holding a general election or statewide primary after the city polls have closed.
 - (5) No liquor shall be consumed in a class E food service establishment on Memorial Day prior to 12:00 noon.
- (b) As used in this section, the word "liquor" means and includes any alcoholic, spirituous, vinous, fermented or other alcoholic beverage, or combination of liquors and mixed liquors, intended for human consumption, which contains more than one-half of one percent alcohol by volume.

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- (c) Any licensee of a class E food service establishment, by himself, clerk, servant or agent, who permits the consumption of liquor on his premises in violation of this section shall be guilty of an offense.

(Code 1982, § 17-23)

Sec. 22-48. Group care facilities.

It shall be the responsibility of the licensee of a group care facility to ensure that such facility is in compliance with the following regulations:

- (1) The building must be kept in good repair and free of safety hazards.
- (2) The grounds and accessory building or structure must be kept in a safe, sanitary and presentable condition. Grounds shall be kept free from refuse and litter, as well as insect and rodent breeding areas.
- (3) Each licensed group care facility shall maintain staff sufficient to keep the building, accessory buildings or structures and grounds in compliance with this section.
- (4) Each facility shall have sufficient trained staff present at all times to properly supervise its operation.
- (5) The licensee is responsible for the prevention of activities constituting a nuisance or annoyance injurious to the health, safety or comfort of the citizens of the city.

(Code 1982, § 17-24)

Sec. 22-49. Adoption of State of Maine Rules.

For the purpose of protecting the public health the City hereby adopts and enacts the following State of Maine Rules:

- (1) State of Maine Food Code 2001 as adopted by the Maine Department of Human Services 10-144 CMR 200 and the Maine Department of Agriculture, Food and Rural Resources 01-001 CMR 331 May 1, 2001.
- (2) Rules Relating to Lodging Establishments, Department of Health and Human Services, Maine Centers for Disease Control and Prevention, Division of Environmental Health 10-144 CMR 206 January 1, 2003.
- (3) Rules Relating to the Administration and Enforcement of Establishments Licensed by the Health Inspection Program, Department of Health and Human Services, Maine Center for Disease Control and Prevention, Division of Environmental Health Inspection Program 10-144 CMR Chapter 201 October 7, 2012.

(Ord. No. 12-12, 11-16-12; Ord. No. 13-1, 2-21-13)

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Secs. 22-50--22-70. Reserved.

ARTICLE III. AUTOMOBILE GRAVEYARDS AND JUNKYARDS

Sec. 22-71. Purpose.

The purpose of this article is to provide adequate controls to ensure that the establishment, operation and maintenance of automobile graveyards and junkyards do not have a deleterious impact on the natural environment or the public health, safety and general welfare.

(Code 1982, § 17-160)

Sec. 22-72. Applicability.

This article shall apply to any automobile graveyard or junkyard all or part of which is within the city, except those owned or operated by the city.

(Code 1982, § 17-161)

Sec. 22-73. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Aquifer means a geological formation composed of rock or sand and gravel that stores and transmits significant quantities of recoverable water, as mapped by the state geological survey.

Automobile graveyard means a yard, field or other area used as a place of storage, other than temporary storage, by an establishment or place of business which is engaged primarily in doing auto body repair work for the purpose of making repairs to render a motor vehicle serviceable, for three or more unserviceable, unregistered and/or uninspected, discarded, wornout or junked motor vehicles as defined in 29-A M.R.S.A. section 101, subsection 42, or parts thereof, referred to in this article as "vehicle" and includes an area used for automobile dismantling, salvage and recycling operations.

Classified waterway means surface water, inland or tidal, and direct or indirect tributaries thereof, which is described and designated by distinct category by the state department of environmental protection pursuant to 38 M.R.S.A. § 363-A or 38 M.R.S.A. § 364.

Floodplain means the low land and relatively flat areas adjoining inland and coastal waters, including floodprone areas of offshore islands, which are inundated by a flood that has a one percent or greater chance of recurring in any year or a flood of magnitude equaled or exceeded once in 100 years on the average as identified by the Federal Insurance Administration.

Junkyard means a yard, field or other area used as a place of storage for:

- (1) Discarded, wornout or junked plumbing, heating supplies, household, appliances and furniture;
- (2) Discarded, scrapped and junked lumber;

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- (3) Old or scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, waste and all scrap iron, steel and other scrap ferrous or nonferrous material; and
- (4) Garbage dumps, waste dumps and sanitary fills;

all of which are referred to in this article as "junk."

(Code 1982, § 17-162; Ord. No. 04-24, 2-3-05) **Cross references:** Definitions generally, § 1-2.

Sec. 22-74. Permit required.

- (a) No person shall establish, operate or maintain, and the owner of property shall not permit the establishment, operation or maintenance of, any junkyard or automobile graveyard all or any part of which is within the city without first obtaining a permit therefor in accordance with the provisions of this chapter and 30-A M.R.S.A. § 3752 et seq.
- (b) All permits issued under this article shall be approved by the city council and issued by the city clerk.
- (c) All permits issued under this article shall be for a term not to exceed one calendar year, which expires on the first day of the year next following unless earlier suspended or revoked.
- (d) In addition to the application fee provided for in this article, the fee required for the issuance of any permit under this article shall be paid in advance in the amount provided for in 30-A M.R.S.A. § 3756.

(Code 1982, § 17-163)

Sec. 22-75. Administration.

- (a) *Conditions of approval.* The city council may impose conditions on the approval of any permit application under this article to ensure compliance with the provisions of this chapter. Such conditions may include, but are not limited to, the following:
 - (1) The applicant provide documentation to the city clerk of the receipt of any approvals required by any federal or state agency or department pursuant to federal or state law prior to the issuance of any permit under this article.
 - (2) The applicant provide documentation to the city clerk of the receipt of any approvals required by any city board pursuant to this Code prior to the issuance of any permit under this article.
 - (3) Any screening requirements imposed pursuant to the provisions of this chapter be installed and completed prior to the issuance of any permit under this article.
- (b) *Contents of application.* All applications for permits under this article shall be filed with, and in a form satisfactory to, the city clerk. Such application shall include, but is not limited to, the following:
 - (1) Name, address and contact information including a phone number of the applicant and all other persons having a legal interest in the property.
 - (2) The location of the premises for which a permit is sought by identification of city tax map number and street address.

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- (3) The dimensions and acreage of the property.
 - (4) An original and three copies of a site plan, drawn to a scale of 100 feet or less to the inch, which contains the following information:
 - a. The boundary lines of the property for which a permit is sought.
 - b. The location of all existing and proposed buildings and structures.
 - c. The location of all existing and proposed areas within which all vehicles and junk will be located.
 - d. The location of any aquifer or classified waterway on the property or within 300 feet thereof.
 - e. The location of any water bodies on the property or within 300 feet thereof.
 - f. The location of any floodplain areas located on the property.
 - g. The location and characteristics of all existing and proposed vegetation which is proposed to be maintained for required screening.
 - h. The location and characteristics of all existing and proposed fencing proposed to be maintained for required screening.
 - i. The location of any residences, private wells or schools within 300 feet of the property.
 - j. The characteristics of the soils existing on the property as determined by the soil conservation service soils survey map.
 - k. The contours of the property as determined by the U.S. Geological Survey Contour Map.
 - l. The location and characteristics of all vehicular entrances and exits serving the property.
 - (5) A statement as to whether approval by any state agency or department is required pursuant to state law and, if so, a copy of the required license and/or approval.
 - (6) A nonrefundable application fee in accordance with the city's policy manual as approved by the city council.
- (c) *Compliance standards.* The following standards shall govern the issuance of permits under this article and the operation and maintenance of all permitted premises:
- (1) An effective visual screen at least six feet in height shall be located and maintained around all sides of the area where vehicles or junk are to be located such that these areas are entirely screened from ordinary view from all directly abutting properties and public ways at all times.
 - (2) All screening and location requirements of 30-A M.R.S.A. § 3754-A and § 3755-A shall be satisfied. There shall be no vehicles or junk stored outside the screened area.
 - (3) No vehicle or junk shall be stored within 300 feet of any water body, aquifer or

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classified waterway.

- (4) No vehicles or junk shall be stored within 300 feet of any residence, private well or school.
- (5) No vehicles or junk shall be stored within a floodplain.
- (6) Upon receiving a motor vehicle, the fuel tank and battery shall be removed and the fuel, engine lubricant, transmission fluid, brake fluid and engine coolant shall be drained into watertight, covered containers and shall be recycled or disposed of according to all applicable federal and state laws, rules and regulations regarding disposal of waste oil and hazardous materials. No discharge of any fluids from any motor vehicle or junk shall be permitted into or onto the ground.
- (7) No vehicles or junk shall be located closer than 100 feet from all lot lines of the property.
- (8) All dismantling of motor vehicles with power tools shall take place within a building.
- (9) All federal and state hazardous waste laws and regulations shall be satisfied.
- (10) All vehicular entrances and exits shall be located and constructed in a manner which does not create or aggravate a traffic safety hazard.
- (11) No noise, vibration, glare, fumes or odor shall be emitted which is detectable to the normal senses from any abutting property.

Upon recommendation of the director of planning and code enforcement, the city council may waive compliance with any of the above standards when both the director of planning and code enforcement and the city council determine that strict compliance therewith is not necessary to accomplish the purposes of this article.

- (d) *Nonconforming uses.* Any automobile graveyard or junkyard in existence and for which a valid permit was in effect on the effective date of the ordinance from which this article derives may remain in operation in its present location, pending the expiration of such permit, so long as such use complies with the provisions of 30 M.R.S.A. § 3751 et seq. Thereafter, such automobile graveyard or junkyard shall be required to comply with all the provisions of this article except those compliance standards contained in subsections (c)(3), (4), (5), (7), (8) and (10) of this section. Any expansion of such junkyard or automobile graveyard beyond the size which existed and for which a valid permit was in effect on the effective date of this article shall comply with all provisions of this article.

(Code 1982, § 17-164; Ord. No. 04-24, 2-3-05; Ord. No. 08-06d, 8-14-08)

Sec. 22-76. Penalty for violation of article.

Any person who violates any provision of this article or the terms of any permit issued under this article may be penalized in the following manner:

- (1) *Temporary suspension.* The city clerk is authorized, pursuant to section 22-44, to immediately and temporarily suspend any permit when continued operation of the permitted premises or activity presents a danger to the health, safety or the general

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welfare of the public.

- (2) *Suspension or revocation.* The city council may suspend or revoke a permit in accordance with the provisions of section 22-44 and 30-A M.R.S.A. § 3758-A and/or 30-A M.R.S.A. § 4452.
- (3) *Civil penalties.* The violator may be required to pay the penalties imposed by section 1-8 or 30-A M.R.S.A. § 3758 and 30-A M.R.S.A. § 4506, whichever are greater, as well as reasonable attorney fees, expert witness fees and costs pursuant to 30-A M.R.S.A. § 4506 and 30-A M.R.S.A. § 4452.

(Code 1982, § 17-165; Ord. No. 04-24, 2-3-05)

Secs. 22-77--22-95. Reserved.

ARTICLE IV. RESERVED*

***Editor's note:** Ord. No. 03-13, effective Sept. 4, 2003, repealed art. IV, § 22-96, in its entirety. Formerly, said article pertained to children's homes and child care facilities record book as enacted by Code 1982, § 17-6.

Secs. 22-96--22-120. Reserved.

ARTICLE V. FLEA MARKETS

Sec. 22-121. Purpose.

The purpose of this article is to regulate the issuance of permits for conducting so-called flea markets.

(Code 1982, § 17-41)

Sec. 22-122. Defined.

The term "flea market" means the selling or offering for sale, to the public, of any services, goods, wares and merchandise or personal property by three or more individuals, groups or organizations from or at one location.

(Code 1982, § 17-42)

Cross references: Definitions generally, § 1-2.

Sec. 22-123. Permit required; application.

No flea market shall be conducted without a permit, which shall be obtained as follows:

- (1) A permit shall be obtained by the owner or duly authorized agent of the premises where the flea market is to be located by submitting a completed application to the city clerk's office upon forms provided for such purpose.
- (2) The fee for a flea market permit shall be paid in accordance with the business fee schedule as established by the city council.

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(Code 1982, § 17-43; Ord. No. 92-7, 3-19-92; Ord. No. 04-15, 7-15-04)

Sec. 22-124. Provisions of section 22-2 not applicable.

Notwithstanding the provisions relating to peddlers under section 22-2, individual participants in a flea market need not secure a peddler's license.

(Code 1982, § 17-44)

Secs. 22-125--22-145. Reserved.

ARTICLE VI. FOOD SERVICE ESTABLISHMENTS*

***State law references:** Food and food handlers generally, 7 M.R.S.A. § 401 et seq., 22 M.R.S.A. §§ 2491--2501, 30-A M.R.S.A. § 3931, 32 M.R.S.A. §§ 1751--1854.

DIVISION 1. GENERALLY

Sec. 22-146. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Food means and includes all liquid or solid substances intended for human consumption.

(Code 1982, § 12-1)

Cross references: Definitions generally, § 1-2.

Sec. 22-147. License required.

No person shall engage in, operate or conduct the business of the manufacture, preparation, sale or service of food in the city unless such person has first acquired a license in accordance with articles I and II of this chapter.

(Code 1982, § 12-2)

Sec. 22-148. Suspension of license; appeal.

- (a) A license granted pursuant to this article may be temporarily suspended at any time by the health officer of the city upon satisfactory evidence that food is being manufactured, prepared, sold or served in an unsanitary manner or in a manner not conducive to public health. The licensee shall have the right to appeal such suspension to the council, such appeal to be heard at the next regular meeting of the council.
- (b) The health officer shall have discretion to remove the suspension and reinstate the license under this article prior to the hearing of the appeal upon finding that the unsanitary conditions have been remedied.

(Code 1982, § 12-3)

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Sec. 22-149. Sanitary conditions required.

Every person owning, managing or operating an establishment or business where food is manufactured, prepared, sold or served to the public in the city shall at all times keep the premises and all fixtures, appliances and utensils in a clean and sanitary condition.

(Code 1982, § 12-4)

Sec. 22-150. Running water, toilet facilities required.

Every establishment or business where food is manufactured, prepared, sold or served to the public in the city shall be provided with an adequate supply of hot and cold running water under pressure from the public mains where such is available, and shall be equipped with proper lavatory and toilet facilities convenient, accessible and sufficient to ensure the comfort and cleanliness of its employees; and where both male and female help are employed, the health officer may require separate toilets, lavatories and dressing rooms to be installed for the use of either sex.

(Code 1982, § 12-5)

Sec. 22-151. Diseased and unhealthy employees.

No person afflicted with any eruptions, ulcerations or running sores, and no person afflicted with any communicable disease, shall be employed in any establishment where food is manufactured, prepared, sold or served to the public.

(Code 1982, § 12-6)

Sec. 22-152. Certificate of health required.

Every person employed in any establishment where food is manufactured, prepared, sold and served to the public shall, when required by the health officer, file with such health officer, as evidence of good health, a certificate of examination by a reputable and competent physician, attesting to the fact that such person is not afflicted with active tuberculosis, any venereal disease or other communicable disease.

(Code 1982, § 12-7)

Sec. 22-153. Physician's duty.

It shall be the duty of every physician attending a case of venereal disease, tuberculosis or any other communicable disease, in any person employed in or about any establishment where food is manufactured, prepared, sold or served to the public, to notify at once, in writing and over his signature, the health officer. Such notification in the case of a venereal disease shall not be made part of any record accessible to the general public, but may be used as evidence in any prosecutions initiated by the health officer for failure to comply with the provisions of this article.

(Code 1982, § 12-8)

Sec. 22-154. Exceptions to article.

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- (a) The requirements of section 22-150 may be waived if the health officer determines that such a waiver will not create a hazard to public health.
- (b) The provisions of this article shall not apply to any person who makes delivery of foodstuffs to customers on order from an established and regular place of business located in the city or to route salesmen while making deliveries of foodstuffs to their regular customers.

(Code 1982, § 12-23)

Secs. 22-155--22-165. Reserved.

DIVISION 2. SPECIAL FOOD HANDLERS AND ROVING DINERS

Sec. 22-166. Intent and purpose.

It is the intent and purpose of this division to establish minimum regulations for special food handlers and roving diners, where food is sold within the corporate limits of the city.

(Code 1982, § 12-19)

Sec. 22-167. Approval of health officer, license required.

No person shall operate a roving diner nor maintain, or otherwise engage in, any business as a special food handler or food service establishment without having first secured the approval of the health officer and obtained a license in accordance with the provisions of this article and those of articles I and II of this chapter.

(Code 1982, § 12-20)

Sec. 22-168. Display of license or permit.

Any person authorized to do business in accordance with this division as a roving diner shall have displayed in a conspicuous place on the lefthand side of each vehicle, cart, conveyance or carrier used in such business a plate showing that a license or permit has been obtained.

(Code 1982, § 12-21)

Sec. 22-169. Pushcarts, roving diners in streets and public places.

- (a) Pushcarts licensed as roving diners may be operated in the streets, ways and public places in accordance with the provisions of this section. For the purpose of this section, the term "public places" shall include public parks and grounds.
- (b) No pushcart shall be operated or stationed:
 - (1) In the roadway as defined in chapter 66 of this Code, except when specifically authorized to do so by the chief of police on a street which has been blocked to vehicular traffic for purposes of a public event.
 - (2) Within 100 feet, measured by the most direct line, of any part of a food service

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establishment having a fixed location.

- (3) On the premises of a public school.
 - (4) In Kennedy Park, with the exception of licensed roving diners who serve as vendors as part of an approved farmer's market.
 - (5) In such a manner as to unreasonably obstruct the normal flow of pedestrian traffic or to expose any pedestrian to a risk of injury.
 - (6) On any city sidewalk where the remaining pedestrian travel path is less than six feet.
 - (7) In such a way that any part of the equipment overhangs over private property, unless the owner of the pushcart has authorization from the property owner in writing.
- (c) No pushcart shall be operated or stationed in, on or within 50 feet of any area subject to an exclusive franchise granted by the city. The city clerk shall maintain a list of such areas and shall advise operators of pushcarts of the location thereof.
 - (d) Operators of pushcarts shall provide waste paper receptacles for use by their customers and shall maintain the areas in which they operate free of litter generated by their business.
 - (e) A license to operate a pushcart in the streets, ways and public places pursuant to this division may be suspended by the city clerk upon three days' written notice and hearing, for a period of five days, for a violation of any provision of this section and may be revoked by the municipal officers upon five days' written notice and hearing, for repeated violations of the provisions of this section.

(Code 1982, § 12-22; Ord. No. 91-3, § 1, 4-5-91; Ord. No. 04-12, 6-3-04)

Secs. 22-170--22-190. Reserved.

ARTICLE VII. JUNK COLLECTORS, PAWNBROKERS AND SECONDHAND DEALERS

Sec. 22-191. License.

- (a) No person shall conduct business as a pawnbroker, junk collector or secondhand dealer without first obtaining a license pursuant to the following provisions:
 - (1) The city clerk shall issue a license to conduct business as a pawnbroker, junk collector or secondhand dealer to any person over the age of 21 who demonstrates that he:
 - a. Has no record of criminal convictions for crimes of moral turpitude, dishonesty or fraud; and
 - b. Possesses adequate financial resources.
 - (2) A license shall be obtained by the owner or duly authorized agent of the premises where the business is to be located ("licensed business location") by submitting a

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completed application to the city clerk's office upon forms provided for such purposes.

- (b) The fee for such licenses shall be set from time to time and a schedule of such fees shall be on file and available in the city clerk's office.
- (c) Before any pawnbroker, secondhand dealer or junk collector license shall be issued to any person that does not maintain a permanent business location in the City of Lewiston, the person shall file with the city clerk a surety company performance bond in the sum of five thousand dollars (\$5,000.00), the form of which bond shall be approved by the city clerk. It shall be a condition of such bond that the principal named therein shall observe and abide by all laws, regulations and City ordinances regulating pawnbrokers, secondhand dealers and junk collectors, and shall account for and retain any merchandise, article or property which comes into their possession through their business as such pawnbroker, secondhand dealer or junk collector in accordance with the requirements of this Article.
- (d) Any license issued pursuant to this provision shall be valid for one year only.
- (e) Any person denied a license to conduct a pawnbroking, junk collector or secondhand dealer business may appeal the denial to the city council by filing a notice of appeal with the office of the city clerk within 30 days of the date of any such denial.

(Code 1982, § 17-70; Ord. No. 11-06, 8-18-11)

Sec. 22-192. Account of business done and disclosure to consumer.

- (a) *Account kept.* Every pawnbroker shall maintain records in which the pawnbroker shall enter:
 - (1) The date, duration, amount, periodic rate of interest and annual percentage rate of every loan that is made;
 - (2) The finance charge, due dates for payment and the total payment needed to redeem or repurchase the pawned property;
 - (3) An accurate account and description of the property pawned;
 - (4) The terms of redemption or repurchase, including any reduction in the finance charge for early redemption or repurchase and the right of the consumer to at least one extension of 31 days at the same rate of interest upon request in writing or in person; and
 - (5) The name and address of the consumer.
- (b) *Inspection.* The pawnbroker shall allow the municipal officers to inspect these records at all reasonable times.
- (c) *Delivery to consumer.* At the time of the pawn transaction, the pawnbroker shall deliver to the consumer a signed, written disclosure complying with the truth-in-lending provisions of the Maine Consumer Credit Code, 9-A M.R.S.A. § 8-101 et seq. containing the items required by subsection 1 and the name and address of the pawnbroker.

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(Code 1982, § 17-71)

Sec. 22-193. List of transactions; seller to furnish proof of identification.

- (a) Every person licensed as a junk collector or secondhand dealer shall make out, and have available for periodic collection, a legible and correct list, upon a format furnished by the police chief, containing an accurate description of all articles taken in pawn, purchased, or taken in exchange, the name, residence and date of birth of the buyer or seller other than the licensee, together with the correct and exact time when such articles were pawned or purchased, and the amount the item was sold for. Before recording the information required by this section, a dealer shall require reasonable written proof of the seller's identification in the form of a motor vehicle operator's license, military identification card, adult liquor identification card or similar item which confirms the person's identification by date of birth and by physical description.
- (b) Alternative compliance mechanism for secondhand dealers. In lieu of the requirements set forth in subsection (a), a secondhand dealer is in compliance with this section with respect to certain secondhand goods if it establishes and maintains the following system for identifying and reporting the purchase of such goods:
 - (i) *Application to low value goods.* This section shall apply only with respect to individual secondhand goods of a mass manufacture process with no specific individual identifying feature, valued at or below \$20, provided the total value of secondhand goods sold by a person to the dealer within a 30 day period does not exceed \$100. Any sale of a secondhand good in excess of the limits established in this paragraph must comply with the requirements set forth in subsection (a) of this section.
 - (ii) *Goods with serial number.* This section shall not apply to a second hand good displaying a readily identifiable serial number or similar registration number, or any other personalized identifying characteristic marking having been uniquely applied. Any sale of a secondhand good with an identifiable number, along with all other secondhand goods sold at such time by the same individual, must comply with the requirements set forth in subsection (a).
 - (iii) *Record retention.* With respect to any sale of secondhand goods under this subsection, the dealer shall maintain records of each secondhand good purchased by the dealer, the date of the purchase, and the name and address of the person selling the good to the dealer. Records may be retained in electronic form.
 - (iv) *Transmittal to police department.* No later than the 15th day of each calendar month, the dealer shall transmit to the chief of police, or the chief's designee, the purchase records collected by the dealer under subparagraph (iii) during the prior calendar month. Transmittal may be provided in electronic form.
 - (v) *Identification of seller.* At the time of purchase of a secondhand good by a dealer, the dealer shall verify the name, address, and date of birth of the person making the return using reasonable means of identification as

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described in subsection (a).

- (vi) *Definitions.* For purposes of this section, the term “purchase” includes the provision by the secondhand dealer of any item or thing of value in exchange for the acquisition of a secondhand good.

(Code 1982, § 17-72; Ord. No. 10-01, 3-4-10; Ord. No. 12-08, 7-19-12)

Sec. 22-194. Receiving articles from minors, thieves.

No one licensed pursuant to this article shall purchase or receive any article from any person under the age of 18 years without the written consent of such person's parent or guardian, from any person known by the licensee to be a thief or a receiver of stolen property, or from any person whom the licensee has reason to believe to be a thief or receiver of stolen property.

(Code 1982, § 17-73; Ord. No. 12-08, 7-19-12)

Sec. 22-195. Retention of articles purchased.

- (a) Articles purchased by anyone licensed in accordance with the provisions of this article, excepting pawnbrokers, shall be retained by such licensee in the same condition in which they were obtained and in an accessible place at the licensed business location where such articles can be examined and inspected for at least 15 days before they are disposed of. This paragraph does not apply with respect to the sale of any secondhand good or goods which conforms to the requirements of section 22-193(b).
- (b) No pawnbroker shall sell, destroy or alter any property pawned until it has remained in his possession for the duration of time as required by this article, unless forfeited in writing by the customer.

(Code 1982, § 17-74; Ord. No. 10-01, 3-4-10; Ord. No. 11-06, 8-18-11; Ord. No. 12-08, 7-19-12)

Sec. 22-196. Periodic inspections of junkyards.

The police chief shall be responsible for inspection of all junkyards periodically and shall report immediately to the council any violation of the license conditions of this article.

(Code 1982, § 17-75)

Secs. 22-197--22-220. Reserved.

ARTICLE VIII. MOBILE HOME PARKS

Sec. 22-221. License required to operate.

- (a) It shall be unlawful for any person to operate and maintain any mobile home park within the city unless such person holds a valid license issued annually by the city council in the name of such person for the specific mobile home park. All applications for licenses shall be made at the city clerk's office, where the city clerk shall issue a license upon compliance by the applicant with the provisions of this section and regulations issued under this section and of the applicable legal requirements.

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- (b) Every person holding a license to operate a mobile home park shall give notice in writing to the city council within 72 hours after having sold, transferred, given away or otherwise disposed of interest in or control of any mobile home park. Such notice shall include the name and address of the person succeeding to the ownership or control of such mobile home park. A license is a personal privilege and is not assignable or transferable.
- (c) Application requirements:
- (1) Application for original licenses shall be made only after the proposed mobile home park has been approved by the planning board and shall be in writing, signed by the applicant as to the truth of the application, and accompanied by the deposit of a fee according to the business fee schedule as established by the city council; and such application shall contain:
 - a. The name and address of the applicant;
 - b. The location and legal description of the mobile home park;
 - c. A site plan of the mobile home park showing all mobile home lots, structures, roads, walkways and other facilities.And in addition to the foregoing, the applicant shall furnish to the city clerk such other information as may be required by this article.
 - (2) Applications for renewals of licenses shall be made in writing by holders of the licenses, shall be accompanied by the deposit of a fee according to the business fee schedule as established by the city council; and shall contain any change in the information submitted since the original license was issued or the latest renewal granted.
- (d) Any person whose application for a license to operate and maintain a mobile home park has been denied may request, and shall be granted, a hearing on the matter before the city council under the procedure provided by section 22-223 and from the city council to the superior court.
- (e) Whenever, upon inspection of any mobile home park, the director of code enforcement or his designee finds that conditions or practices exist which are in violation of any provision of this article or regulations issued under this article or appendix A of this Code, he shall report such to the city council, which shall direct the director of code enforcement to communicate in writing in accordance with section 22-223 to the person to whom the license was issued that unless such conditions or practices are corrected within a reasonable period of time specified in the notice by the city council, the license shall be suspended. At the end of such period, the director of code enforcement or his designee shall reinspect such mobile home park and, if such conditions or practices have not been corrected, he shall report such to the city council, which will suspend the license and give notice in writing of such suspension to the person to whom the license is issued. Upon receipt of notice of such suspension, such person shall cease operation of such mobile home park except as provided in section 22-223.

(Code 1982, § 17-167; Ord. No. 04-15, 7-15-04)

Sec. 22-222. Inspections; access.

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- (a) It shall be the duty of the owners or occupants of mobile home parks and mobile homes contained therein, or of the person in charge thereof, to give the director of code enforcement or his designee free access to such premises at reasonable times for the purpose of inspection.
- (b) It shall be the duty of every occupant of a mobile home park to give the owner thereof or his agent or employee access to any part of such mobile home park or its premises at reasonable times for the purpose of making such repairs or alterations as are necessary to effect compliance with this article and regulations issued under this article and appendix A of this Code, or with any lawful order issued pursuant to the provisions of this article.

(Code 1982, § 17-168)

Sec. 22-223. Notices, hearings and orders.

- (a) Whenever the city council determines that there are reasonable grounds to believe that there has been a violation of any provision of this article, or regulations issued under this article, the city council shall direct the director of code enforcement to give notice of such alleged violation to the person to whom the license was issued as provided in this section. Such notice shall:
 - (1) Be in writing;
 - (2) Include a statement of the reasons for its issuance;
 - (3) Allow a reasonable time for the performance of any act it requires;
 - (4) Be served upon the owner or his agent, as the case may require, provided, that such notice or order shall be deemed to have been properly served upon such owner or agent when a copy thereof has been sent by registered mail to his last known address, or where he has been served with such notice by any method authorized or required by the laws of the state;
 - (5) Contain an outline of remedial action which, if taken, will effect compliance with the provisions of this article and regulations issued under this article.
- (b) Any person affected by any notice which has been issued in connection with the enforcement of any provision of this article, or regulations issued under this article, may request, and shall be granted, a hearing on the matter before the city council; provided, that such person shall file in the office of the city clerk a written petition requesting such hearing and setting forth a brief statement of the grounds therefor within ten days after the day the notice was served. The filing of the request for a hearing shall operate as a stay of the notice and of the suspension except in the case of an order issued under subsection (e) of this section. Upon receipt of such petition, the city council shall set a time and a place for such hearing and shall give petitioner written notice thereof. At such hearing the petitioner shall be given an opportunity to be heard and to show why such notice should be modified or withdrawn. The hearing shall be commenced not later than ten days after the day on which the petition was filed; provided, that, upon application of the petitioner, the city council may postpone the date of the hearing for a reasonable time beyond the ten-day period when in its judgment the petitioner has submitted good and sufficient reasons for such postponement.

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- (c) After the hearing under this section, the city council shall make findings as to compliance with the provisions of this article and regulations issued under this article and appendix A of this Code and shall issue an order in writing, sustaining, modifying or withdrawing the notice which shall be served as provided in subsection (a)(4) of this section. Upon failure to comply with any order sustaining or modifying a notice, the licensee shall be in violation of this section and the license of the mobile home park affected by the order shall be suspended.
- (d) The proceedings at such a hearing, including the findings and decisions of the city council, and together with a copy of every notice and order related thereto, shall be entered as a matter of public record in the office of the city clerk, but the record of the proceedings need not be transcribed unless judicial review of the decision is sought to the superior court.
- (e) Whenever the city council shall find that an emergency exists which requires immediate action to protect the public health, it may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as the council may deem necessary to meet the emergency, including the suspension of the permit or license. Notwithstanding any other provisions of this article, such order shall be effective immediately. Any person to whom such an order is directed shall comply therewith immediately, but, upon petition to the city council, shall be afforded a hearing as soon as possible. The provisions of subsections (c) and (d) of this section shall be applicable to such hearing and the order issued thereafter.

(Code 1982, § 17-169)

Secs. 22-224--22-245. Reserved.

ARTICLE IX. PEDDLERS

DIVISION 1. GENERALLY

Sec. 22-246. Use of streets.

No peddler shall have any exclusive right to any location in the public streets, nor shall any peddler be permitted a stationary location, nor shall he be permitted to operate in any congested area where his operations might impede or inconvenience the public. For the purpose of this article, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested or the public impeded or inconvenienced.

(Code 1982, § 17-89)

Secs. 22-247--22-255. Reserved.

DIVISION 2. LICENSE

Sec. 22-256. Application.

- (a) An applicant for a license under this article shall file with the city a sworn application in

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writing on a form to be furnished by the clerk, which shall give the following information:

- (1) Name of the applicant;
 - (2) Permanent home address and full local address of the applicant;
 - (3) A brief description of the nature of the business and the goods to be sold;
 - (4) If employed, the name and address of the employer, together with credentials establishing the exact relationship;
 - (5) If a vehicle is to be used, a description of such vehicle, together with a license number or other means of identification;
 - (6) A statement as to whether or not the applicant has been convicted of any crime, misdemeanor, felony or violation of any municipal ordinance, the nature of the offense and the punishment or penalty assessed therefor.
- (b) The application for a license under this article shall be accompanied by a photograph, in duplicate, of the applicant, at least two inches square, taken within 30 days immediately prior to the date of the filing of the application.

(Code 1982, § 17-86)

Sec. 22-257. Contents.

A license issued pursuant to this article shall contain the signature and seal of the issuing officer and shall show the name, address and photograph of the licensee, the date of issuance and the length of time such license shall be operative, as well as the license number and other identifying description of any vehicle used.

(Code 1982, § 17-87)

Sec. 22-258. Exhibition of license.

Every licensee at all times while engaged in peddling shall have in his immediate possession the license issued to him and when so peddling shall display such license upon demand of any police officer of the city and upon demand of any person to whom he is peddling.

(Code 1982, § 17-88)

Sec. 22-259. Suspension and revocation.

Upon complaint being filed with the police department that any person to whom a local peddler's license has been issued has violated any law or ordinance which has a reasonable relationship to the conduct of the licensed business, and, if upon investigation, it is found that such complaint is valid, the police official charged with the duty of investigating such complaint may suspend such license for no more than three days. It shall be the duty of the police official who effects such a suspension to notify the city clerk and the city council on the next regular working day following such suspension. The grounds of such suspension shall also be sufficient basis for revocation of that same license.

(Code 1982, § 17-90)

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Sec. 22-260. Special event license.

A special event peddlers license can be issued to eligible applicants for a maximum of seven consecutive days, and will limit their sale area to be inside the designated festival zone area, as per requirements of the festival event organizers. Only one special event peddlers license shall be needed for booths or sales tables operated by the same vendor, and individuals working for the primary vendor at the booth shall not require a separate license. The primary vendor shall be subject to a criminal background investigation regarding their peddler application for this section.

The license shall be displayed the entire time the vendor is operating the booths or sales tables.

(Ord. No. 04-11, 5-20-04)

Secs. 22-261--22-280. Reserved.

ARTICLE X. SALE OF PERSONAL PROPERTY FROM RESIDENTIAL PREMISES

Sec. 22-281. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Donated personal property means the personal property of persons other than those residing on the residential premises where such sale is to take place, such personal property being donated to, or the sale being conducted by, a tax-exempt religious or charitable organization, and the entire proceeds from such sale being donated to, or retained by, the sponsoring tax-exempt religious or charitable organization.

Residential premises means a building or structure having at least one dwelling unit, boarding or lodging room, and the lot of land associated therewith, and any accessory structures; and any lot of land within a residential zone.

(Code 1982, § 17-116)

Cross references: Definitions generally, § 1-2.

Sec. 22-282. Permit required; conditions.

No person shall sell or offer for sale personal property from any residential premises except as permitted by this article. Only the sale of donated personal property and the sale of personal property owned, used and maintained for personal use only by the seller, and not for resale to the public, shall be permitted to be sold from residential premises, and only after issuance to the seller of a permit for such purposes, as follows:

- (1) A permit may be obtained from the city clerk's office. The fee for a permit shall be paid in accordance with the business fee schedule as established by the city council.
- (2) No permit shall be issued for sales of personal property upon residential premises

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for a period of more than three consecutive days, and no more than two permits shall be issued for such sales upon a residential premises in any one calendar year. Permits required under this article shall be on forms furnished by the city clerk.

(Code 1982, § 17-117; Ord. No. 04-15, 7-15-04)

Sec. 22-283. Signs.

Notwithstanding the provisions relating to signs under appendix A of this Code, one single-faced sign, containing not more than four square feet in total area, may be placed upon residential premises where the sale of personal property has been permitted for the duration of the sale only.

(Code 1982, § 17-118)

Sec. 22-284. Exemption.

The provisions of this article shall not apply to sales of personal property made under court order or process.

(Code 1982, § 17-119)

Secs. 22-285--22-305. Reserved.

ARTICLE XI. SOLICITATIONS

DIVISION 1. GENERALLY

Secs. 22-306--22-315. Reserved.

DIVISION 2. LICENSE

Sec. 22-316. Required.

It shall be unlawful for any person to solicit on any public street or sidewalk, park or other public place or at any doorway or entranceway immediately abutting thereon, within the corporate limits of the city, the sale of any subscription of any magazine, periodical or other publication, newspapers excepted, or the sale of any tangible personal property, for delivery at a subsequent time without a license.

(Code 1982, § 17-101)

Sec. 22-317. Application.

Applicants for licenses under this article shall file with the city clerk a sworn application in writing on a form to be furnished by the clerk, which shall give the following information:

- (1) Name of the applicant and name of the agent making the application and remuneration to be received by the agent for services rendered;

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- (2) Permanent home address and full local address of the applicant and of the agent making application;
- (3) A brief description of the nature of the applicant's activities;
- (4) A brief description of the intended disposition of the funds to be solicited by the applicant;
- (5) If the application is for a so-called "tag day" or "poppy day," then it shall indicate the exact date the solicitation is to be made on.

(Code 1982, § 17-102)

Sec. 22-318. Issuance and duration.

After an investigation of the representations made in an application required by this article, the city clerk shall issue the license. If the application is for a "tag day" or "poppy day," then the license shall be issued for a date certain on a first come, first served basis only, and no more than one such license shall be made available to any person and used by him in any one calendar year. If the application is for other than a "tag day" or "poppy day," then the license may be issued for any period of time not in excess of one year.

(Code 1982, § 17-103)

Secs. 22-319--22-340. Reserved.

ARTICLE XII. TATTOOING

DIVISION 1. GENERALLY

Sec. 22-341. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Operator means the individual who performs or practices the art of tattooing on the person of another.

Tattoo means to insert pigment under the skin of a human being by pricking with a needle or otherwise, so as to produce an indelible mark or figure visible through the skin.

(Code 1982, § 17-153)

Cross references: Definitions generally, § 1-2.

Sec. 22-342. Prerequisites to tattooing.

No tattoo shall be administered except by conforming to all of the following:

- (1) *Age.* No tattoo shall be administered to any person less than 18 years old, as verified by a driver's license, liquor identification card, military identification card or other adequate record.

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- (2) *Notice of permanency.* Before administering a tattoo, the patron shall be advised that the tattoo should be considered permanent; that it can be removed only with a surgical procedure; and that any effective removal will leave permanent scarring and disfigurement. The written cautionary notice contained in subsection (7) shall be furnished to and signed by the patron.
- (3) *Skin condition.* The skin to be tattooed shall be free from rash, pimples, infection or recent (less than two years) scar tissue. The patron must be in apparent good health, and the skin to be tattooed generally in a healthy condition to all appearances.
- (4) *Sobriety of patron.* Tattoos shall not be administered to any person under the influence of drugs or alcohol, and the operator is charged with the responsibility of making reasonable observation and inquiry to assure himself that the patron is not under the influence of drugs or alcohol.
- (5) *Food, drink, smoking, and alcoholic beverages prohibited.* The consumption of food or drink and smoking is prohibited in the tattooing area. The consumption of alcoholic beverages on the tattooing premises is prohibited.
- (6) *Prior jaundice or hepatitis.* The patron shall be asked, before the operation, whether he has had jaundice or hepatitis. If the answer is in the affirmative, the tattoo operation shall not be performed.
- (7) *Record; form.* The tattoo establishment shall keep a permanent record of all patrons tattooed, stating name, age, address, date of tattoo, operator's name, place where tattooed, and a description of the design of the tattoo. Such records shall be made available to any city official upon request, and shall be in the following form, which shall be signed by the patron and the tattoo operator:

Date _____

I, the undersigned, realize that a tattoo is permanent; that it can be removed only with a surgical procedure; and that any effective removal will leave permanent scarring and disfigurement.

Name _____

Address _____

Date of birth _____

Social security no. _____

Serial number if a member of armed forces

Have you had jaundice or hepatitis within the last two years?

Yes _____ No _____

Patron

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Description of tattoo _____

Area of body _____

Tattoo operator

(Code 1982, § 17-154)

Sec. 22-343. Tattooing procedure.

The minimum required procedure for administering a tattoo shall be as follows:

- (1) No tattooing shall be done on the head, neck, hands, feet or the genitalia of any person.
- (2) The operator shall wash his hands thoroughly with soap and water before starting to tattoo; the hands shall be dried with individual single-use towels.
- (3) No skin area shall be penetrated, abraded or treated with chemicals for the purpose of removing, camouflaging or altering any blemish, birthmark or scar.
- (4) Safety razor with a new single-service blade for each patron or a straight-edge razor may be used and shall be thoroughly cleaned and sterilized as required by the state before use on each patron.
- (5) The area to be tattooed shall first be thoroughly washed, i.e., for a period of two minutes with warm water to which has been added an antiseptic soap. A sterile single-use sponge shall be used to wash the area. After shaving and before tattooing is begun, a solution of 70 percent alcohol shall be applied to the area with a single-use sponge used and applied with a sterile instrument.
- (6) Only petroleum jelly in collapsible metal or plastic tubes, or its equivalent as approved by the state, shall be used on the area to be tattooed and it shall be applied with a sterile gauze.
- (7) The use of styptic pencils, alum blocks, or other solid or liquid styptics to check the flow of blood is prohibited.
- (8) A patch test for sensitivity for each of the dyes used shall be made on the patron before any tattooing design is applied.
- (9) Single service or individual containers of dye or ink shall be used for each patron and the container therefor shall be discarded immediately after completing work on a patron and any dye in which the needles were dipped shall not be used on any person.
- (10) Excess dye or ink shall be removed from the skin with an individual sterile sponge which shall be used only on one person and then immediately discarded.
- (11) After completing work on any person, the tattooed area shall be washed with sterile gauze saturated with an antiseptic soap solution approved by the state, or a 70 percent alcohol solution. The tattooed area shall be allowed to dry and

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petroleum jelly from a collapsible or plastic tube shall be applied, using sterile gauze. A sterile gauze dressing shall then be fastened to the tattooed area with adhesive.

(Code 1982, § 17-155)

Sec. 22-344. Care of instruments.

- (a) *Storing of instruments.* All clean and ready-to-use needles and instruments shall be kept in a closed glass or metal case or storage cabinet while not in use. Such cabinet shall be maintained in a sanitary manner at all times.
- (b) *Sterilizing of instruments.* A steam sterilizer (autoclave) shall be provided for sterilizing all needles and similar instruments before use on any customer, person or patron. Alternate sterilizing procedures may only be used when specifically approved by the authorized city inspector. Sterilization of equipment will be accomplished by exposure to live steam for at least 30 minutes at a minimum pressure 15 pounds per square inch, temperature of 240 degrees Fahrenheit or 116 degrees Celsius.
- (c) *Use of instruments.* The needles and instruments required to be sterilized shall be so used, handled and temporarily placed during tattooing so that they will not be contaminated.

(Code 1982, § 17-156)

Sec. 22-345. Inspection of tattooing establishment.

City inspectors may conduct periodic inspections of any tattooing establishment for the purpose of determining whether or not such establishment and the persons performing the art of tattooing therein are in compliance with all applicable health provisions contained within this article and other pertinent ordinances. It shall be unlawful for any person or operator of a tattooing establishment willfully to prevent or restrain the inspection officer from entering any licensed establishment where tattooing is being performed for the purpose of inspecting such premises, after proper identification is presented to the operator.

(Code 1982, § 17-157)

Sec. 22-346. Licensed practitioners.

The provisions of this article shall not apply to any establishment under the control or direction of a duly licensed practitioner of the healing arts, nor do they apply to licensed medical hospitals, and similarly licensed medical institutions.

(Code 1982, § 17-158)

Sec. 22-347. Penalty for violation of article.

In addition to the revocation and suspension of any license, any person violating any provision of this article shall be subject to the penalty set forth in section 1-8 of this Code.

(Code 1982, § 17-159)

Secs. 22-348--22-360. Reserved.

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DIVISION 2. LICENSE

Sec. 22-361. Required.

No individual shall tattoo another, or operate or conduct a tattooing establishment of any kind within the city without first obtaining a license therefor in accordance with the provisions of this article.

(Code 1982, § 17-150)

Sec. 22-362. Application fee.

An application for a license under this article shall be accompanied by a fee in accordance with the city's policy manual as approved by the city council. No application fee shall be required for the renewal of an existing license.

(Code 1982, § 17-151; Ord. No. 08-06d, 8-14-08)

Sec. 22-363. License fee; expiration.

Each applicant, before being granted a license under this article, shall pay an annual fee according to the business fee schedule as established by the city council. Each license shall expire one year from date of issuance.

(Code 1982, § 17-152; Ord. No. 04-15, 7-15-04)

Secs. 22-364--22-380. Reserved.

ARTICLE XIII. MASSAGE ESTABLISHMENTS AND MASSAGE THERAPISTS

DIVISION 1. GENERALLY

Sec. 22-381. Title.

This article shall be known as the "City of Lewiston Massage Establishment and Massage Therapist Regulatory Ordinance" and may be referred to by short title as the "massage ordinance".

(Ord. No. 96-10, 9-12-96)

Sec. 22-382. Purpose.

The city recognizes that the practice of legitimate massage therapy by trained and experienced therapists is a valuable component of our health care system. The city also recognizes that persons without legitimate massage training or experience may masquerade as massage therapists as a facade for unlawful purposes such as prostitution. It is the purpose of this article to clearly distinguish between these persons and to promote the public health, safety and general welfare by simultaneously acknowledging and permitting legitimate massage therapy and prohibiting the commission of sexual intercourse, sexual contacts or sexual acts for money.

(Ord. No. 96-10, 9-12-96)

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Sec. 22-383. Definitions.

For purposes of this article, the following definitions shall apply unless the context clearly implies otherwise:

Client means any person who receives a therapeutic massage.

Massage or *therapeutic massage* are used interchangeably to mean any method of rubbing, kneading, tapping, vibration, compression, percussion, application of friction or manipulation of the external parts of the human body other than parts of the body above the neck, with the hands or other parts of the body or with the aid of any instrument or device.

Massage establishment or *therapeutic massage establishment* are used interchangeably to mean any business including, but not limited to, a sole proprietorship in which the business operations consist of providing or making available massage in the city for consideration or with the expectation of receiving consideration or any gratuity, whether or not the business has a fixed place of business within the city limits.

Massage therapist means any person who performs therapeutic massage for consideration or gratuity or with the expectation of receiving consideration or any gratuity.

Person means an individual, partnership, corporation or other entity.

Recognized school means any post secondary, academic institution for massage, bodywork, and/or somatic therapy which offers a course of training in the theory, method, profession and work of massage therapy consisting of 500 hours or more, such institution being approved by the Maine Higher Education Department or an equivalent agency in another state. The 500 hours shall include at least 100 hours of anatomy/physiology; at least 100 hours devoted to professional aspects of the practice of massage including but not limited to ethics, draping, contraindications, first aid, CPR, and business management; and at least 200 hours of theory, practice and techniques of massage therapy.

(Ord. No. 96-10, 9-12-96; Ord. No. 96-14, 11-14-96; Ord. No. 99-1, 2-18-99)

Sec. 22-384. Exemptions.

The following persons shall be exempt from this article while licensed and practicing in accordance with the laws of this state: physicians, physician's assistants, surgeons, osteopaths, nurses, chiropractors, physical therapists, and persons holding a license issued by the State of Maine Department of Professional and Financial Regulations, Division of Licensing and Enforcement. Students enrolled in a recognized school who are required to give massages as part of their training shall be exempt from this article.

(Ord. No. 96-10, 9-12-96; Ord. No. 96-14, 11-14-96; Ord. No. 99-1, 2-18-99)

Sec. 22-385. General provisions to apply.

Except to the extent that this article contains a contrary provision, all provisions of chapter 22 shall apply to this article.

(Ord. No. 96-10, 9-12-96)

DIVISION 2. LICENSES

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Sec. 22-386. Required.

- (a) *Therapeutic massage establishment license.* No person shall operate a therapeutic massage establishment without a valid therapeutic massage establishment license issued by the city. A separate license shall be required for each such establishment.
- (b) *Massage therapist license.* No person shall work as a massage therapist without a valid massage therapist license or a combined massage establishment/therapist license issued by the city.
- (c) *Combined massage establishment/massage therapist license.* A sole practitioner who employs no massage therapist other than himself may apply for a combined massage establishment/massage therapist license in lieu of both a therapeutic massage establishment license and a massage therapist license.

(Ord. No. 96-10, 9-12-96)

Sec. 22-387. Compliance of existing therapists and massage establishments.

Any person presently operating as a massage therapist and/or operating a massage establishment in the city as defined herein on the effective date of this article shall comply with the terms of this article by obtaining a license hereunder within three months of the effective date of this article.

(Ord. No. 96-10, 9-12-96)

Sec. 22-388. License fee; expiration.

Each applicant, within 30 days of approval of the application and before issuance of the license, shall pay an annual fee according to the business fee schedule as established by the city council. If the fee is not paid within said 30 days, the approval of the application shall expire. Any license issued pursuant to this chapter shall expire one year from date of issuance, unless otherwise suspended or revoked.

(Ord. No. 96-10, 9-12-96; Ord. No. 04-15, 7-15-04)

Sec. 22-389. Application and information.

Each applicant for a license shall:

- (1) Complete all information upon and file an application on a form prescribed by the city clerk;
- (2) Pay a nonrefundable application fee in accordance with the city's policy manual as approved by the city council in advance to the city clerk;
- (3) Submit the completed application to the city clerk, together with attested copies of the articles of incorporation and bylaws, if the applicant is a corporation, evidence of partnership, if a partnership, or articles of association and bylaws, if the applicant is an association, as well as a list of all officers and directors;
- (4) File an affidavit which will identify all owners, officers, managers or partners of the applicant and their places of residence at the time of the application and for

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the immediately preceding five years;

- (5) For a combined massage establishment/massage therapist license or a massage therapist license, submit two front face photographs of the applicant taken within 30 days of application, of such size as the clerk may specify;
- (6) File the release authorized by 16 M.R.S.A. § 620(6), Criminal History Record Information Act, with the application for each applicant and for each officer, owner, manager or partner of an applicant seeking a therapeutic massage establishment or combined massage establishment/massage therapist license; and
- (7) File any information not set forth above which is required by section 22-32.

(Ord. No. 96-10, 9-12-96; Ord. No. 08-06d, 8-14-08)

Sec. 22-390. Qualifications of applicant, officers.

Within the five years immediately preceding the date of application, no applicant nor, for a massage establishment or combined massage establishment/massage therapist license, any owner, officer, manager or partner of an applicant shall have been convicted of a crime now classified under Maine Statute as a Class A, B, or C crime, a crime involving moral turpitude, the crimes of engaging in prostitution or promotion of prostitution, nor of violating any of the gambling, drug or prohibitive liquor laws under the laws of the United States or the State of Maine or any other state. Hereinafter any one of the foregoing convictions or violations may be referred to as a "disqualifying criminal conviction".

(Ord. No. 96-10, 9-12-96)

Sec. 22-391. Investigation of applicant, officers.

Upon receipt of an application or notice of a change of the owners, officers, managers or partners of the applicant:

- (1) The building inspector shall verify that the premises at which the establishment will be located complies with all applicable ordinances of the city including, but not limited to, the building code, electrical code, plumbing code and zoning ordinance and shall report his findings in writing to the city clerk;
- (2) The city clerk shall review the application and other documents and determine whether such documents comply with all of the requirements of this article;
- (3) The health officer shall inspect the location or proposed location to determine whether the applicable ordinances relating to health and safety have been satisfied and shall report his findings in writing to the city clerk;
- (4) The fire chief or his agent shall inspect the location or proposed location to determine if all city ordinances concerning fire and safety have been satisfied and shall submit his report in writing to the city clerk; and
- (5) The police chief or his agent shall investigate the application, including the criminal history record information authorized under subsection 22-389(6) and required under section 22-390 and shall report his findings in writing to the city clerk.

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All reports under this section shall be filed with the city clerk.

(Ord. No. 96-10, 9-12-96)

Sec. 22-392. Basic proficiency.

Each applicant for a massage therapist license or combined massage establishment/therapist license shall show proof of basic proficiency in the field of massage therapy which may be satisfied by:

- (1) Evidence of the satisfactory completion of all formal course work and training in massage therapy required for graduation from a recognized school, which shall be in the form of a diploma or certificate of graduation or equivalent documentation; or
- (2) A written statement from a physician, nurse, osteopath, chiropractor, physical therapist, or member of the AMTA stating that that person refers clients to the applicant for therapeutic massage.

(Ord. No. 96-10, 9-12-96)

Sec. 22-393. Obtaining license by fraud.

No person shall make any false, untruthful or fraudulent statement, either written or oral, or in any way conceal any material fact, or give or use any fictitious name in order to secure or aid in securing a license required by this chapter. All names, including, but not limited to maiden name, ever used by the applicant must be noted on the application.

Any license so secured shall be void.

(Ord. No. 96-10, 9-12-96)

Sec. 22-394. Use of license.

No person shall make use of, in any manner, to his own or another's benefit, any license which has not been duly issued to him in accordance with this chapter.

(Ord. No. 96-10, 9-12-96)

Sec. 22-395. Standards for denial.

A license under this division shall be denied to the following persons:

- (1) *Therapeutic massage establishment license:*
 - a. To a corporation not registered to do business in this state; or
 - b. To a corporation if any principal officer thereof or any person having an actual ownership interest or management authority therein has a disqualifying criminal conviction (as defined in section 22-390) within the immediately preceding five years; or
 - c. To an applicant, other than a corporation, if such applicant or any person having an actual ownership interest or management authority therein has a

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disqualifying criminal conviction within the immediately preceding five years.

- (2) *Massage therapist license, or combined massage establishment/massage therapist license:*
 - a. To an applicant who has a disqualifying criminal conviction at any time during the five years immediately preceding application; or
 - b. To an applicant who is not at least 18 years of age.
- (3) *All licenses:*
 - a. To an applicant who has submitted an incomplete application, knowingly made an incorrect statement of a material nature, or failed to supply additional information required by the city clerk or reasonably necessary to determine whether the license is issuable; or
 - b. To an applicant, if such applicant or any person having an actual ownership interest or management authority therein has been denied a license for knowingly making an incorrect statement of a material nature within the immediately preceding five years; or
 - c. To an applicant, if such applicant or any person having an actual ownership interest or management authority therein has had a license granted pursuant to this article revoked for any reason within the immediately preceding five years.

(Ord. No. 96-10, 9-12-96)

Sec. 22-396. Grounds for suspension or revocation.

- (a) *All licenses.* In addition to the grounds of denial set forth in section 22-395, any license may be suspended or revoked upon a determination that the licensee:
 - (1) Failed to notify the clerk of any change in material fact set forth in the application for such license; or
 - (2) Violated any provision of this article.
- (b) *Therapeutic massage establishment or combined establishment/therapist license.* In addition to the provisions of subsection (a) hereof, either a massage establishment license or combined establishment/therapist license may be suspended or revoked upon a determination that the licensee:
 - (1) Permitted any person to perform therapeutic massage without a valid license to do so;
 - (2) Permitted or allowed an employee, massage therapist or conditional massage therapist, to violate any provision of this chapter on the premises of the establishment or in the course of conduct of the business of the establishment; or
 - (3) Knowingly permitted any violation of 17-A M.R.S.A. §§ 851 through 855. Such knowledge shall be presumed if there has been a conviction of any such offense within the immediately preceding five years. The applicant or licensee may rebut

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said presumption by showing that: (i) due diligence was exercised to prevent the recurrence of any such offense; and (ii) despite such diligence, he or she did not know and could not reasonably have known of any subsequent offense.

(Ord. No. 96-10, 9-12-96)

DIVISION 3. OPERATING REQUIREMENTS

Sec. 22-397. Licenses displayed.

A valid therapeutic massage establishment license shall be displayed at all times in an open and conspicuous place in the massage establishment for which it was issued. A valid massage therapist license or combined massage establishment/massage therapist license must be readily available to be produced immediately if demanded of the licensee.

(Ord. No. 96-10, 9-12-96)

Sec. 22-398. Age restrictions.

No massage or therapeutic massage shall be practiced on a minor without the written consent of a parent or guardian.

(Ord. No. 96-10, 9-12-96)

Sec. 22-399. Massage tables.

All therapeutic massage shall be administered on a massage table, treatment table, treatment mat, or treatment chair.

(Ord. No. 96-10, 9-12-96)

Sec. 22-400. Maintenance and cleaning.

Every person who conducts or operates a therapeutic massage establishment shall keep the same at all times in a clean and sanitary condition. All instruments, supplies and devices of any kind, or parts thereof, that come into contact with the human body shall be kept clean by a modern and approved method of cleaning.

(Ord. No. 96-10, 9-12-96)

Sec. 22-401. Prohibited activities.

- (a) No massage therapist shall administer a massage to a client whose genitals are exposed.
- (b) No massage therapist shall administer or agree to administer a massage to the genitals or anus of a client.
- (c) No massage therapist shall administer a massage unless he or she is fully clothed with nontransparent clothing of the type customarily worn by massage therapists while administering a massage.
- (d) No massage therapist shall perform sexual intercourse, commit a sexual act or make sexual contact as defined in 17-A M.R.S.A. § 251, for pecuniary benefit to himself or a

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third party.

(Ord. No. 96-10, 9-12-96)

Sec. 22-402. Closing hours.

At all times when open for business, a therapeutic massage establishment shall have upon the premises a licensed massage therapist or person who possesses a combination massage establishment/massage therapist license who shall be available to supervise the operation of the establishment and assure that no violations of this article occur.

(Ord. No. 96-10, 9-12-96)

Sec. 22-403. List of employees.

The therapeutic massage establishment shall keep a written list of the names and current addresses of all employees, both on duty and off duty. Such list shall be shown to the chief of police, his authorized deputy, the city clerk or his representative, upon request.

(Ord. No. 96-10, 9-12-96)

DIVISION 4. PENALTIES

Sec. 22-404. Penalties.

The violation of any provision of this article shall be punished by a fine in accordance with the city's policy manual as approved by the city council. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense. In addition to such penalty, the city may enjoin or abate any violation of this article by appropriate action, including, but not limited to revocation of the license.

(Ord. No. 96-10, 9-12-96; Ord. No. 08-06d, 8-14-08)

Secs. 22-405--22-409. Reserved.

ARTICLE XIV. OUTPATIENT ADDICTION TREATMENT CLINICS

Sec. 22-410. Purpose.

The city council recognizes that an outpatient addiction treatment clinic can be a valuable component of our health care system. The city council also recognizes that the appropriate siting of such clinics, including restricting their proximity to schools, churches, family day care homes, small day care facilities, day care centers, and public parks and play grounds as well as other locations where children and other young adults may frequent is important in order to protect the public. In addition, the city has devoted substantial resources and made significant efforts to attract retail and commercial development in the Southern Gateway Development District, South Lewiston Retail Growth District, and Western Gateway Development District. The city council finds that it is in the best interests of the city to protect areas where efforts are currently being made to stimulate new business investment, and encourage focused and planned economic growth, which includes the districts identified above. Siting of outpatient addiction treatment

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clinics in these areas could detract from these efforts. Proper siting will also work to minimize potential adverse law enforcement impacts and overburdening of police and rescue resources. The city council finds that with the reasonable and necessary siting restrictions listed herein, there remain sufficient suitable areas within the city to site outpatient addiction treatment clinics. Licensing of these facilities will enhance community relations with the providers of such clinics and will establish lines of communications with the clinics. Licensing of these facilities is appropriate and consistent with the city's policies and practices to review and license business activities that impact its citizens. The licensing is not meant to duplicate the licensing done at the state level pursuant to 14-118 CMR Ch. 4 *Regulations for Licensing/Certifying Substance Abuse Treatment Programs in the State of Maine*, but to provide separate and additional requirements as necessitated by the above findings.

(Ord. No. 06-06, 5-4-06)

Sec. 22-411. Applicability.

This article shall apply to any outpatient addiction treatment clinic which is located within the city.

(Ord. No. 06-06, 5-4-06)

Sec. 22-412. Definitions.

For purposes of this article, the following definitions shall apply unless the content clearly implies otherwise:

Church means a building, together with its contiguous accessory buildings and uses, where persons regularly assemble for religious worship, and which building, together with its accessory buildings and uses, is maintained and controlled by a religious body organized to sustain public worship.

Day care center means a building, structure or other place in which a person, or combination of persons, maintains or otherwise carries out a regular program, for consideration, for any part of the day providing protection and child care for more than 12 children under 13 years of age, who are unattended by parents or guardians for any part of the day, and which holds all necessary licenses and permits from the State of Maine and/or the City of Lewiston.

Family day care home means child care for three to 12 children under 13 years of age (not related by blood or marriage to, or legal wards of the operator, or foster children living in the private family residence (i.e. dwelling unit) serving as the day care home) who are unattended by parents or guardians for any part of the day. A family day care home shall be operated by a person who is domiciled and a resident within the private family residence, and who is the holder of all necessary licenses and permits from the State of Maine and/or the City of Lewiston.

Outpatient addiction treatment clinic means a program or facility operated for the purpose of and specializing in the care, treatment and/or rehabilitation of persons suffering with addictions, including, but not limited to gambling addiction, alcohol or controlled substance addictions. This includes, but is not limited to, substance abuse treatment programs licensed by the State of Maine Department of Behavioral and

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Developmental Services Office of Substance Abuse. An outpatient addiction treatment clinic does not include an inpatient or residential addiction treatment program, or a program consisting solely of support group activities without treatment by licensed health practitioners, such as Alcoholics Anonymous, Narcotics Anonymous, and similar programs.

School means a building together with its contiguous accessory buildings and uses for the education and learning of children. Uses within the meaning of this definition shall include private and public preschool, elementary, middle and high school.

South Lewiston Retail Growth District. The area identified as a special retail growth area by the Lewiston City Council, which includes the contiguous land area defined in a map entitled (South Lewiston Retail Growth District), dated February, 2006 and kept on file with the Lewiston City Clerk.

Southern Gateway Development District. The land area identified as per appendix A, article XVI, section 2 of this Code.

Small day care facility means child care for three to 12 children under 13 years of age who, are unattended by parents or guardians for any part of the day, in a nonhome setting. Small day care facilities shall not be operated within a private family residence (i. e. dwelling unit).

Western Gateway Development District. The land area identified as per appendix A, article XVI, section 3 of this Code.

(Ord. No. 06-06, 5-4-06)

Sec. 22-413. Application requirements.

All applications for licenses under this article shall be filed with, and in a form satisfactory to, the city clerk. Such application shall include, but is not limited to the following:

- (1) Name, address and contact information including a phone number of the applicant and all other persons having a legal interest in the clinic and property and the individual(s) hired by the applicant to manage operation of the facility, if any.
- (2) The location of the premises for which a license is sought by identification of city tax map number and street address.
- (3) The dimensions and acreage of the property.
- (4) A copy of a site plan, drawn to a scale of 50 feet or less to the inch, which contains the following information:
- (5) The boundary lines of the property for which a license is sought.
- (6) The location of all existing and proposed buildings and structures.
- (7) The location of all existing and proposed parking areas and walkways and any other site improvements.
- (8) The location and characteristics of all existing and proposed vegetation which is

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proposed to be maintained for required screening.

- (9) The location and characteristics of all existing and proposed fencing proposed to be maintained for required screening.
- (10) A site location map at a scale of not greater on 1" to 100' showing all adjoining residential uses and any schools, churches, family day care homes, small day care facilities, day care centers and public parks and play grounds.
- (11) The location and characteristics of all vehicular entrances and exits serving the property.
- (12) A detailed description of the proposed outpatient addiction treatment clinic to include the following: population to be served, client services, methods of treatment, identification of controlled substances to be kept on site, staffing requirements, security provisions, hours of operation, anticipated parking demand, peak hour traffic, identification of other required licenses, etc.
- (13) Identification of any other approvals required the City of Lewiston, by any state agency or department or of any federal agencies.
- (14) A nonrefundable application fee in accordance with the city's policy manual as approved by the city council and an original and 15 copies of the license application and all supporting documentation.

(Ord. No. 06-06, 5-4-06; Ord. No. 08-06d, 8-14-08)

Sec. 22-414. Administration.

- (a) *City council review.* License applications for outpatient addiction treatment clinics shall be filed with the city clerk and the clerk will order a background check from the police department for the applicant, individuals with a legal interest in the facility and any individual(s) hired to manage operation of the facility. The license application with the background check will then be reviewed by the city clerk to determine if the application is complete. If the application is not deemed complete, the license shall be denied. If the application is deemed to be complete, the application will be forwarded to the planning board for a recommendation regarding the location requirements contained in this article. In the event that development review approval is required pursuant to appendix A, article XIII of this Code, the planning board shall not provide a recommendation to the city council until it conducts a site plan review hearing on the proposed clinic.
- (b) *Planning board recommendation.* Once the city clerk receives the recommendation from the planning board, the clerk shall schedule public hearings for the city council to consider the request to establish the proposed outpatient addiction treatment clinic. The city council shall conduct two public hearings on the application for a license to allow adequate time for public comment and review.
- (c) *Conditions of license approval.* The city council may impose conditions on the approval of any license application under this article to ensure compliance with the provisions of this article or any other provision of law. Such conditions may include, but are not limited to, the following:
 - (1) That the applicant provide documentation to the city clerk of the receipt of all

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approvals required by any federal or state agency or department pursuant to federal or state law prior to clinic operations.

- (2) That the applicant provide documentation to the city clerk of the receipt of any approvals required by any city board pursuant to this Code prior to the issuance of any license under this article.
- (3) That any screening and or other requirements imposed by the city council pursuant to the provisions of this article or by the planning board upon development review, shall be installed, completed and approved by staff prior to the issuance of any license under this article.

(Ord. No. 06-06, 5-4-06)

Sec. 22-415. Location criteria.

Applicants for licenses must demonstrate to the satisfaction of the city council that all of the standards contained in this section are met in order to approve a license to operate an outpatient addiction treatment clinic.

- (1) *Location criteria.*
 - a. No clinic may be located within 1,000 feet of any church, school, family day care home, small day care facility, day care center, or public park or playground.
 - b. No clinic may be located within the bounds of the following revitalization and/or growth areas: South Lewiston Retail Growth Area, Southern Gateway, and the Western Gateway.
- (2) *Neighborhood compatibility standards.* No license shall be approved if the city council finds that the granting of the license would violate one or more of the following neighborhood compatibility standards:
 - a. Neither the proposed use nor the proposed site upon which the use will be located is of such a character that the use will have significant adverse impact upon the value or quiet possession of surrounding properties. The city council may not find that this standard is satisfied unless it finds that:
 1. The size of the proposed use is comparable to the size of surrounding uses;
 2. The amount and type of traffic to be generated, hours of operation, expanse of pavement, and the number of parking spaces are comparable to surrounding uses;
 3. The generation of noise, dust, odor, vibration, glare, smoke, litter and other nuisances is comparable to that generated surrounding uses;
 4. The impact of the use on the quality and quantity of groundwater available to abutting properties is comparable to that for surrounding uses;

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5. Unusual physical characteristics of the site, including size of the lot, shape of the lot, topography, and soils, do not aggravate adverse impacts upon surrounding properties.
- (3) Vehicular and pedestrian access and circulation to, from, into and within the site will be safe and no public way will be overburdened or made hazardous as a result of the new use of and/or development of the property. The city council may not find that this standard has been satisfied unless it first finds that:
 - a. Vehicular access to the site will be on roads which have adequate capacity to accommodate the additional traffic generated by the development. Adequate capacity means that: Intersections on major access routes to the site within a one-half mile radius of any entrance road will function after development at a minimum at Level of Service C, as defined in Maine Department of Transportation regulations, 17-229 C.M.R. Ch. 305, *Rules and Regulations Pertaining to Traffic Movement Permits* (2000); or
 - b. If any such intersection is functioning at a Level of Service D (as defined in MDOT regulations Chapter 305, cited above) or lower prior to the development, the project will not reduce the current level of service. The city council may approve a license for an application not meeting this requirement if the applicant demonstrates that: A public agency has committed funds to construct the improvements necessary to bring the level of access to said standard, or the applicant will assume financial responsibility for the improvements necessary to bring the level of service to said standard and will guarantee the completion of the improvements within one year of approval of the license.
 - (4) The topography of the site shall permit the construction of all driveways, entrances or proposed streets to meet the standards set forth in appendix A, article XIII, subsection 4(c) of this Code.
 - (5) Adequate facilities are present to assure the safety of pedestrians passing by or through the site.
 - (6) Municipal or other facilities serving the proposed use will not be overburdened or made hazardous. The city council may not find that this standard is satisfied unless it finds that: The capacity of sewerage and water supply systems is adequate to accommodate the proposed use; the capacity of the storm drainage system is adequate to accommodate the proposed use; and the ability of the fire department to provide necessary protection services to the site and development is adequate.
 - (7) The soils on the proposed site shall have adequate capacity and stability to support all loadings, including fill, developed by the proposed use and the use will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water to the extent that a dangerous or unhealthy condition may result on the site or upon the land of abutters. In considering whether this standard is satisfied, the city council shall take into account the elevation above sea level of the site and surrounding properties, its relation to floodplains, the slope and vegetation of the land and their effects on drainage.

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- (8) The scale and design of the proposed structures with respect to materials, scale and massing shall be compatible with existing structures within 500 feet of the site in areas where the existing structures are of a similar scale and architectural treatment.

(Ord. No. 06-06, 5-4-06)

Sec. 22-416. Screening requirements.

All clinics shall be required to erect and maintain opaque fencing to provide an effective visual screen at least six feet in height to be located along side and rear property lines that abut properties in residential use. Said fencing is to screen the clinic entrance and parking lot from ordinary view from all directly adjoining properties.

(Ord. No. 06-06, 5-4-06)

Sec. 22-417. Semi-annual meetings with the chief of police.

A minimum of two meetings per calendar year will be conducted at the clinic to allow the applicant and city staff the opportunity to discuss issues with the chief of police and or his designee. The purpose of said meetings is to establish a good working relationship between the police department and the owner and operators of clinics.

(Ord. No. 06-06, 5-4-06)

Sec. 22-418. Nonconforming uses.

Any outpatient addiction treatment clinic in lawful existence on the effective date of this article may remain in operation in its present location for 12 months following the effective date of this article. Thereafter, such clinics shall be required to comply with all the provisions of this article except the location and screening requirements set forth in sections 22-415 and 22-416 *supra*.

(Ord. No. 06-06, 5-4-06)

Sec. 22-419. Penalty for violation of article.

Any person who violates any provision of this article or the terms of any license issued under this article may be penalized in the following manner:

- (1) *Temporary suspension.* The city clerk is authorized, pursuant to section 22-44, to immediately and temporarily suspend any license when continued operation of the licensed premises or activity presents a danger to the health, safety or the general welfare of the public.
- (2) *Suspension or revocation.* The city council may suspend or revoke a license in accordance with the provisions of section 22-44 of this chapter.
- (3) *Civil penalties.* A violator may be required to pay the penalties imposed by section 1-8 of this Code or 30-A M.R.S.A. (4452 et seq. as amended). A judgment from such a lawsuit in the city's favor can result in a court order that the owner and/or operator of said clinic abate any violations, pay a penalty in accordance

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with the city's policy manual as approved by the city council, and pay the court costs and legal and expert witness fees incurred by the city.

(Ord. No. 06-06, 5-4-06; Ord. No. 08-06d, 8-14-08)

ARTICLE XV. MEDICAL MARIJUANA – DISTRIBUTION AND CULTIVATION

Sec. 22-420. Purpose.

The purpose of this chapter is to implement the Maine Medical Use of Marijuana Act (“Act”) and to protect the public health, safety, and welfare of the residents and patients of the City of Lewiston by prescribing the manner in which the cultivation and distribution of medical marijuana can be conducted in the City. Further, the purpose of this chapter is to:

Provide for the safe sale and distribution of marijuana to patients who qualify to obtain, possess and use marijuana for medical purposes under the Maine Medical Marijuana Act.

Protect public health and safety through reasonable controls on marijuana cultivation and distribution operations as they relate to noise, air and water quality, food safety, neighborhood and patient safety, security for the operation and its personnel, and other health and safety concerns.

Impose fees to cover the cost to the City of licensing the cultivation and distribution of medical marijuana in an amount sufficient for the City to recover its costs of the licensing program.

Adopt a mechanism for the monitoring compliance with the provisions of this chapter.

Sec. 22-421. Applicability.

This article shall apply to any registered dispensary and any registered primary caregiver located and doing business in the City of Lewiston, and to any registered patient residing within the city.

Sec. 22-422. Definitions.

For purposes of this article, the following definitions shall apply unless the content clearly implies otherwise:

Cardholder means a registered patient, a registered primary caregiver or a principal officer, board member, or employee of a registered dispensary who has been issued and possesses a valid registry identification card from the State of Maine.

Department means the State Department of Health and Human Services or any successor agency.

City Department means any or all of the chief of police, the fire chief, the director of planning and code enforcement and their designees who administer the provisions of this chapter.

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Disqualifying drug offense means a conviction for a violation of a state or federal controlled substance law that is a crime punishable by imprisonment for one year or more. It does not include an offense for which the sentence, including any term of probation, incarceration or supervised release, was completed ten (10) or more years earlier; or an offense that consisted of conduct that would have been permitted under this chapter.

Enclosed, locked facility means a closet, room, or other enclosed area within a building, or an enclosed locked facility within a greenhouse, that is equipped with locks or other security devices that permit access only by a cardholder.

Marijuana means the leaves, stems, flowers and seeds of all species of the plant genus cannabis, whether growing or not. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake or sterilized seed of the plant which is incapable of germination.

Marijuana plant means a harvestable female marijuana plant that is flowering and is greater than twelve inches in height and twelve inches in diameter.

Medical use means the acquisition, possession, cultivation, manufacture, use, delivery, transfer or transportation of marijuana or paraphernalia relating to the administration of marijuana to treat or alleviate a registered patient's debilitating medical condition or symptoms associated with the registered patient's debilitating medical condition.

Multifamily dwelling means a building containing three (3) or more dwelling units, such buildings being designed for residential use and occupancy by three (3) or more families living independently of one another, with the number of families not exceeding the number of dwelling units, and which is not a single-family attached dwelling.

Patient means a person whose physician has provided a written certification to the Department for the patient's medical use of marijuana.

Physician means a person licensed as an osteopathic physician by the Board of Osteopathic Licensure pursuant to 32 M.R.S.A. Chapter 36 or a person licensed as a physician or surgeon by the Board of Licensure in Medicine pursuant 32 M.R.S.A. Chapter 48 who is in good standing and who holds a valid federal Drug Enforcement Administration license to prescribe drugs.

Physician's written certification means a document signed by a physician stating that in the physician's professional opinion a patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition.

Prepared marijuana means the dried leaves and flowers of the marijuana plant, and any mixture or preparation of those dried leaves and flowers, including but not limited to tinctures, ointments, and other preparations. It does not include the seeds, stalks and roots of the marijuana plant or other ingredients in goods prepared for human consumption or use.

Registered dispensary or dispensary means a not-for-profit entity registered pursuant to State

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Law that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana, paraphernalia or related supplies and educational materials to registered patients who have designated the dispensary to cultivate marijuana for their medical use and the registered primary caregivers of those patients.

Registered patient means a patient who has a registry identification card issued by the State of Maine.

Registered primary caregiver or primary caregiver means a person, a hospice provider licensed under Title 22 M.R.S.A. chapter 1681 or a nursing facility licensed under Title 22 M.R.S.A. chapter 405 that provides care for a registered patient and that has been named by the registered patient as a primary caregiver to assist with a registered patient's medical use of marijuana. A person who is a primary caregiver must be at least 21 years of age and may not have been convicted of a disqualifying drug offense.

Registered primary caregiver operation means a registered primary caregiver that cultivates marijuana for 2 or more registered patients pursuant to State law.

Registry identification card means a document issued by the department that identifies a person as a registered patient, registered primary caregiver, or a principal officer, board member, or employee of a registered dispensary.

School means a building together with its contiguous accessory buildings and uses for the education and learning of children. Uses within the meaning of this definition shall include private and public preschool, elementary, middle and high school.

State Law means the Act and any rules and regulations issued by the Department under the Act.

Sec. 22-423. Medical marijuana license required.

No person shall engage, operate or conduct the business of a registered dispensary or a registered primary caregiver operation in the city unless such person has first acquired a license in accordance with this Article.

Sec. 22-424. Food establishment license.

A registered dispensary and a registered primary caregiver must obtain a food establishment license, pursuant to 22 Maine Revised Statutes section 2167, prior to preparing goods containing marijuana for medical use for a registered patient.

Sec. 22-425. Application requirements for registered dispensary.

This section governs the license application requirements for a registered dispensary. All applications for licenses under this article shall be filed with, and in a form satisfactory, to the city clerk. Such application shall include, but is not limited to the following:

- (1) Name, address, date of birth and contact information, including a phone number of the applicant and all other persons having a legal interest in the registered dispensary and the

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- individual(s) hired by the applicant to manage these operations, if any. A photograph and a copy of a valid registry identification card issued by the State of Maine are required for each principal officer, board member, agent and employee of a registered dispensary.
- (2) The location of the premises for which a license is sought identified by city tax map number and street address and a copy of the property deed and demonstration of right, title or interest for use of the property as a registered dispensary.
 - (3) The dimensions and acreage of the property.
 - (4) A copy of a site plan, drawn to a scale of 50 feet or less to the inch, which contains the following information:
 - (a) The boundary lines of the property for which a license is sought.
 - (b) The location of all existing and proposed buildings and structures.
 - (c) The location of all existing and proposed parking areas and walkways and any other site improvements.
 - (d) The location and characteristics of all existing and proposed vegetation to be maintained for required screening.
 - (e) The location and characteristics of all existing and proposed fencing to be maintained for required screening.
 - (f) The location and characteristics of all vehicular entrances and exits serving the property.
 - (5) A site location map at a scale of not greater than 1" to 100' showing any public or private school located within 500 feet of the proposed registered dispensary.
 - (6) A detailed description of the proposed cultivation and/or distribution of medical marijuana to include the following: number of qualified registered patients to be served, registered patient services, staffing requirements, security provisions, hours of operation, anticipated parking demand, peak hour traffic, identification of other required licenses, floor plans, etc.
 - (7) Identification of any other approvals required by the City of Lewiston, any state agency or department, or any federal agencies.
 - (8) A nonrefundable application fee in accordance with the city's policy manual as prescribed by the city council and an original and 15 copies of the license application and all supporting documentation.
 - (9) Evidence of registered dispensary incorporation under Title 13B and evidence that the corporation is in good standing with the Secretary of State;

Sec. 22-426. Background checks.

The city clerk shall order background checks of each principal officer, board member and employee of a registered dispensary and a registered primary caregiver engaged in the cultivation of marijuana for two or more registered patients. Updated background checks shall be conducted annually at the time of license renewal. Background checks shall be conducted in each state where such individuals have resided since the age of 18.

Sec. 22-427. Limitation on number of dispensaries.

Not more than one registered dispensary shall be licensed to operate within the City of Lewiston. The registered dispensary must cultivate and distribute medical marijuana from one location.

Sec. 22-428. Requirements for registered dispensary.

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A registered dispensary shall conform to the following provisions:

- (1) It shall comply at all time and in all circumstances with State Law.
- (2) It shall not be located within 500 feet of the property line of a preexisting public or private school;
- (3) It shall keep marijuana plants in an enclosed, locked facility not visible from outside of the premises where the plants are grown to deter and prevent unauthorized entrance into areas containing marijuana and the theft of marijuana at the registered dispensary;
- (4) Access to the enclosed, locked facility shall be limited to a cardholder who is a principal officer, board member, or employee of a registered dispensary when acting in his or her official capacity
- (5) It shall implement appropriate security and safety measures provisions in accordance with Sec. 22-431 and any city department rules regarding security and safety to the satisfaction of the city department to deter and prevent unauthorized entrance into areas containing marijuana and the theft of marijuana at the registered dispensary;
- (6) It shall obtain all necessary building, electrical, plumbing and mechanical permits for any portion of the structure that contains electrical wiring, lighting and/or watering devices that support the cultivation of marijuana;

Sec. 22-429. Application requirements for registered primary caregiver operation.

This section governs the license application requirements for a registered primary caregiver operation. All applications for licenses under this article shall be filed with, and, in a form satisfactory, to the city clerk. Such application shall include, but is not limited to the following:

- (1) Name, address, date of birth and contact information, including a phone number of the registered primary caregiver. A photograph and a copy of a valid registry primary caregiver identification card issued by the State of Maine are required.
- (2) The location of the premises for which a permit is sought identified by city tax map number and street address and a copy of the property deed and demonstration of right, title or interest for use of the property as a registered primary caregiver operation.
- (3) The dimensions and acreage of the property.
- (4) A copy of a site plan, drawn to a scale of 50 feet or less to the inch, which contains the following information:
 - (a) The boundary lines of the property for which a permit is sought.
 - (b) The location of all existing and proposed buildings and structures.
 - (c) The location of all existing and proposed parking areas and walkways and any other site improvements.
 - (d) The location and characteristics of all vehicular entrances and exits serving the property.
- (5) A site location map at a scale of not greater than 1" to 100' showing any public or private school located within 500 feet of the proposed registered caregiver operation.
- (6) A detailed description of the proposed cultivation and/or distribution of medical marijuana to include the following: number of qualified registered patients to be served,

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security provisions, hours of operation, identification of other required licenses, floor plans, etc.

- (7) Identification of any other approvals required by the City of Lewiston, any state agency or department, or any federal agencies.
- (8) A nonrefundable application fee in accordance with the city's policy manual as prescribed by the city council and an original and 3 copies of the license application and all supporting documentation.

Sec. 22-430. Requirements for registered primary caregiver operation.

Registered primary caregiver operations shall conform to the following provisions:

- (1) They shall comply at all times and in all circumstances with the provisions of State Law;
- (2) They shall not cultivate marijuana within or on the property of a multifamily dwelling;
- (3) They shall not cultivate marijuana within 500 feet of the property line of a preexisting public or private school;
- (4) They shall keep marijuana plants in an enclosed, locked facility not visible from outside of the premises where the plants are grown to deter and prevent unauthorized entrance into areas containing marijuana and the theft of marijuana at the registered primary caregiver operation, unless the plants are being transported because the primary caregiver is moving;
- (5) They shall comply with security and safety related provisions contained in Sec, 22-431 and any city department rules regarding security and safety;
- (6) They shall obtain all necessary building, electrical, plumbing and mechanical permits for any portion of the structure that contains electrical wiring, lighting and/or watering devices that support the cultivation of marijuana.

Sec. 22-431. Dispensary and primary caregiver operation security and safety - protections of premises and persons.

A registered dispensary and registered primary caregiver operation shall implement appropriate security and safety measures to deter and prevent unauthorized entrance into areas containing marijuana and the theft of marijuana. Security measures to protect the premises, registered patients, registered primary caregivers, and principal officers, board members and employees of the registered dispensary shall include but are not limited to the following:

- (1) On-site parking in accordance with Appendix A, Article XII, Sec. 17(d) of the Code of Ordinances of the City of Lewiston (hereinafter referred to as the Code) shall be provided.
- (2) Exterior lighting shall be provided in accordance with Appendix A, Article XIII, Sec.4 (n) of the Code to deter nuisance activity and facilitate surveillance;
- (3) Devices or a series of devices, including, but not limited to, a signal system interconnected with a radio frequency method such as cellular, private radio signals, or other mechanical or electronic device shall be installed to detect an unauthorized intrusion.
- (4) The interior shall be equipped with electronic monitoring, video cameras, and panic buttons.

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- (5) Satisfy all applicable State of Maine and city code requirements such as but not limited to electrical, plumbing, building, ventilation, energy conservation, life safety, mechanical and the environmental performance standards with respect to odors and other environmental considerations as per Appendix A, Article XII, Section 19 of the Code.

Sec. 22-432. Inspection of Registered Dispensary.

A registered dispensary is subject to inspection as follows:

- (1) A registered dispensary shall allow the City Department entry without notice to carry out an inspection in accordance with this chapter.
- (2) Submission of a license application for a registered dispensary shall constitute permission for entry and inspection.
- (3) During an inspection the City Department may identify violations of this chapter, provisions of the Code and State Law. The registered dispensary may receive written notice of the nature of the violations. The registered dispensary shall notify in writing the representative of the City Department identified in such notice with a postmark date within five (5) business days of the date of the notice of violations identifying the corrective actions taken and the date of the correction.
- (4) Failure to cooperate with required inspections and to respond to notice of violations as specified shall be grounds for the city clerk or the City Department to temporarily suspend the license of the registered dispensary subject to revocation by the City Council.

Sec. 22-433. Inspection of registered primary caregiver operation.

A registered primary caregiver operation is subject to inspection as follows:

- (1) A registered primary caregiver operation shall allow the City Department entry upon 24 hours notice to carry out an inspection in accordance with this chapter.
- (2) Submission of a license application for a registered primary caregiver operation shall constitute permission for entry and inspection.
- (3) During an inspection the City Department may identify violations of this chapter, provisions of the Code and State Law. The registered primary caregiver operation may receive written notice of the nature of the violations. The registered primary caregiver operation shall notify in writing representative of the City Department identified in such notice with a postmark date within five (5) business days of the date of the notice of violations identifying the corrective actions taken and the date of the correction.
- (4) Failure to cooperate with required inspections and to respond to notice of violations as specified shall be grounds for the city clerk or the City Department to temporarily suspend the license of the registered primary caregiver operation subject to revocation by the city administrator.

Sec. 22-434. Denial of application.

The city clerk may deny an application for a license based on the following:

- (1) The applicant's failure to comply with the application requirements set out in these rules, including the applicant's failure to provide the required information; and,
- (2) The determination that the information provided was materially inaccurate or incomplete.

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Sec. 22-435. Disqualifying drug conviction.

The City shall not approve a license to a registered dispensary or to a registered primary caregiver operation if any principal officer, board member, agent or employee of a dispensary, or the registered primary caregiver, has been convicted of a disqualifying drug offense in Maine or another jurisdiction.

Sec. 22-436. Revocation of license.

The city clerk or the City Department shall temporarily suspend the license for a registered dispensary or a registered primary caregiver operation that sells, furnishes or gives marijuana to a person who is not allowed to possess marijuana for medical purposes under State Law and for any violations of the provisions contained within this chapter. Grounds for revocation of a license by the city council of a registered dispensary or revocation of a license by the city administrator of a registered primary caregiver operation include the following:

- (1) The dispensary or caregiver is convicted of selling, furnishing, or giving marijuana to a person who is not allowed to possess marijuana for medical purposes in accordance with these rules.
- (2) A registered caregiver or a registered dispensary cardholder is convicted of a disqualifying drug offense.
- (3) A registered dispensary or registered primary caregiver cardholder is convicted of dispensing, delivering, or otherwise transferring marijuana to a person other than a registered patient who has designated the dispensary or registered primary caregiver to cultivate marijuana; or a registered dispensary cardholder is convicted of dispensing, delivering, or otherwise transferring marijuana to a person other than a patient's registered primary caregiver.
- (4) Failure to cooperate with required inspections.
- (5) Violations of any laws, rules or ordinances that govern the operation of a registered dispensary or registered primary caregiver operation.
- (6) Committing, permitting, aiding or abetting any illegal practices in the operation of a dispensary or primary caregiver operation.
- (7) Conduct or practices that are detrimental to the safety and welfare of registered patients or registered primary caregivers; and,
- (8) Providing information that is materially inaccurate or incomplete.

Sec. 22-437. License administration for registered dispensary.

- (1) City council review. License applications for a registered dispensary shall be filed with the city clerk and the clerk will order a background check from the chief of police for the applicant, individuals with a legal interest in the facility and any individual(s) hired to manage operation of the facility. The license application with the background check will then be reviewed by the city clerk to determine if the application is complete. If the application is not deemed complete, the license shall be denied by the city clerk.
- (2) If the application for a registered dispensary is deemed to be complete, the city clerk will notify the applicant that the registered dispensary must first obtain a conditional use permit from the planning board along with development review approval if required

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pursuant to Appendix A, Article XIII Sec. 2 of this Code. The conditional use permit must be obtained prior to scheduling a public hearing for the city council to consider the license to establish the proposed registered dispensary. In addition, the department shall provide a recommendation to the city council prior to said public hearing.

- (3) Conditions of license approval. The city council may impose conditions on the approval of any license application for a registered dispensary under this article to ensure compliance with the provisions of this article or any other provision of law. Such conditions may include, but are not limited to, the following:
 - (a) That the applicant provides documentation to the city clerk of the receipt of all approvals required by any federal or state agency or department pursuant to federal or state law prior to operations.
 - (b) That the applicant provide documentation to the city clerk of the receipt of any approvals required by any city board pursuant to this Code prior to the issuance of any license under this article.
 - (c) That any screening and or other requirements imposed by the city council pursuant to the provisions of this article or by the planning board or by the director of planning, shall be installed and completed to the satisfaction of the city clerk prior to the issuance of any license under this article.

Sec. 22-438. License administration for registered primary caregiver operation.

- (1) City clerk review. License applications for a registered primary caregiver operation shall be filed with the city clerk and the clerk will order a background check from the chief of police for the applicant. The license application with the background check will then be reviewed by the city clerk to determine if the application is complete and if the license should be granted. If the application is not deemed complete, the license shall be denied by the city clerk.
- (2) Conditions of license approval. The city clerk and the City Department may impose conditions on the approval of any license application for a registered dispensary under this article to ensure compliance with the provisions of this article or any other provision of law. Such conditions may include, but are not limited to, the following:
 - (a) That the applicant provides documentation to the city clerk of the receipt of all approvals required by any federal or state agency or department pursuant to federal or state law prior to operations.
 - (b) That the applicant provide documentation to the city clerk of the receipt of any approvals required by any city board pursuant to this Code prior to the issuance of any license under this article.

Sec. 22-439. Screening requirements.

A registered dispensary shall be required to erect and maintain opaque fencing to provide an effective visual screen at least six feet in height to be located along side and rear property lines that abut properties in residential use. Notwithstanding this requirement, plantings or other means may be used to satisfy the requirement for a visual screen of six feet in height.

Sec. 22-440. Semi-annual meetings with the City Department.

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A minimum of two meetings per calendar year will be conducted at the registered dispensary to allow the applicant and the City Department the opportunity to discuss issues and to establish a good working relationship between the City Department and the dispensary.

Sec. 22-441. Requirements for registered patients and registered caregivers that do not cultivate marijuana for more than one registered patient.

A registered patient and a registered primary caregiver that does not cultivate marijuana for more than one registered patient shall conform to the following provisions:

- (1) A registered patient and a registered primary caregiver that does not cultivate marijuana for more than one registered patient shall comply at all time and in all circumstances with the provisions of State Law;
- (2) A registered patient or a registered primary caregiver that cultivates marijuana shall keep the marijuana plants in an enclosed, locked facility not visible from outside of the premises where the plants are grown to deter and prevent unauthorized entrance into areas containing marijuana and the theft of marijuana unless the plants are being transported because the patient is moving or taking the plants to another patient's home.

Sec. 22-442. Penalty for violation of article.

Any person who violates any provision of this article or the terms of any license issued under this article may be penalized in the following manner:

- (1) Temporary suspension. The city clerk and the City Department is authorized, pursuant to section 22-44, to immediately and temporarily suspend any license when continued operation of the licensed premises or activity presents a danger to the health, safety or the general welfare of the public.
- (2) Suspension or revocation. The city council may suspend or revoke a license for a registered dispensary in accordance with the provisions of section 22-44 of this chapter. The city administrator may suspend or revoke a license for a primary caregiver operation in accordance with the provisions of section 22-436 of this article.
- (3) Civil penalties. A violator may be required to pay the penalties imposed by section 1-8 of this Code or 30-A M.R.S.A. (4452 et seq. as amended). A judgment from such a lawsuit in the city's favor can result in a court order that the owner and/or operator of said clinic abate any violations, pay a penalty in accordance with the city's policy manual as approved by the city council, and pay the court costs and legal and expert witness fees incurred by the city. Notwithstanding the above the chief of police may initiate criminal proceedings relative to individuals engaged in the unlawful distribution, use and cultivation of medical marijuana.

Sec. 22-443. Confidentiality.

All applications and supporting information submitted by primary caregivers under this ordinance, and the identity of registered primary caregivers and registered patients, shall be confidential pursuant to the Act, 22 M.R.S.A. §2425(8), and the Maine Freedom of Access law, 1 M.R.S.A. §402(3)(F).

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(Ord. No. 10-15, 1-6-11)

Chapter 24

CABLE TELEVISION*

Article I. In General

- Sec. 24-1. Establishment and purpose.
- Sec. 24-2. Definitions.
- Sec. 24-3. Franchise required.
- Sec. 24-4. Franchise contract.
- Sec. 24-5. Public hearing.
- Sec. 24-6. Performance bond and insurance coverage.
- Secs. 24-7--24-19. Reserved.

Article II. Board Created

- Sec. 24-20. Cable television advisory board.
- Secs. 24-21--24-29. Reserved.

Article III. Operations

- Sec. 24-30. Franchise contract contents.
- Sec. 24-31. Rules, regulations and procedures.
- Sec. 24-32. Compliance with all laws.
- Sec. 24-33. Severability.

***Cross references:** Administration, ch. 2; buildings and building regulations, ch. 18; businesses, ch. 22; streets and sidewalks, ch. 66; utilities, ch. 74; zoning and land use code, app. A.

CABLE TELEVISION

ARTICLE I. IN GENERAL

Sec. 24-1. Establishment and purpose.

This chapter is an ordinance providing for city regulation and use of the cable television system including its construction, operation and maintenance in, along, upon, across, over and under the streets, alleys, public ways and public places now laid out or dedicated, and all extensions thereof and additions thereto in the city, including poles, wires, cables, underground conduits, manholes, conductors and fixtures necessary for a cable television system and to provide conditions accompanying the grant of a franchise and providing for the city's regulating of cable television system operation.

(Ord. No. 96-17, 12-17-96)

Sec. 24-2. Definitions.

For purposes of this chapter, the following definitions shall apply unless the context clearly implies otherwise:

Cable television company or *company* means any person, firm or corporation owning, controlling, operating, managing or leasing a cable television system within the city.

Cable television system means any facility that, in whole or in part, receives directly or indirectly over the air, and amplifies or otherwise modifies signals transmitting programs broadcast by one or more television or radio stations, or originates its own signal or signals produced through any of its community access channels, and distributes such signals by wire or cable to subscribing members of the public who pay for such services. The term does not include any such facility that serves fewer than 50 subscribers or that serves only the residents of one or more apartment dwellings under common ownership, control or management, and commercial establishments located on the premises of the apartment dwellings.

City shall mean the City of Lewiston organized and existing under the laws of the State of Maine and the area within its territorial limits.

(Ord. No. 96-17, 12-17-96)

Cross references: Definitions and rules of construction, § 1-2.

Sec. 24-3. Franchise required.

No person, firm or corporation shall install, maintain or operate within the city or any of its public streets or other public areas any equipment or facilities for the operation of a cable television system unless a franchise agreement authorizing the use of said public streets or areas has first been obtained pursuant to the provisions of this chapter and unless said franchise agreement is in full force and effect.

(Ord. No. 96-17, 12-17-96)

Sec. 24-4. Franchise contract.

The municipal officers of the city may contract on such terms, conditions and fees as are in the best interest of the municipality and its residents with one or more cable television companies for the operation of a cable television system within the city, including the granting of

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nonexclusive franchise agreements for the operation thereof for a period not to exceed 15 years.

Applicants for a franchise agreement, including applicants for renewal of a franchise agreement, shall pay a reasonable fee to the city to defray the cost of public notices, advertising and other expenses relating to, or incurred by the city in acting upon, such applications. The amount of said fee is to be determined by the municipal officers.

The application shall be filed with the city clerk and shall contain such information as the city may require, including but not limited to a general description of the applicant's proposed operation, a schedule of proposed changes, a statement detailing its previous two fiscal years, an estimated ten-year financial projection of its proposed system and its proposed annual city franchise fee or the basis for same, and a statement detailing the prior operational experience of the applicant in both cable television and microwave service including that of its officers, management and staff to be associated with the proposed operation.

Prior to issuing a request for proposals to any cable television company or companies for franchise agreements or renewals, the city shall hold a public hearing or conduct some other process to determine any special local needs or interests with respect to cable television service and shall allow for a period of public comment on the request for proposals.

Franchise agreement applications, including renewal applications, and any submittals in response to a request for proposals or solicitation of bids and related documents, are public records. Upon the filing of such documents, the city shall provide reasonable notice to the public that such documents are open to public inspection during reasonable hours.

A franchise agreement may be revoked by the municipal officers for good and sufficient cause after due notice to the company and a public hearing thereon; with the sole right to appeal to the Androscoggin County Superior Court pursuant to Rule 80B of the Maine Rules of Civil Procedure.

(Ord. No. 96-17, 12-17-96)

Sec. 24-5. Public hearing.

Before authorizing the issuance of any such franchise agreement, including renewals, and approvals of any transfers of ownership, property or rights under franchise agreements, the municipal officers shall review the applicant's character, financial and technical qualifications and the adequacy and feasibility of its qualifications to operate a cable television system within the city, and shall conduct a public hearing thereon with at least seven days advertised notice prior to said public hearing. Such public hearing shall provide a reasonable opportunity for public input on the proposed franchise agreement, renewal or transfer.

(Ord. No. 96-17, 12-17-96)

Sec. 24-6. Performance bond and insurance coverage.

Upon the execution of any such franchise agreement, the cable television company shall file a surety company performance bond in the amount and in such form as is acceptable to the city.

The city, in making this determination, may rely upon the advice of the municipal officers, city administrator, city attorney and/or other appropriate city officials. The amount of

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said bond shall not be less than the estimated cost of performing any work specified in the franchise agreement and shall include the cost of dismantling the cable television system. Said bond shall be conditioned upon the faithful performance of said contract and full compliance with any laws, ordinances or regulations governing said franchise agreements.

When the cable television company has completed construction of the system as set forth in the franchise agreement and provided that the cable television company is otherwise in compliance with the terms of the franchise agreement, the municipal officers shall permit the company to reduce said bond to an amount sufficient to cover the cost of dismantling the system.

The cable television company shall also, upon execution of any such franchise contract, provide evidence of such public liability, copyright infringement and other insurance coverage as the municipal officers may require.

The municipal officers may opt to provide for a cash security fund in lieu of a performance bond and appropriately condition the security fund.

(Ord. No. 96-17, 12-17-96)

Secs. 24-7--24-19. Reserved.

ARTICLE II. BOARD CREATED

Sec. 24-20. Cable television advisory board.

- (a) *Establishment.* The municipal officers are hereby authorized to establish a cable television advisory board and to enter into an interlocal agreement with the City of Auburn and other municipalities served by the cable system(s) serving Lewiston for the purpose of establishing a cable television advisory board.
- (b) *Membership.* The municipal officers are hereby authorized to appoint up to ten volunteer members to the cable television advisory board for the city. In addition, the city administrator, or his/her designee, shall be an advisory member to the board.
- (c) *Duties of the board.* The cable television advisory board shall have the following duties:
 - (1) To propose such rules and regulations as it may deem necessary for monitoring the operation of the cable television system, said rules and regulations being subject to the approval of the municipal officers. All such rules and regulations shall not be in conflict with those that have been or may be adopted by the Federal Communications Commission for the operation of such systems, but may, unless expressly preempted, be more detailed, more restrictive, or more strict than applicable FCC regulations.
 - (2) To make recommendations to the city and the cable television company concerning educational and local interest programming.
 - (3) To resolve complaints, disputes, or disagreements between subscribers and the company.
 - (4) To prepare specifications for bids or requests for proposals for cable television franchises and invite bids or issue requests for proposals for said franchises. Before issuing a request for proposals or soliciting bids, the cable television

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advisory board shall determine any special local needs or interests, whether by actively seeking to determine those needs or interests or by allowing a period for public comment on a proposed request for proposals. Upon receipt of bids or proposals, it shall study same and make recommendations on the awarding of a franchise, said recommendations being subject to the approval of the municipal officers.

- (5) To oversee and administer the use and operation of local public, educational and governmental access facilities.

(Ord. No. 96-17, 12-17-96)

Secs. 24-21--24-29. Reserved.

ARTICLE III. OPERATIONS

Sec. 24-30. Franchise contract contents.

Each franchise agreement between the city and any cable television company shall contain, but is not limited to, the following provisions:

- (1) A statement of the area or areas to be served by the cable television company;
- (2) A line extension policy;
- (3) A provision for renewal, the term of which may not exceed 15 years;
- (4) Procedures for the investigation and resolution of subscriber complaints by the cable television company;
- (5) An agreement to comply with the requirements of 30-A M.R.S.A. § 3010 regarding consumer rights and protection and any amendments thereto;
- (6) Any other terms and conditions that are in the best interest of the city; and
- (7) A provision for access to, and facilities to make use of, one or more local public, educational and governmental access channels.

(Ord. No. 96-17, 12-17-96)

Sec. 24-31. Rules, regulations and procedures.

The municipal officers of the city shall, either directly or through their designees:

- (1) Adopt such ordinance rules and regulations as they may deem necessary for regulating the operation of a cable television system;
- (2) Make recommendations to the cable television company concerning educational and local interest programming;
- (3) Resolve complaints, disputes, or disagreements between subscribers and the company;
- (4) Conduct public hearings and issue such appropriate orders as it may deem necessary to enforce the provisions of this chapter and any regulations, rules and

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orders and franchise agreements, including the revocation of franchise agreements and the assessment of penalties for violations, as well as to correct any deficiencies in the operation of the system. The municipal officers' decisions and findings shall be final and binding upon all parties including the company, except such decision or finding may be appealed to the Androscoggin County Superior Court pursuant to Rule 80B of the Maine Rules of Civil Procedure;

- (5) All such ordinances, regulations, rules and orders of the municipal officers shall not be in conflict with those that have been or may be adopted by the Federal Communications Commission for the operation of such systems, except that unless expressly preempted, such ordinances, regulations, rules and orders may be more detailed, more strict or more restrictive than applicable FCC regulations; and
- (6) As part of its enforcement authority, the municipal officers have the authority to bring legal action for damages, penalties and for injunctive relief. The city shall be entitled to recover its costs, including reasonable attorneys fees, incurred in the enforcement of this chapter, the provisions of the franchise agreement, or any local rules or regulations adopted pursuant to this chapter.

(Ord. No. 96-17, 12-17-96)

Sec. 24-32. Compliance with all laws.

Cable television companies shall at all times comply with all applicable federal, state and local laws, statutes, rules, regulations, ordinances, codes and orders.

(Ord. No. 96-17, 12-17-96)

Sec. 24-33. Severability.

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

(Ord. No. 96-17, 12-17-96)

Chapter 26

CEMETERIES

Sec. 26-1. Control, care and maintenance.

Sec. 26-2. Accounting; disbursements.

CEMETERIES

Sec. 26-1. Control, care and maintenance.

The department of public works shall be charged with the control, care and maintenance of all cemeteries under the jurisdiction of the city.

(Code 1982, § 8-1)

Sec. 26-2. Accounting; disbursements.

All trust funds and accounts established for the purpose of maintaining the Grand Army of the Republic and all other public cemeteries shall be administered by the city treasurer. The treasurer shall annually reimburse the city for expenses incurred in the maintenance of cemeteries up to an amount not to exceed the accumulated interest in such trust accounts.

(Code 1982, § 8-2)

Chapter 30

CIVIL EMERGENCIES*

Article I. In General

Secs. 30-1--30-25. Reserved.

Article II. Emergency Management

Sec. 30-26. Organization.

Sec. 30-27. Appointment of emergency management director, duties and responsibilities.

Sec. 30-28. Rules and regulations.

Sec. 30-29. Emergency proclamation; mayor's or city administrator's powers.

Sec. 30-30. Mayor's or city administrator's duties and emergency powers.

Sec. 30-31. Emergency operational plan.

Sec. 30-32. Civil emergency preparedness forces.

Sec. 30-33. Immunity from liability.

Sec. 30-34. Compensation for injuries.

Sec. 30-35. Right-of-way; penalty.

Sec. 30-36. Violation of article.

*Cross references: Administration, ch. 2.

CIVIL EMERGENCIES

ARTICLE I. IN GENERAL

Secs. 30-1--30-25. Reserved.

ARTICLE II. EMERGENCY MANAGEMENT

Sec. 30-26. Organization.

- (a) There is created an emergency management agency in compliance and conformity with the provisions of 37-B M.R.S.A. §§ 703 and 781, referred to in this article as the emergency management agency.
- (b) The city administrator shall be responsible for the agency's organization, administration and operation. The city administrator may employ such permanent and temporary employees as he deems necessary and prescribe their duties.
- (c) The city council shall advise the city administrator and the emergency management director on all matters of civil emergency preparedness, review the existing operational organization to ascertain the agency's ability to cope with its responsibilities, and accept or reject, after public hearing, such rules and regulations submitted to it under section 30-28.

(Ord. No. 92-10, § 2-531, 5-21-92)

Sec. 30-27. Appointment of emergency management director, duties and responsibilities.

The city administrator shall appoint a director who shall coordinate the activities of all city departments, organizations and agencies for civil emergency preparedness within the city and maintain liaison with other emergency management agencies and public safety agencies, and have such additional duties and responsibilities as may be prescribed by the city administrator.

(Ord. No. 92-10, § 2-532, 5-21-92)

Sec. 30-28. Rules and regulations.

The director shall prepare under the direction and control of the city administrator such policies as may be deemed necessary for the administration and operational requirements of the emergency management agency, which policies must be approved by the city council prior to becoming effective. The city council, after public hearing, shall accept, amend or reject such policies.

(Ord. No. 92-10, § 2-533, 5-21-92)

Sec. 30-29. Emergency proclamation; mayor's or city administrator's powers.

- (a) The mayor or the city administrator shall have with the power and authority, after consultation with the city council, to issue a proclamation that an emergency exists under conditions specified in 37-B M.R.S.A. § 742. The proclamation may declare the fact that an emergency exists in any or all sections of the city. If the city administrator is temporarily absent from the city or is otherwise unavailable, the next person in the city who would serve as acting city administrator shall have the authority to issue an

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emergency proclamation. A copy of such proclamation shall be filed within 24 hours with the city clerk.

- (b) Notwithstanding the provisions of subsection (a) of this section, when consultation with the city council would result in a substantial delay in an effective response in alleviating or preventing an emergency or disaster, the mayor or the city administrator is authorized to take whatever actions are necessary to prevent the loss of life and property in the city.
- (c) The mayor or the city administrator and/or the emergency management director shall be responsible to submit a full report to the city council of actions taken under this section as soon as the city council can convene.

(Ord. No. 92-10, § 2-534, 5-21-92)

Sec. 30-30. Mayor's or city administrator's duties and emergency powers.

- (a) During any period when an emergency or disaster exists or appears imminent, the mayor or the city administrator may promulgate such regulations deemed necessary to protect life, property and to preserve critical resources within the purpose of this section. Such regulations may include but shall not be limited to the following:
 - (1) Regulations prohibiting or restricting the movement of vehicles from areas within or without the city.
 - (2) Regulations pertaining to the evacuation of persons from any hazard-stricken or threatened areas of the city.
 - (3) Regulations necessary to abate, clean up or mitigate whatever hazards exist.
 - (4) Such other regulations necessary to preserve public peace, health and safety.
- (b) The mayor or the city administrator or the emergency management director shall be authorized to request aid and/or assistance from the state or any political subdivisions of the state and shall render assistance through reciprocal mutual aid agreements to other entities or political subdivisions under the provisions of 37-B M.R.S.A. §§ 701 and 784.
- (c) The mayor or the city administrator or purchasing agent may obtain vital supplies, equipment and other properties found lacking and needed for the protection of health, life and property.
- (d) The provisions of subsections (a) through (c) of this section will terminate at the ending of the declared emergency.

(Ord. No. 92-10, § 2-535, 5-21-92)

Sec. 30-31. Emergency operational plan.

- (a) The city administrator will cause to be prepared an emergency operational plan for the city, which shall be submitted to the city council for approval. Amendments to the emergency operational plan shall be submitted to the city council for approval.
- (b) It shall be the responsibility of all municipal departments and agencies to perform the functions and/or responsibilities assigned and to maintain their portion of the emergency plan in a current state of readiness. The city's emergency operational plan shall be

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reviewed periodically by the mayor or the city administrator in conjunction with all city department heads and the emergency management director.

(Ord. No. 92-10, § 2-536, 5-21-92)

Sec. 30-32. Civil emergency preparedness forces.

The civil emergency preparedness forces of the city shall be the employees, equipment and facilities of all city departments, agencies, boards, and commissions suitable for, or adaptable to, the activities of emergency management and, in addition, shall include all private volunteer personnel, equipment and facilities contributed by or obtained from private volunteer persons and organizations.

(Ord. No. 92-10, § 2-537, 5-21-92)

Sec. 30-33. Immunity from liability.

Immunity from liability shall be as set forth in 37-B M.R.S.A. § 822.

(Ord. No. 92-10, § 2-538, 5-21-92)

Sec. 30-34. Compensation for injuries.

All members of the civil emergency preparedness forces shall be deemed to be employees of the state when engaged in training for, or on, duty and shall have all the rights of state employees under the workmen's compensation act as specified in 37-B M.R.S.A. § 823.

(Ord. No. 92-10, § 2-539, 5-21-92)

Sec. 30-35. Right-of-way; penalty.

Personnel and equipment required to respond to an emergency or disaster shall have the right-of-way over all public ways and roads, and anyone failing to grant such right-of-way shall suffer penalties as specified under 37-B M.R.S.A. § 828.

(Ord. No. 92-10, § 2-540, 5-21-92)

Sec. 30-36. Violation of article.

It shall be unlawful for any person to violate any of the provisions of this article or the regulations or plans issued pursuant to the authority contained in this article, or to willfully obstruct, hinder or delay any member of the emergency management organization as described in this article in the enforcement of the provisions of this article or any regulation or plan issued thereunder.

(Ord. No. 92-10, § 2-541, 5-21-92)

Chapter 32

ELECTIONS*

Article I. In General

- Sec. 32-1. Wards described.
- Sec. 32-2. Write-in vote.
- Sec. 32-3. Validity of vote.
- Sec. 32-4. Voter approval required.
- Secs. 32-5--32-25. Reserved.

Article II. Initiative and Referendum

- Sec. 32-26. Established.
- Sec. 32-27. How to invoke.
- Sec. 32-28. Form of petition.
- Sec. 32-29. Ordinances subject to initiative or referendum.
- Sec. 32-30. Number of votes required.
- Sec. 32-31. Submission to voters; municipal action eliminating an election.
- Sec. 32-32. Effective date after election.
- Sec. 32-33. Conflicting ordinances.
- Sec. 32-34. Order upon the ballot.
- Sec. 32-35. Amending and repealing matters enacted by the people.
- Sec. 32-36. Authority to submit question to a popular vote.
- Sec. 32-37. Publication required.
- Sec. 32-38. Form of ballot.
- Sec. 32-39. Ordinances not retroactive.
- Sec. 32-40. Additional ordinances authorized.
- Sec. 32-41. Authority of council to submit question for nonbinding vote.

***Cross references:** Administration, ch. 2.

State law references: Municipal elections generally, 30-A M.R.S.A. § 2501 et seq.

ELECTIONS

ARTICLE I. IN GENERAL

Sec. 32-1. Wards described.

The ward and precinct boundaries of the city are as follows:

- A. *Map included.* The wards and precincts of the city for all elections of the city shall be as shown on the map dated September 9, 2004, on file in the office of the city clerk.
- B. *Narrative description of wards.* The ward and precinct boundaries of the city shown on the map as enacted by this section are further described as follows:
 - (1) *Ward one, precinct one:* Beginning at the Androscoggin River and the Vietnam Veterans Memorial Bridge; thence in a general easterly direction along said bridge to Maine Central Railroad Tracks; thence in a general northerly direction along Maine Central Railroad Tracks to Strawberry Avenue; thence in an easterly direction along Strawberry Avenue to Main Street; thence in a general southerly direction along Main Street to Ware Street; thence in a general easterly direction along Ware Street to College Street; thence in a general southwesterly direction along College Street to Elm Street; thence in a general westerly direction along Elm Street to Oak Street; thence in a general southerly direction along Oak Street to Union Street; thence in a general westerly direction along Union Street to Main Street; thence in a general southwesterly direction along Main Street to Park Street; thence in a general southeasterly direction along Park Street to Ash Street; thence in a general southwesterly direction along Ash Street to Canal Street; thence in a general southeasterly direction along Canal Street to Cedar Street; thence in a general southwesterly direction along Cedar Street to Oxford Street; thence in a general northwesterly direction along Oxford Street to the Canal; thence in a general southwesterly direction along the Canal to the Androscoggin River; thence in a general northerly direction along said river to the point of beginning.
 - (2) *Ward one, precinct two:* Beginning at the Androscoggin River and the Vietnam Veterans Memorial Bridge; thence in a general easterly direction along said bridge to Maine Central Railroad Tracks; thence in a general easterly direction along said bridge to Maine Central Railroad Tracks; thence in a general northerly direction along Maine Central Railroad Tracks to Strawberry Avenue thence in an easterly direction along Strawberry Avenue to Main Street; thence in a general southerly direction along Main Street to Ware Street; thence in a general easterly direction along Ware Street to College Street; thence in a general northerly direction along College Street to Fair Street; thence in a general northwesterly direction along Fair Street to King Avenue; thence in a general northwesterly direction along King Avenue to Main Street; thence in a general northerly direction along Main Street to Maine Central Railroad Tracks; thence in a general northerly direction along the Maine Central Railroad Tracks to Stetson Road; thence in a general westerly direction along Stetson Road to Main Street; thence in a general northerly direction

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along Main Street to the Greene town line; thence in a general northwesterly direction along Greene Town Line to the Androscoggin River; thence in a general southerly direction along the Androscoggin River to the point of beginning.

- (3) *Ward two, precinct one:* Beginning on Main Street at the Greene town line; thence in a general southeasterly direction along the Greene town line to Old Greene Road; thence in a general southerly direction along Old Greene Road to Sabattus Street; thence in a general westerly direction along Sabattus Street to Russell Street; thence in a general westerly direction along Russell Street to College Street; thence in a general northerly direction along College Street to Fair Street; thence in a general northwesterly direction along Fair Street to King Avenue; thence in a general northwesterly direction along King Avenue to Main Street; thence in a general northerly direction along Main Street to Maine Central Railroad Tracks; thence in a northerly direction along the Maine Central Railroad Tracks to Stetson Road; thence in a general westerly direction along Stetson Road to Main Street; thence in a general northerly direction along Main Street to the point of beginning.
- (4) *Ward two, precinct two:* Beginning on Old Greene Road at the Greene town line; thence in a general southeasterly direction along the Greene town line to the Sabattus town line; thence in a general southerly direction along the Sabattus town line to Sabattus Street; thence in a general southwesterly direction along Sabattus Street to Golder Road; thence in a general northerly direction along Golder Road to Pond Road; thence in a general northerly direction along Pond Road to No Name Pond Road; thence in a general westerly direction along No Name Pond Road to Old Greene Road; thence in a general northerly direction along Old Greene Road to the point of beginning.
- (5) *Ward two, precinct three:* Beginning on Owen Street at Jean Street; thence in a general southerly direction along Jean Street to Sabattus Street; thence in a general southwesterly direction along Sabattus Street to East Avenue; thence in a general northeasterly direction along East Avenue to Owen Street; thence in a general easterly direction along Owen Street to the point of beginning.
- (6) *Ward three, precinct one:* Beginning on College Street at Campus Avenue; thence in a general northeasterly direction along College Street to Russell Street; thence in a general easterly direction along Russell Street to Lafayette Street; thence in a general southwesterly direction along Lafayette Street to Campus Avenue; thence in a general westerly direction along Campus Avenue to the point of beginning.
- (7) *Ward three, precinct two:* Beginning on Park Street at Ash Street; thence in a general northwesterly direction along Park Street to Main Street; thence in a general northeasterly direction along Main Street to Union Street; thence in a general easterly direction along Union Street to Oak Street; thence in a general northerly direction along Oak Street to Elm

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Street; thence in a general easterly direction along Elm Street to College Street; thence in a general northerly direction along College Street to Campus Avenue; thence in a general easterly direction along Campus Avenue to Lafayette Street; thence in a general northeasterly direction along Lafayette Street to Russell Street; thence in a general easterly direction along Russell Street to East Avenue; thence in a general southerly direction along East Avenue to Tampa Street; thence in a general westerly direction along Tampa Street to Sylvan Avenue; thence in a general southerly direction along Sylvan Avenue to Webster Street; thence in a general westerly direction along Webster Street to Walnut Street; thence in a general southwesterly direction along Walnut Street to Bradley Street; thence in a general northwesterly direction along Bradley Street to Sabattus Street; thence in a general southwesterly direction along Sabattus Street to Bartlett Street; thence in a general southeasterly direction along Bartlett Street to Ash Street; thence in a general southwesterly direction along Ash Street to the point of beginning.

- (8) *Ward three, precinct three:* Beginning on Walnut Street at Webster Street; thence in a general southwesterly direction along Walnut Street to Bradley Street; thence in a general northwesterly direction along Bradley Street to Sabattus Street; thence in a general easterly direction along Sabattus Street to Webster Street; thence in a general southeasterly direction along Webster Street to the point of beginning.
- (9) *Ward four, precinct one:* Beginning on Connector Road at Sabattus Street; thence in a southerly direction along Connector Road to Farwell Street; thence in a southerly direction along Farwell Street to Webster Street; thence in a general southeasterly direction along Webster Street to 592 Webster Street; thence in a general northeasterly direction from 592 Webster Street to the Right of Way to Pagoma Lane; thence in a general northeasterly direction along Pagoma Lane to Randall Road; thence in a northerly direction along Randall Road to Sabattus Street; thence in a general westerly direction along Sabattus Street to the point of beginning.
- (10) *Ward four, precinct two:* Beginning on Old Greene Road at Randall Road; thence in a general northeasterly direction along Old Greene Road to No Name Pond Road; thence in a general easterly direction along No Name Pond Road to Pond Road; thence in a general southerly direction along Pond Road to Sabattus Street; thence in a general westerly direction along Sabattus Street to Grove Street; thence in a general southeasterly direction along Grove Street to Pond Road; thence in a general southerly direction along Pond Road to Webster Street; thence in a general westerly along Webster Street to 592 Webster Street; thence in a general easterly direction from 592 Webster Street to the Right of Way to Pagoma Lane; thence in a general northerly direction along Pagoma Lane to Randall Road; thence in a general northerly direction along Randall Road to the point of beginning.
- (11) *Ward five, precinct one:* Beginning on Webster Street at Walnut Street; thence in a general southeasterly direction along Webster Street to East

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Avenue; thence in a general southerly direction along East Avenue to Bartlett Street; thence in a general northwesterly direction along Bartlett Street to Adams Avenue; thence in a general southerly direction along Adams Avenue to Knox Street; thence in a general northwesterly direction along Knox Street to Birch Street; thence in a general southwesterly direction along Birch Street to Park Street; thence in a general northwesterly direction along Park Street to Ash Street; thence in a general northeasterly direction along Ash Street to Bartlett Street; thence in a general northwesterly direction along Bartlett Street to Sabattus Street; thence in a general easterly direction along Sabattus Street to Bradley Street; thence in a general southeasterly direction along Bradley Street to Walnut Street; thence in a general northeasterly direction along Walnut Street to the point of beginning.

- (12) *Ward five, precinct two:* Beginning on Webster Street at Sylvan Avenue; thence in a general easterly direction along Webster Street to Farwell Street; thence in a general northeasterly direction along Farwell Street to Connector Road; thence in a general northerly direction along Connector Road to Sabattus Street; thence in a general westerly direction along Sabattus Street to East Avenue; thence in a general southwesterly direction along East Avenue to Tampa Street; thence in a general westerly direction along Tampa Street to Sylvan Avenue; thence in a general southwesterly direction along Sylvan Avenue to the point of beginning.
- (13) *Ward six, precinct one:* Beginning at Lisbon Street and Cassell Street; thence in a general easterly direction along Lisbon Street to Interstate 495; thence in a general easterly direction along Interstate 495 to the Sabattus town line; thence in a general northerly direction along the Sabattus town line to Sabattus Street; thence in a general westerly direction along Sabattus Street to Golder Road; thence in a general northerly direction along Golder Road to Pond Road; thence in a general southerly direction along Pond Road to Sabattus Street; thence in a general westerly direction along Sabattus Street to Grove Street; thence in a general southeasterly direction along Grove Street to Pond Road; thence in a general southerly direction along Pond Road to Webster Street; thence in a general westerly direction along Webster Street to Alfred A. Plourde Parkway; thence in a southerly direction along Alfred A. Plourde Parkway to Mitchell Street; thence in a general southerly direction along Mitchell Street to Pleasant Street; thence in a westerly direction along Pleasant Street to Cassell Street; thence in a general southerly direction along Cassell Street to the point of beginning.
- (14) *Ward six, precinct two:* Beginning on Gully Brook at Lisbon Street; thence in a general southwesterly direction along Gully Brook to the Androscoggin River; thence in a general southerly direction along the Androscoggin River to the Lisbon Town Line; thence in a general northerly direction along the Lisbon Town Line to the Sabattus Town Line; thence in a general northerly direction along the Sabattus Town Line to Interstate 495; thence in a general southwesterly direction along

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Interstate 495 to Lisbon Street; thence in a general westerly direction along Lisbon Street to the point of beginning.

- (15) *Ward seven, precinct one:* Beginning on Webster Street at Webber Avenue; thence in a general southeasterly direction along Webster Street to Alfred A Plourde Parkway; thence in a general southwesterly direction along Alfred A Plourde Parkway to Mitchell Street; thence in a general southwesterly direction along Mitchell Street to Pleasant Street; thence in a general westerly direction along Pleasant Street to Webber Avenue; thence in a general northeasterly direction along Webber Avenue to the point of beginning.
- (16) *Ward seven, precinct two:* Beginning on Webster Street at East Avenue; thence in a general southeasterly direction along Webster Street to Webber Avenue; thence in a general southerly direction along Webber Avenue to Pleasant Street; thence in a general easterly direction along Pleasant Street to Cassell Street; thence in a general southerly direction along Cassell Street to Lisbon Street; thence in a general westerly direction along Lisbon Street to Gully Brook; thence in a general southerly direction along Gully Brook to the Androscoggin River; thence in a general northwesterly direction along the Androscoggin River to the Canal; thence in a general easterly direction toward Oxford Street; thence in a general southerly direction along Oxford Street to Cedar Street; thence in a general easterly direction along Cedar Street to the Canal Street; thence in a general northerly direction along Canal Street to the Ash Street; thence in a general easterly direction along Ash Street to Park Street; thence in a general southerly direction along Park Street to Birch Street; thence in a general easterly direction along Birch Street to Knox Street; thence in a general southerly direction along Knox Street to Adams Avenue; thence in a general easterly direction along Adams Avenue to Bartlett Street; thence in a general southeasterly direction along Bartlett Street to East Avenue; thence in a general northerly direction along East Avenue to the point of beginning.

- C. *Conflicts between map and description.* In the event of any conflict between the above map and the preceding description, the map provision shall control.

(Code 1982, § 9-1; Ord. No. 93-10, § 9-1, 7-1-93; Ord. No. 93-14, § 9-1, 8-19-93; Ord. No. 04-22, 9-9-04)

Sec. 32-2. Write-in vote.

If a voter wishes to vote for a person whose name is not on the ballot, he shall write the full name and street address in the blank space provided at the end of the list of nominees for the office in question, with the surname first or last. The voter shall then complete the arrow at the right of the name. (Code 1982, § 9-3)

Sec. 32-3. Validity of vote.

If a voter marks his ballot or casts a write-in vote in a manner which differs from the

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instructions at the top of the ballot, but in such a manner that it is possible to determine the voter's choice, then the vote for the office or question concerned shall be counted.

(Code 1982, § 9-4)

Sec. 32-4. Voter approval required.

No local tax monies shall be spent to build a convention center or civic center in the City of Lewiston. The construction of a convention center or civic center shall not be funded through the city's general budget, general obligation bonds, and/or community development block grants unless approved by the voters at a regular or special municipal election.

(Ord. No. 98-10, 11-5-98)

Secs. 32-5--32-25. Reserved.

ARTICLE II. INITIATIVE AND REFERENDUM

Sec. 32-26. Established.

Initiative and referendum for the electors of the city in regard to its municipal affairs are hereby established in accordance with article 4, part 3, section 21, of the state constitution.

(Code 1982, § 9-18)

Sec. 32-27. How to invoke.

The submission to the vote of the people of any proposed or enacted ordinance, order or resolve, or question, may be accomplished by the presentation of a petition therefor to the council in the manner provided in this article. Any ten qualified voters of the city may originate a petition putting in operation the initiative or the referendum by signing a petition application at the office of the city clerk. Whenever requested by ten such voters, the clerk shall prepare the proper petition with a copy of the ordinance, order or resolve to be submitted attached thereto, and upon its being signed by the ten voters, the clerk shall issue the petition forms to the ten voters and upon the request of any registered voter within the city, who shall for 60 days thereafter collect signatures of qualified voters of the city. Any signatures collected outside of the 60-day period shall be deemed invalid. Prior to the close of business on the 60th day, or in the event said day is a nonbusiness day, the immediate next business day, the petition forms shall be submitted to the city clerk, the city clerk shall declare the petition closed, shall verify the signatures on the petition within ten business days, and shall at the first regular meeting of the council thereafter present the petition with verification of the number of valid signatures thereto attached to the council. If the number of valid signatures to such petition shall amount to seven percent of the number of votes cast in the City of Lewiston at the last gubernatorial election or greater, the council shall order that the question proposed in the petition be submitted to the voters of the city at the next available, scheduled election following.

Provided, that in the case of the referendum, the entire repeal of the ordinance, order or resolve sought to be referred, and in the case of the initiative, the passage by the council of the desired ordinance, order or resolve, shall put an end to all proceedings under the petition.

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(Code 1982, § 9-19; Ord. No. 08-01, 7-10-08)

Sec. 32-28. Form of petition.

The petition used to originate the initiative or the referendum shall be substantially in the following terms:

PETITION TO THE CITY COUNCIL

FOR THE SUBMISSION TO THE PEOPLE OF THE QUESTION

Shall the ordinance, order, resolve or question, a copy of which is hereunto attached, be adopted?

We, the undersigned, are duly qualified voters of the City of Lewiston, residing respectively at the addresses placed opposite our names, and we hereby petition the city council to submit the foregoing question to the voters of the City of Lewiston at the next regular municipal election.

Names	Residence	Date
_____	_____	_____
_____	_____	_____

(Code 1982, § 9-20; Ord. No. 08-01, 7-10-08)

Sec. 32-29. Ordinances subject to initiative or referendum.

Initiatives and referendums are permitted on all ordinances, orders and resolves pertaining to the policing power authority of the council to regulate, govern and enforce all legislative matters on the municipal level regarding the health, safety and welfare of the general public, such as, but not limited to zoning, licensing, noise, traffic, solid waste, animals and other related issues. Any resolve dealing with appropriations or orders or resolves dealing with tax levy or budgetary matters shall be subject to the ordinance from which this section derives for the next fiscal year following the successful passage by the voters. No ordinance, order or resolve dealing with terms and conditions of employment for city employees shall be subject to the initiative and referendum provisions contained in this article.

(Ord. No. 08-01, 7-10-08)

Sec. 32-30. Number of votes required.

Whenever a petition has been originated in accordance with the provisions of this article for the reference to the people of any ordinance, order, resolve or question passed by the council, and the required number of valid signatures has been obtained thereon for its presentation to the council, the same shall be suspended from going into operation until it has been submitted to a vote of the people and has received the affirmative vote of a majority of the voters on such question, unless otherwise restricted in section 32-29.

(Code 1982, § 9-21; Ord. No. 08-01, 7-10-08)

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Sec. 32-31. Submission to voters; municipal action eliminating an election.

When an initiative or referendum petition meeting the requirements of this article is presented by the city clerk, the city council shall order that the proposed or referred ordinance, order, resolve or question be submitted to the voters of the city at the next available, scheduled election following if not otherwise earlier authorized by a special election, unless the city council proceeds to repeal the ordinance, order, resolve or question in the case of a referendum, or to pass the desired ordinance, order, resolve or question in the case of the initiative.

(Code 1982, § 9-22; Ord. No. 08-01, 7-10-08)

Sec. 32-32. Effective date after election.

If a majority of the qualified voters voting on a proposed initiative ordinance, order, resolve or question or a referred ordinance, order, resolve or question shall vote in favor thereof, such ordinance, order, resolve or question shall take effect upon the declaration of the official canvass of the return of such election and the mayor shall forthwith make proclamation thereof.

(Code 1982, § 9-23; Ord. No. 08-01, 7-10-08)

Sec. 32-33. Conflicting ordinances.

Any number of proposed or referred ordinances, orders, resolves or questions may be voted upon at the same election. If two or more ordinances, orders, resolves or questions adopted at the same election shall contain conflicting provisions, the ordinance, order, resolve or question receiving the highest number of votes at such election shall be paramount and all questions of construction shall be determined accordingly.

(Code 1982, § 9-24; Ord. No. 08-01, 7-10-08)

Sec. 32-34. Order upon the ballot.

If two or more ordinances, orders, resolves or questions are submitted at the same election, they shall be placed upon the ballot in the order of the priority of the filing of the respective petitions and shall be given precedence upon the ballot over any and all questions submitted by the council on its own initiative.

(Code 1982, § 9-25; Ord. No. 08-01, 7-10-08)

Sec. 32-35. Amending and repealing matters enacted by the people.

An ordinance, order, resolve or question proposed by petition or adopted by vote of the people shall not be repealed or amended except by a vote of the people, unless such ordinance, order, resolve or question shall otherwise expressly provide.

(Code 1982, § 9-26; Ord. No. 08-01, 7-10-08)

Sec. 32-36. Authority to submit question to a popular vote.

The council may submit on its own initiative a proposition for the enactment, repeal or amendment of any ordinance, order, resolve or question except as otherwise provided in this article, to be voted upon at a regular or special city election, and should such proposition receive

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a majority of the votes cast thereon at such election, such ordinance, order, resolve or question shall be enacted, repealed or amended accordingly.

(Code 1982, § 9-27; Ord. No. 08-01, 7-10-08)

Editor's note: Lewiston voters accepted this ordinance, that was passed by the council, at an election held on Feb. 17, 1947.

State law references: City council's authority to establish the initiative and referendum, the Maine Constitution, art. IV, § 21.

Sec. 32-37. Publication required.

Whenever any ordinance, order, resolve or question is required by the provisions of this article to be submitted to the voters of the city, the city council shall order one publication of the complete text thereof to be made in the daily newspapers published in the city, such publication to be made not less than seven days, nor more than 15 days prior to the election.

(Code 1982, § 9-30; Ord. No. 08-01, 7-10-08)

Sec. 32-38. Form of ballot.

The ballots used when voting upon proposed ordinances, orders, resolves or questions shall set forth the title in full and state its general nature and shall contain the words: "For the ordinance, order, resolve or question" and "Against the ordinance, order, resolve or question".

(Code 1982, § 9-31; Ord. No. 08-01, 7-10-08)

Sec. 32-39. Ordinances not retroactive.

All ordinances, orders, resolves or questions and parts thereof which are hereafter repealed through the initiative and referendum provided for in this article shall remain in force for the trial and punishment of all past violations of them and for the recovery of penalties and forfeitures already incurred and for the preservation of all rights and remedies existing by them and, so far as they apply, to any office, trust, proceeding, right, contract or event already affected by them. (Code 1982, § 9-29; Ord. No. 08-01, 7-10-08)

Sec. 32-40. Additional ordinances authorized.

The council shall, by ordinance, make such further regulations as may be necessary to carry out the provisions of this article. (Code 1982, § 9-28; Ord. No. 08-01, 7-10-08)

Sec. 32-41. Authority of council to submit question for nonbinding vote.

The council may submit to the electorate on its own initiative a nonbinding question, to determine the collective views of the voters, to be voted upon at a regular or special city election. Such question shall be entitled on the Ballot "Nonbinding Question To Voters" and the vote thereon shall not be binding upon the council. The city clerk shall report to the council the results of such vote at the next council meeting occurring at least ten days after the date of such election. Such question shall not be subject to sections 32-26 through 32-36 or 32-38.

(Ord. No. 01-15, 10-4-01; Ord. No. 08-01, 7-10-08)

Chapter 34

ENVIRONMENT*

Article I. In General

Secs. 34-1--34-25. Reserved.

Article II. Nuisances

Sec. 34-26. Forbidden.

Sec. 34-27. Nuisance defined.

Sec. 34-28. Inspections of tenements; vacating occupants.

Sec. 34-29. Offensive conditions declared nuisances.

Sec. 34-30. Abatement generally.

Sec. 34-31. Abatement orders and appeals.

Sec. 34-32. Abatement by city.

Sec. 34-33. Penalty and abatement.

Sec. 34-34. Obnoxious use of buildings.

Sec. 34-35. Dense smoke.

Sec. 34-36. Abandoning an airtight container.

Sec. 34-37. Disposal of dead animals restricted.

Sec. 34-38. Action for damages.

*Cross references: Vegetation, ch. 78.

ENVIRONMENT

ARTICLE I. IN GENERAL

Secs. 34-1--34-25. Reserved.

ARTICLE II. NUISANCES*

*Cross references: Depositing offensive substances, § 54-5.

Sec. 34-26. Forbidden.

No person shall commit, create or maintain any nuisance.

(Code 1982, § 18-1)

Sec. 34-27. Nuisance defined.

Whatever is dangerous to human health, whatever renders the grounds, the water, the air, or food, hazardous or injurious to health, is hereby declared to constitute a nuisance.

(Code 1982, § 14-2)

Sec. 34-28. Inspections of tenements; vacating occupants.

Whenever the health officer shall find that the number of persons occupying any tenement is so great as to be the cause of nuisance or sickness, or a source of filth; and whenever any tenement is not furnished with suitable sewage disposal facilities, according to the rules and regulations of the state department of human services, division of health and engineering, such health officer may cause all or any persons occupying such tenement to be removed therefrom, first giving them notice in writing to remove, and allowing them at least 48 hours in which to comply with the notice.

(Code 1982, § 14-1)

Sec. 34-29. Offensive conditions declared nuisances.

Any accumulation of refuse matter such as swill, waste of meat, fish, shells, bones, decayed vegetables, dead carcasses, excrement or any kind of offal which may decompose and generate diseases, germs or unhealthy gases, and affect the purity of the air in the immediate vicinity of any dwelling house or place of business, shall be considered a nuisance.

(Code 1982, § 14-3)

Sec. 34-30. Abatement generally.

The process for abatement of a nuisance is as provided by 17 M.R.S.A. § 2702.

(Code 1982, § 18-7)

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Sec. 34-31. Abatement orders and appeals.

(a) Whenever the health officer determines that a condition is or is likely to become injurious to the health of the public, an order to correct such condition shall be issued to the responsible party. The order shall be in writing and include a statement of the reasons for issuance of the order and may contain an outline of remedial action which will effect compliance with this chapter. A copy of the order shall be kept as part of the public record.

(b) The order shall be served upon the owner or his agent or upon the occupant as the case may require. The order shall be deemed to be properly served upon such owner, agent or occupant if a copy thereof is served upon him personally or if a copy thereof is sent by registered mail or certified mail to his last known address or the address as shown on the records in the department of assessment. A statement signed by the person so serving, stating the date of service, shall be filed in the office of the director of code enforcement.

(c) Any person served with an order pursuant to this section may request a hearing before the board of appeals by filing a written petition for the hearing at the office of the director of code enforcement within ten days of the date of service of order. The appeal shall be heard at the next scheduled meeting of the board of appeals occurring at least 48 hours after the date of filing. The board of appeals may sustain, modify or withdraw such order. The decision of the board of appeals may be further appealed pursuant to the provisions of rule 80B of the Maine Rules of Civil Procedure. To take advantage of this right, a petition for review must be filed with the superior court within 30 days of receipt of the decision of the board of appeals.

(d) The health officer may, upon evidence of disregard of the order or noncompliance with the decision of the board of appeals, request that appropriate legal action be instituted by the city attorney.

(Code 1982, § 14-4)

Sec. 34-32. Abatement by city.

Upon failure to correct any nuisance described in section 34-28, after due notice given by the health officer, the same shall be corrected at the expense of the owner or agent, or occupant of the premises where such nuisance exists. (Code 1982, § 14-5)

State law references: Health officer's authority to remove private nuisance, 22 M.R.S.A. § 1561.

Sec. 34-33. Penalty and abatement.

As provided by 17 M.R.S.A. § 2706, whoever erects, causes or continues a public or common nuisance, as described in state law or at common law, where no other punishment is specially provided, shall be punished by a fine of not more than \$100.00, and the court with or without such fine may order such nuisance to be discontinued or abated and issue a warrant therefor as provided in state law.

(Code 1982, § 18-6)

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Sec. 34-34. Obnoxious use of buildings.

The erection, continuance or use of any building or place for the exercise of a trade, employment or manufacture which, by noxious exhalations, offensive smells or other annoyances becomes injurious and dangerous to the health, comfort or property of individuals, or of the public, is declared to be a public nuisance as provided by 17 M.R.S.A. § 2802.

(Code 1982, § 18-3)

Sec. 34-35. Dense smoke.

(a) The following definitions shall apply in the interpretation and enforcement of this section:

Chart shall be considered as referring to the Ringelmann smoke chart as published and used by the Bureau of Mines.

Stack means and includes chimneys, smokestacks, structures and openings of any kind whatsoever, capable of emitting smoke. This shall include locomotives.

(b) Any stack emitting smoke of greater density than no. 2 on the chart except for a period of six minutes in any one hour and not exceeding 12 minutes daily while engaged in cleaning or building a new fire, and except for locomotives which shall be allowed one minute in 30 minutes for smoke denser than no. 2 but not denser than no. 3 by the chart, shall be termed a nuisance and annoyance. Any person causing, or responsible for, a stack emitting smoke in excess of limits set forth in this section shall be guilty of an offense. Every 24 hours the offense continues shall be a separate offense. The health department shall be the agent for the enforcement of this section.

(Code 1982, § 18-4)

Sec. 34-36. Abandoning an airtight container.

(a) A person is guilty of abandoning an airtight container if:

(1) He abandons or discards in any public place, or in a private place that is accessible to minors, any chest, closet, piece of furniture, refrigerator, icebox or other article having a compartment capacity of 1 1/2 cubic feet or more and having a door or lid which when closed cannot be opened easily from the inside; or

(2) Being the owner, lessee, manager or other person in control of a public place or of a place that is accessible to minors on which there has been abandoned or discarded a container described in subsection (1), above, he knowingly or recklessly fails to remove such container from that place, or to remove the door, lid or other cover of the container.

(b) Abandoning an airtight container is an offense. Any person violating any of the provisions of this section shall upon conviction thereof be fined in an amount not exceeding \$50.00. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such under this section.

(Code 1982, § 19-5)

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Sec. 34-37. Disposal of dead animals restricted.

No person shall cast any dead animal substance into any street, nor into any of the canals or waters within or adjoining the city, nor cause any animal to be drowned in such canals or waters.

(Code 1982, § 14-6)

Cross references: Animals, ch. 14.

State law references: Depositing of dead animals a nuisance, 22 M.R.S.A. § 1562.

Sec. 34-38. Action for damages.

As provided by 17 M.R.S.A. § 2701, any person injured in his comfort or enjoyment of his estate by a common and public or a private nuisance may maintain against the offender an action of the case for his damages, unless otherwise specially provided.

(Code 1982, § 18-5)

Chapter 38

FIRE PREVENTION AND PROTECTION*

*Cross references: Buildings and building regulations, ch. 18; weapons and explosives, § 50-106 et seq.; hazardous materials, § 62-56 et seq.; fire zones, § 70-137.

State law references: Municipal fire protection, 30-A M.R.S.A. § 3151.

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FIRE PREVENTION AND PROTECTION

ARTICLE I. IN GENERAL

Sec. 38-1. Interfering with fire alarm.

No person shall interfere in any way with any of the signal boxes of the fire alarm system by breaking, cutting, defacing or injuring such boxes, nor tamper or meddle with such boxes or any part thereof.

(Code 1982, § 11-1)

Sec. 38-2. Unauthorized use of hydrants prohibited.

No person except one duly authorized shall remove the cap from any water hydrant in the city. No person shall interfere with or meddle with, obstruct the approach to, partially or wholly cover with snow or any other substance, or in any manner damage or deface such hydrant or decrease its immediate availability in the event of an emergency.

(Code 1982, § 11-2)

Sec. 38-3. Regulation of false fire alarms.

(a) Installation of alarm systems. No person shall, without first obtaining a permit from the fire chief, install an alarm system that includes any mechanism, equipment or device, designed to automatically transmit a signal, message or warning from private or public premises, including, but not limited to, telephonic alarm systems designed to operate automatically through the use of public telephone facilities to the city fire department, or monitored by a private or public entity, which in turn calls the city fire department.

(b) Existing alarm systems. Sixty days after the enactment of this section, no person shall, without first obtaining a permit from the fire chief, continue to operate an alarm system that includes any mechanism, equipment or device, designed to automatically transmit a signal, message or warning from private or public premises, including, but not limited to, telephonic alarm systems designed to operate automatically through the use of public telephone facilities to the city fire department, or monitored by a private or public entity, which in turn calls the city fire department.

(c) Issuance of permits. Permits shall be issued to applicants upon the following conditions:

- (1) The applicant shall execute and submit to the fire chief a written agreement, upon a form furnished by the fire chief, that includes, inter alia, an acknowledgment that the applicant has read and agrees to abide by the terms of the false fire alarm policy adopted by and amended from time to time by the city council.
- (2) With respect to applicants under subsection (b) above, the applicant shall provide evidence that the applicant has, prior to the time of the application, fully complied with the false fire alarm policy adopted by and amended from time to time by the city council.

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(3) With respect to applicants under subsection (b) above, in the event that they are unable to make such certification due to their prior failure to pay charges under such policy, they shall submit with their application full payment of such charges.

(d) Disconnection from noncompliance; appeal. In the event a permittee under this section fails to comply with the terms of the permit or with the terms of the false fire alarm policy adopted by and amended from time to time by the city council, the fire chief shall give to the permittee 60 days written notice of the city's intention to disconnect the permittee's system from the connection with the city fire department. In the event that the permittee, having received such notice, fails to place itself in compliance within such 60-day period, the fire chief shall proceed to disconnect the permittee from the system. A permittee may appeal to the city council from the fire chief's notice of intention to disconnect by filing a written notice of appeal with the city clerk within 20 days after the date of mailing of the notice of intention to disconnect. Upon hearing of the appeal, the city council shall determine the issue of compliance, and may affirm, reverse or modify the decision of the fire chief.

(e) Disconnection for nonapplication or failure to submit conforming application; appeal. In the event that an applicant or person required to file an application under subsection (b) above fails to submit an application, or submits an incomplete application, within the 60-day period set forth in subsection (b) above, the fire chief shall send notice of intention to disconnect as in subsection (d) above; in the event that the applicant, or person required to submit an application, having received such notice, fails to file a completed application within the 60-day period specified in the notice, the fire chief shall proceed to disconnect the permittee from the system. An applicant or person receiving a notice of intention to disconnect may appeal to the city council from the fire chief's notice of intention to disconnect by filing a written notice of appeal with the city clerk within 20 days after the date of mailing of the notice of intention to disconnect. Upon hearing of the appeal, the city council shall determine the issue of compliance, and may affirm, reverse or modify the decision of the fire chief.

(Ord. No. 95-15, 11-2-95)

Secs. 38-4--38-25. Reserved.

ARTICLE II. FIRE PREVENTION CODE*

*Charter references: Board of appeals, § 4.06.

Sec. 38-26. Codes adopted.

(a) For the purpose of protecting life and property against the hazards of fire and explosion, the city hereby adopts and enacts as codes of the city the following National Fire Codes as promulgated by the National Fire Protection Association:

- NFPA 1: Fire Prevention Code, 2006 Edition
- NFPA 10: Standard for Portable Fire Extinguishers, 2007 Edition
- NFPA 11: Standard for Low, Medium, and High Expansion Foam Systems, 2005 Edition
- NFPA 12: Standard on Carbon Dioxide Extinguishing Systems, 2008 Edition

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- NFPA 13: Installation of Sprinkler Systems, 2007 Edition
- NFPA 13D: Standard for the Installation of Sprinkler Systems in One and Two Family Dwellings and Manufactured Homes, 2007 Edition
- NFPA 13R: Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height, 2007 Edition
- NFPA 14: Standard for the Installation of Standpipe, Private Hydrants and Hose Systems, 2007 Edition
- NFPA 15: Standard for Water Spray Fixed Systems for Fire Protection, 2007 Edition
- NFPA 16: Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems, 2007 Edition
- NFPA 17: Standard for Dry Chemical Extinguishing Systems, 2002 Edition
- NFPA 17A: Standard for Wet Chemical Extinguishing Systems, 2002 Edition
- NFPA 18: Standard on Wetting Agents, 2006 Edition
- NFPA 20: Standard for the Installation of Stationary Fire Pumps for Fire Protection, 2007 Edition
- NFPA 22: Standard for Water Tanks for Private Fire Protection, 2008 Edition
- NFPA 24: Installation of Private Fire Service Mains and Their Appurtenances, 2007 Edition
- NFPA 25: Inspection, Testing and Maintenance of Water-Based Fire Protection Systems, 2008 Edition
- NFPA 30: Standards for Flammable and Combustible Liquids, 2008 Edition
- NFPA 30A: Code for Motor Fuel Dispensing Facilities and Repair Garages, 2008 Edition
- NFPA 30B: Code for the Manufacture and Storage of Aerosol Products, 2007 Edition
- NFPA 32: Standard for Dry Cleaning Plants, 2007 Edition
- NFPA 33: Standard for Spray Application Using Flammable or Combustible Materials, 2007 Edition
- NFPA 34: Standard for Dipping and Coating Processes Using Flammable or Combustible Liquids, 2007 Edition
- NFPA 37: Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines, 2006 Edition
- NFPA 51: Standard for the Design and Installation of Oxygen-Fuel Gas Systems for Welding, Cutting and Allied Processes, 2007 Edition
- NFPA 51A: Standard for Acetylene Cylinder Charging Plants, 2006 Edition
- NFPA 51B: Standard for Fire Prevention During Welding, Cutting and Other Hotwork, 2003 Edition
- NFPA 54: National Fuel Gas Code, 2006 Edition
- NFPA 55: Standard for the Storage, Use, and Handling of Compressed Gases and Cryogenic Fluids in Portable and Stationary Containers, Cylinders, and Tanks, 2005 Edition
- NFPA 58: Liquefied Petroleum Gas Code, 2008 Edition

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- NFPA 59: Utility LP-Gas Plant Code, 2008 Edition
- NFPA 72: National Fire Alarm Code, 2007 Edition
- NFPA 80: Standard for Fire Doors and Windows, 2010 Edition
- NFPA 96: Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations, 2008 Edition
- NFPA 99: Standard for Health Care Facilities, 2005 Edition
- NFPA 99B: Standard for Hypobaric Facilities, 2005 Edition
- NFPA 101: Life Safety Code, 2009 Edition
- NFPA 102: Standard for Grandstands, Folding and Telescopic Seating, Tents, and Membrane Structures, 2006 Edition
- NFPA 110: Standard for Emergency and Standby Power Systems, 2005 Edition
- NFPA 160: Standard for the Flame Effects Before an Audience, 2006 Edition
- NFPA 211: Standard for Chimneys, Fireplaces, Vents, and Solid Fuel-Burning Appliances, 2006 Edition
- NFPA 214: Standard on Water-Cooling Towers, 2005 Edition
- NFPA 220: Standard on Types of Building Construction, 2006 Edition
- NFPA 318: Standard for the Protection of Semiconductor Fabrication Facilities, 2006 Edition
- NFPA 385: Standard for Tank Vehicles for Flammable and Combustible Liquids, 2007 Edition
- NFPA 409: Standard on Aircraft Hangers, 2004 Edition
- NFPA 418: Standard for Heliports, 2006 Edition
- NFPA 495: Explosive Materials Code, 2006 Edition
- NFPA 496: Standard for Purged and Pressurized Enclosures for Electrical Equipment, 2008 Edition
- NFPA 750: Standard on Water Mist Fire Protection Systems, 2006 Edition
- NFPA 1122: Code for Model Rocketry, 2008 Edition
- NFPA 1123: Code for Fireworks Display, 2006 Edition
- NFPA 1124: Code for the Manufacture, Transportation, and Storage of Fireworks and Pyrotechnic Articles, 2006 Edition
- NFPA 1126: Standard for the Use of Pyrotechnics Before a Proximate Audience, 2006 Edition
- NFPA 2001: Standard on Clean Agent Fire Extinguishing Systems, 2008 Edition

(b) Specific Provisions: The City of Lewiston Fire Prevention Code incorporates by reference National Fire Protection Association (NFPA) #101, *Life Safety Code*, 2009 edition; NFPA #80, *Standard for Fire Doors and other Opening Protectives*, 2010 edition; and NFPA #220, *Standard on Types of Building Construction*, 2006 edition. Specific provisions of the Life Safety Code have been excluded to avoid conflict with the *Maine Uniform Building and Energy Code*, and several

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provisions have been modified to make the provisions specific to Maine. This section also includes rules governing portable classrooms and indoor and special pyrotechnic events.

1. This rule incorporates by reference National Fire Protection Association Standard #101, *Life Safety Code*, 2009 edition.
 - A. Unvented fuel-fired heaters. Unvented fuel-fired heaters shall not be used in a bedroom or bathroom or in a manufactured home.
 - B. Extinguishment Requirements. The following provisions of NFPA # 101, the *Life Safety Code*, 2009 edition, are not incorporated by reference:
 1. Chapter 12, section 12.3.5.3, subsections 3 & 4; and,
 2. Chapter 13, section 13.3.5.3, subsections 1 & 2.
 - C. Extinguishment Requirements in One- and Two- Family Dwellings. Section 24.3.5.1 of NFPA #101, the *Life Safety Code*, 2009 edition, is not incorporated by reference.
 - D. Stair risers, guards, treads, and tread nosing. The following provisions of NFPA # 101, *Life Safety Code*, 2009 edition, are modified as indicated: The maximum height of risers as prescribed in Chapter 24, Section 24.2.5 is modified to permit a maximum 7 $\frac{3}{4}$ " riser for newly constructed stairs in one- and two family dwellings only. The minimum height of guards as prescribed in Chapter 24, Section 24.2.5 is modified to permit a minimum guard height of 36" for newly constructed stairs in one- and two family dwellings only. The minimum tread depth as prescribed in Chapter 24, Section 24.2.5 shall be amended to permit a 10" tread depth for newly constructed stairs in one-and two family dwellings only. Tread nosing as prescribed in Chapter 7, Section 7.2.2.3.5 is modified to permit a nosing at least $\frac{3}{4}$ " but not more than 1 $\frac{1}{4}$ " in depth for newly constructed one-and two family dwellings.
 - E. Separated Occupancies. Tables 6.1.14.4.1 a & b, "*Required Separation of Occupancies (hours.)*" shall be crossed referenced with Table 508.4 *Required Separation of Occupancies* of the 2009 *International Building Code(IBC)*. Where separation requirements in the two tables conflict, separation requirements set forth in the IBC table control.
 - F. Accessory Occupancies. Chapter 6, Section 6.1.14.1.3 of NFPA # 101, *Life Safety Code*, 2009 edition, is not incorporated. Section 508.2 *Accessory Occupancies*, of the 2009 *International Building Code* governs.
 - G. Dead End Corridors. The following provisions of NFPA # 101, *Life Safety Code*, 2009 edition, are modified as indicated: Chapter 18, Section 18.2.5.2 is modified to require dead end corridors not to exceed 20 feet. Chapter 32, Section 32.3.2.5.4 is modified to require dead end corridors not to exceed 50 feet. Chapter 42, Table 42.2.5 is modified to require that a dead end corridor in an ordinary hazard storage occupancy protected by a sprinkler system not exceed 50 feet. A dead end

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corridor in an ordinary hazard storage occupancy not protected by a sprinkler shall not exceed 20 ft.

2. This rule incorporates by reference the National Fire Protection Association Standard #80, *Standard for Fire Doors and other Opening Protectives*, 2010 edition.
3. This rule incorporates by reference the National Fire Protection Association Standard #220, *Standard for Types of Building Construction*, 2006 edition.
4. Portable Classrooms

Portable Classrooms shall mean buildings manufactured and moved to a site to provide educational space for educational facilities. Similar portable classrooms may be site built if the installation follows these requirements and a construction permit is obtained in accordance with Title 25 M.R.S.A. §2448.

- A. All portable classrooms shall be placed in such a manner that no part of the portable classroom is within 20 feet horizontally to any other building.
 - B. Groups of portable classrooms shall maintain 20 feet of clearance between individual buildings.
 - C. All groups of buildings under this construction shall have a construction permit issued by the Office of State Fire Marshal as required by Title 25 M.R.S.A. §2448.
 - D. Buildings and groups of buildings on the same property shall have fire alarm systems as required (NFPA 101, 2006~~9~~ edition, Sections 14.3.4 and 15.3.4) and all systems shall be interconnected.
 - E. Fire Drills shall be conducted in conjunction with drills in main educational buildings.
 - F. Portable classrooms shall meet all egress requirements of the adopted National Fire Protection Association Standard #101, *Life Safety Code*, 2009 edition.
 - G. No installation shall be completed unless a letter from the municipal fire authority has been received by the Office of State Fire Marshal. This letter must indicate that the fire authority's ability to respond to fire emergencies will not be hindered by the placement of the portable classrooms and that the installations of the portable classrooms do not violate local ordinances.
5. Indoor Pyrotechnic Events

Indoor events using special effect display features, as defined in Title 8 M.R.S.A. §221-A, shall be held only:

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- A. In buildings fully protected by automatic fire sprinkler systems meeting all requirements of National Fire Protection Association #13, *Installation of Sprinkler Systems*, 2006 edition.
 - B. With the prior approval of the Office of State Fire Marshal in accordance with the requirements of Title 8 M.R.S.A., Chapter 9-A; Rules Chapters 20 and 26; and the following:
 - 1. The announcement required by Chapter 20, Section 9 shall be made regardless of capacity.
 - 2. The special effect display shall be conducted by a licensed Fireworks Technician with appropriate Indoor and/or Flame Effect endorsement.
 - 3. The event shall be monitored by the Office of State Fire Marshal.
 - 4. An inspection by the Office of State Fire Marshal shall be completed prior to the commencement of the event with all scenery, effects, and equipment in place.
6. Special Pyrotechnic Amusement Events
- A. A special pyrotechnic amusement event is an event, including but not limited to such events as a magic show or theatrical performance, which uses no more than 1 ounce of flash paper, or small open flame devices such as candles, matches or lighters, or similar devices approved for use at special pyrotechnic amusement events by the Office of State Fire Marshal.
 - B. An operator of a special pyrotechnic amusement event shall register with the Office of State Fire Marshal and provide a list of scheduled events and their locations. Such registration shall be valid for a period of 1 year. Location and event schedules shall be updated with the Office of State Fire Marshal no less than 10 days prior to any newly scheduled event or location.
 - C. An operator or manager of a special pyrotechnic amusement event shall obtain licensure as a Fireworks Technician with indoor pyrotechnic endorsement pursuant to Title 8 M.R.S.A. Chapter 9-A or conduct the event under the direct supervision of one holding this license.
7. Announcement required

At every event with a defined start time, where an assembly occupancy can accommodate 300 occupants or more, the event manager, operator, sponsor, or a designee shall make an audio announcement to all occupants, prior to the commencement of the event, regarding the following:

- A. Location of exits;

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- B. Smoking rules and regulations;
- C. Use of open flame devices;
- D. What to do in case of emergency evacuation; and
- E. Location of any first aid stations.

Such events include but are not limited to those held at armories, assembly halls, auditoriums, dance halls, exhibition halls, gymnasiums, special amusement buildings regardless of occupant load, and theaters.

(c) All NFPA codes and portions therefore adopted by this section may be viewed by contacting the Lewiston Fire Prevention Bureau.

(Code 1982, § 11-19; Ord. No. 92-26, § 1, 11-19-92; Ord. No. 94-7, 7-21-94; Ord. No. 99-14, 7-15-99; Ord. No. 01-3, 3-8-01; Ord. No. 02-03, 4-18-02; Ord. No. 05-04, 3-10-05; Ord. No. 10-07, 09-16-10; Ord. No. 11-10, 10-20-11)

Sec. 38-27. Application of fire codes on new or existing conditions; fire chief to set limit on corrections.

The provisions of the codes adopted by section 38-26 shall apply equally to new and existing conditions, except that existing conditions not in strict compliance with the terms of the codes hereby adopted may be permitted to continue where the exceptions do not constitute a distinct hazard to life or property, in the opinion of the fire chief. The fire chief may prescribe a time limitation on corrections required to be made to existing conditions or to bring conditions or corrections up to code requirements.

(Code 1982, § 11-20)

Sec. 38-28. Enforcement orders and appeals.

(a) Whenever the director of the fire prevention division determines that a condition is or is likely to become a fire hazard, an order to correct such condition shall be issued to the responsible party. Such order shall be in writing and include a statement of the reasons for issuance of the order and may contain an outline of remedial action which will correct such condition. A copy of such order shall be kept as part of the public record.

(b) An order under this section shall be served upon the owner or his agent or upon the occupant, as the case may require. Such order shall be deemed to be properly served upon such owner, agent or occupant if a copy thereof is served upon him personally or if a copy thereof is sent by registered mail or certified mail to his last known address or the address as shown on the records in the department of assessment. A statement signed by the person so serving stating the date of service shall be filed in the office of the director of code enforcement.

(c) Any person served with an order pursuant to this section may request a hearing before the board of appeals by filing a written petition for such hearing at the office of the director of code enforcement within ten days of the date of service of order. Such appeal shall be heard at the next scheduled meeting of the board of appeals occurring at least 48 hours after the

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date of filing. The board of appeals may sustain, modify or withdraw such order. The decision of the board of appeals may be further appealed pursuant to the provisions of rule 80B of the Maine Rules of Civil Procedure. To take advantage of this right, a petition for review must be filed with the superior court within 30 days of receipt of the decision of the board of appeals.

(d) The director of fire prevention may, upon evidence of disregard of an order served under this section or noncompliance with the decision of the board of appeals, request that appropriate legal action be instituted by the city attorney.

(Code 1982, § 11-21)

Sec. 38-29. Aggrieved person may seek revocation of permit, approval or license.

Any person aggrieved by the granting of a permit or approval, or the granting of a license by the fire department on the grounds that the exercise thereof would constitute a fire nuisance, health or explosion hazard may appeal for revocation of such permit, approval or license to the fire chief.

(Code 1982, § 11-22)

Sec. 38-30. Limitations on permits; applications generally to be made to bureau.

A permit required by this article or the codes adopted hereby shall not take the place of any license required by law. It shall not be transferable, and any change in use or occupancy or change in location shall require a new permit. Applications for permits required by this article or by the codes adopted hereby shall be made to the fire prevention bureau, except that permits for outdoor fires may be issued by dispatchers, fire department officers and fire inspectors.

(Code 1982, § 11-23)

Sec. 38-31. Authority to suspend, revoke permits, licenses; reports required; appeal.

All fire department officers and fire inspectors shall have the authority to suspend or revoke any and all permits or licenses which may be issued by the fire department. Permits and licenses shall be suspended or revoked only if, in the opinion of the officer or inspector having jurisdiction, such action is immediately necessary to safeguard life or property and failure to take such action would be a distinct hazard to life or property. Appeals for restoration of such permit or license shall be made to the fire chief. Suspension or revocation of a permit or license shall be reported to the fire chief with a written report setting forth all facts concerning such action.

(Code 1982, § 11-24)

Sec. 38-32. City council to prescribe areas, locations, boundaries for storage of materials.

The city council shall prescribe areas, locations or boundaries as required by the codes adopted in this article for the enforcement of restrictions on use, storage, consumption, loading, unloading, processing or other matters pertaining to any or all products or materials requiring such defined areas.

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(Code 1982, § 11-25)

Sec. 38-33. Public meeting to be held prior to establishing restricted areas.

The city council shall hold a public meeting prior to the establishment of any restricted area, location or boundary, and such public meeting shall be advertised at least once in a newspaper of general circulation within the city.

(Code 1982, § 11-26)

Sec. 38-34. Open-air burning.

(a) As used in this section, the term "fire" means and shall include, but is not limited to, bonfires, burning of grass, leaves, weeds, brush, wood, paper boxes, trash, waste, automobiles and trucks, junk, fires on public or private dumps, and any burning of combustible or flammable materials, including petroleum products.

(b) No person shall kindle or maintain any fire in the open air, or authorize any such fire to be kindled or maintained, in any street, alley, roadway, lane, public grounds or private lot, without first having obtained a written permit to do so from the fire department.

(c) The fire chief shall prescribe and direct the issuance of burning permits and shall have full control of such permits. The chief engineer of the department or the deputy fire chief on duty shall have the authority to suspend or stop all burning in the city whenever, in their opinion, safety requires such action.

(d) Notwithstanding any of the provisions of this section, no person shall kindle or cause to be kindled such fires as are enumerated in this section, without calling by telephone the city fire department for clearance to kindle the fire just prior to lighting it. Failure to obtain such clearance shall cause the permit issued therefor to be automatically null and void.

(Code 1982, § 11-27)

Sec. 38-35. Outdoor incinerators, defined; fire chief to prescribe regulations; permit required, revocation.

(a) "Outdoor incinerators" are defined as "any container used to burn waste or discarded materials."

(b) The city fire chief is authorized to prescribe and issue rules and regulations for the safe use of outdoor incinerators, including, without limitations, the types of containers authorized to be used.

(c) It shall be unlawful to use any outdoor incinerator without having first obtained a permit for such incinerator from the city fire department. Such permits may be refused by the inspector if the incinerator or its location is not in compliance with all laws and ordinances.

(d) The permit for any outdoor incinerator may be revoked by a fire inspector in the event of violation of any rules or regulations of the city fire chief.

(e) Any permit for an outdoor incinerator may be revoked if the incinerator causes smoke or odor or is a source of discomfort or a nuisance to adjoining property owners or tenants.

(Code 1982, § 11-28)

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Sec. 38-36. Class B or class C gas leaks.

(a) When a class B or class C gas leak, or a combination of leaks, as defined by the Maine Public Utilities Commission in General Order number 27, as revised, is discovered anywhere in the city, a committee made up of the fire chief, police chief, and the director of public works, or their deputies acting in their absence, or any of the above, by a majority vote of such committee, and upon approval of the city council, may order the supplier of the gas service to the section of the city in which the leak is located to immediately shut off the distribution, transmission or supply of gas to the area in the vicinity of the leak where it reasonably appears that such action is necessary to prevent imminent danger to lives or property. Any such order shall be revoked upon the presentation of satisfactory evidence that the dangerous situation which prompted it no longer exists. Such evidence may consist of instrument readings and other scientific data relative to the presence of natural gas in the area where the leak is located.

(b) Any person who refuses to comply with any lawful order issued under the provisions of this section shall be punished by a fine in accordance with the city's policy manual as approved by the city council, which such fine shall not be suspended. Each 24-hour period during which a refusal continues from the issuance of the original order shall constitute a separate offense.

(c) In addition to enforcement under the preceding subsection, the city may initiate civil proceedings to temporarily or permanently enjoin the continuation of the dangerous condition.

(d) The city shall not be liable for damages incurred as a result of shutting down the system. If areas are shut off, the gas company shall notify users of natural gas.

(e) Outside shutoffs shall be installed at every building where natural gas is used.

(Code 1982, § 11-29; Ord. No. 08-06e, 8-14-08)

Sec. 38-37. Fire chief's statutory duties.

The city council hereby assumes the power conferred and the responsibility for performance of duties prescribed by 25 M.R.S.A. §§ 2394, 2395, 2397, and hereby delegates the exercise of such powers and the responsibility for performance of such duties to the fire chief as authorized by 25 M.R.S.A. § 2391, except in such specific cases as the city council may notify the fire chief of its intention to take jurisdiction. (Code 1982, § 11-31)

Sec. 38-38. Right of entry to inspect for hazards.

The chief of the fire department may enter any building, premises or structure within the limits of the city with the permission of any person having control of such building, premises or structure, or may apply to a court for process to do so, for the purpose of examining and inspecting the same to ascertain the condition thereof with regard to the presence, arrangement or deposit of any articles, materials, substances, goods, wares or merchandise which may have a tendency to create danger from fire on or in the building, premises or structure, or personal injury or loss of life of the occupants thereof or persons in or about such premises, building or structure; also with regard to the condition of the chimneys, stoves, stovepipes, boilers and places of deposit of ashes. The inspector shall wear the regulation uniform of the fire department or produce proper credentials. (Code 1982, § 11-32)

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State law references: Municipal inspection of buildings, 25 M.R.S.A. §§ 2351--2360; inspection by the state insurance commissioner, removal of dangerous matter, appeal, exits, 25 M.R.S.A. § 2392.

Sec. 38-39. Appeal from order of fire chief.

Should any owner, lessee or occupant of any premises, building or structure or the owner or person in control of any materials, goods, wares or merchandise, chimneys, stove, stovepipe, boiler or place of deposit of ashes, consider himself aggrieved by an order of the chief of the fire department, he may, within 24 hours after the receipt of such order, appeal to the insurance commissioner of the state, who shall, within ten days, review such order and file his decision thereon, and such decision shall be final and shall be complied with within such time as may be fixed in such order or decision of the insurance commissioner.

(Code 1982, § 11-33)

Sec. 38-40. Violations of article.

Except as otherwise provided in this article, any person violating any of the provisions of this article or neglecting to comply with any order issued pursuant to any provisions of this article shall be guilty of an offense. Each day a violation is permitted to exist beyond a reasonable period after service of an order shall constitute a separate offense.

(Code 1982, § 11-34)

Chapter 46

GENERAL ASSISTANCE*

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- Sec. 46-66. Work requirement.
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- Sec. 46-68. Use of resources.
- Sec. 46-69. Period of disqualification.
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Article IV. Determination of Eligibility

- Sec. 46-91. Recognition of dignity and rights.
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Sec. 46-98. Basic necessities; maximum levels of assistance.

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Article V. Fair Hearing

Sec. 46-121. Right to fair hearing.

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Sec. 46-146. Recipients.

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ARTICLE I. IN GENERAL

Sec. 46-1. Introductory provisions.

- (a) The city shall administer a program of general assistance available to all persons who are eligible to receive assistance in accordance with the standards of eligibility as provided in this chapter and in 22 M.R.S.A. § 4301 et seq.
- (b) Every effort will be made to recognize the dignity of the applicant for general assistance and to encourage self-reliance. The program will help each person achieve self-maintenance and will encourage the work incentive. When possible, it will seek to alleviate needs other than financial through rehabilitative, preventive and protective services. General assistance will promote strengthening the family, especially with regard to the care and protection of children.
- (c) The general assistance program will place no restrictions on the personal rights of the applicant or recipient, nor will there be any unlawful discrimination based on gender, age, race, religion, disability or political affiliation. The applicant or recipient will be informed of his rights and responsibilities under the general assistance program.
- (d) The general assistance administrator will act promptly on all applications for assistance and requests for fair hearings. Within 24 hours of receiving an application, the applicant will receive a written decision whether or not assistance is granted, and that will state the specific reasons for the decision. The administrator will also give the applicant written notice that the applicant may appeal to the municipal fair hearing authority, if dissatisfied with the decision. When an applicant is determined to be eligible, assistance appropriate to the need will be furnished within 24 hours after the completed application is submitted, except when the administrator issues nonemergency assistance conditionally on the successful completion of a workfare assignment.
- (e) The administrator will maintain complete and accurate records pertaining to each applicant and recipient. These records are confidential.
- (f) The administrator will post a notice stating the days and hours the administrator will be available. A copy of this chapter and the Maine General Assistance Law, 22 M.R.S.A. § 4301 et seq., will be readily available to any member of the public upon request.
- (g) The general assistance administrator will refer to and abide by any other city ordinance to define a condition, area or situation. The administrator will not pay rent to a building owner or landlord when that building, or any unit in that building, has been placarded, condemned, unlicensed, or is known to be in violation of any other municipal ordinance.

(Ord. No. 92-6, § 13-1, 3-5-92; Ord. No. 94-2, § 13-1, 5-5-94; 12-9, 8-16-12)

Cross references: Municipal work program, § 46-67.

Sec. 46-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Applicant means a person who has submitted, either directly or through an authorized

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representative, an application for general assistance or who has, in an emergency, requested assistance without first completing an application. In addition, all persons on whose behalf an application has been submitted or on whose behalf benefits have been granted shall be considered applicants.

Application form means a standardized form used by the general assistance administrator for the purpose of allowing a person to apply for general assistance and confirming the fact that a person has made application. The application form must be signed by the applicant to be considered complete.

Basic necessities means food, clothing, shelter, fuel, electricity, nonelective medical services as recommended by a physician, nonprescription drugs, telephone where it is necessary for medical reasons, property taxes when a tax lien placed on the property threatens the loss of the applicant's place of residence, and any other commodity or service determined essential by the city. The term "basic necessities" does not include security deposits for rental property, except for those situations where no other permanent lodging is available unless a security deposit is paid, and a waiver, deferral or installment arrangement cannot be made between the landlord and tenant to satisfy the need for the immediate payment of the security deposit or payment in full.

Case record means an official file containing application forms, correspondence, narrative records and all other communications pertaining to an applicant or recipient, written decisions regarding eligibility including reasons for those decisions as well as the types and amounts of assistance provided; and all records concerning an applicant's request for fair hearing and those fair hearing decisions.

Caseworker. The term "overseer" shall be that official so designated by the municipal officers, and the term shall incorporate those personnel within the division of general assistance who act as agents of the overseer.

Categorical assistance means all state and federal income maintenance programs.

Claimant means a person who has requested a fair hearing.

Disabled person means a person who is presently unable to work or maintain a home due to a physical or mental disability that is verified by a physician.

Dwelling unit means a building or part thereof used for separate living quarters for one or more persons living as a single housekeeping unit.

Eligible person means a person who is qualified to receive general assistance from the municipality, according to the standards of eligibility set forth in this chapter.

Emergency means any life threatening situation or a situation beyond the control of the individual which, if not alleviated immediately, could reasonably be expected to pose a threat to the health or safety of a person.

General assistance administrator means a municipal official designated to receive applications, make decisions concerning an applicant's right to receive assistance, and prepare records and communications concerning assistance. The administrator may be an overseer or an authorized agent such as a town manager, welfare director, or caseworker.

General assistance program means a service administered by a municipality for the immediate aid of persons who are unable to provide the basic necessities essential to maintain

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themselves or their families. A general assistance program provides a specific amount and type of aid for defined needs during a limited period of time and is not intended to be a continuing "grant-in-aid" or "categorical" welfare program. This definition shall not in any way lessen the responsibility of each municipality to provide general assistance to a person each time that the person has need and is found to be otherwise eligible to receive general assistance.

Household means an individual or a group of individuals who share a dwelling unit. When an applicant shares a dwelling unit with one or more individuals, even when a landlord-tenant relationship may exist between individuals residing in the dwelling unit, eligible applicants may receive assistance for no more than their pro rata share of the actual costs of the shared basic needs of that household according to the maximum levels of assistance established in the municipal ordinance. The income of household members not legally liable or otherwise responsible for supporting the household shall be considered as available to the applicant only when there is a pooling of income.

Income means any form of income in cash or in kind received by the household, including net remuneration for services performed, cash received on either secured or unsecured credit, any payments received as an annuity, retirement or disability benefits, veterans' pensions, workers' compensation, unemployment benefits, benefits under any state or federal categorical assistance program, supplemental security income, social security and any other payments from governmental sources, unless specifically prohibited by any law or regulation, court ordered support payments, income from pension or trust funds and household income from any other source, including relatives or unrelated household members.

The following items shall not be considered as income or assets which must be liquidated for the purposes of deriving income.

- (1) Real or personal income-producing property, tools of trade, governmental entitlement specifically treated as exempt assets by state or federal law;
- (2) Actual work-related expenses, whether itemized or by standard deduction, such as taxes, retirement fund contributions, union dues, transportation costs to and from work, special equipment costs and child care expenses; or
- (3) Earned income of children below the age of 18 years who are full-time students and who are not working full time.

In determining need, the period of time used as a basis for the calculation shall be a 30-day period commencing on the date of application. This prospective calculation shall not disqualify an applicant who has exhausted income to purchase basic necessities, provided that the income does not exceed the income standards established by the municipality.

Notwithstanding this prospective calculation, if any applicant or recipient receives a lump sum payment prior or subsequent to applying for assistance, that payment must be prorated over future months.

Just cause means a valid, verifiable reason that hinders an individual from complying with one or more conditions of eligibility.

Lump sum payment means a one-time or typically nonrecurring sum of money issued to an applicant or recipient. "Lump sum payment" includes, but is not limited to, retroactive or settlement portions of social security benefits, workers' compensation payments, unemployment benefits, disability income, veterans' benefits, severance pay benefits, or money received from

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inheritances, lottery winnings, personal injury awards, property damage claims or divorce settlements. A lump sum payment includes only the amount of money available to the applicant after payment of required deductions has been made from the gross lump sum payment. A lump sum payment does not include conversion of a nonliquid resource to a liquid resource if the liquid resource has been used or is intended to be used to replace the converted resource or for other necessary expenses.

Maximum levels of assistance means the amount of assistance as established in article IV or the actual cost of any basic necessity, whichever is less.

Misconduct shall have the same meaning as misconduct defined in 26 MRSA§1043 (23). Generally, employees are guilty of misconduct when the employee violates his or her duties or obligations to the employer. Employees who engage in a pattern of irresponsible behavior to the detriment of the employer's interests may also be found guilty of misconduct.

Municipality means any city, town or plantation administering a general assistance program.

Municipality of responsibility means the municipality which is liable for the support of an eligible person at the time of application.

Need means the condition whereby a person's income, money, property, credit, assets or other resources available to provide basic necessities for the individual and the individual's family are less than the maximum levels of assistance.

Net general assistance costs means those direct costs incurred by a municipality in providing assistance to eligible persons according to standards established by the municipal officers. These do not include the administrative expenses of the general assistance program.

Period of eligibility means the time for which a person has been granted assistance. The period of eligibility may vary depending on the type of assistance, provided, however, that in no event shall this period extend beyond one month.

Pooling of income means the financial relationship among household members who are not legally liable for mutual support in which there occurs any commingling of funds or sharing of income or expenses. Municipalities may by ordinance establish as a rebuttable presumption that persons sharing the same dwelling unit are pooling their income. Applicants who are requesting that the determination of eligibility be calculated as though one or more household members are not pooling their income have the burden of rebutting the presumption of pooling income.

Real estate means any land, buildings, homes, mobile homes, and any other things affixed to the land.

Recipient means a person who has applied for and is currently receiving general assistance.

Resident means a person who is physically present in Lewiston with the intention of remaining in Lewiston in order to maintain or establish a home and who has no other residence. A person who applies for assistance in Lewiston who is not a resident of Lewiston or any other municipality is the responsibility of the municipality where the person first applies. That municipality must take an application and grant assistance to the applicant if he is eligible, until he establishes a new residence in another municipality. See section 46-40.

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Resources means and includes any program, service, or other sources of support which are an alternative to or supplement for general assistance. There are two kinds of resources: available and potential.

- (1) *Available resources.* Available resources include resources which are immediately available to the applicant or which can be conveniently secured by the applicant without delay, such as cash on hand or in bank accounts, assets for which there is an immediate and available market, or support from relatives which is being made available at the time of application and for which the applicant does not have to take any unreasonable steps to secure (e.g., relocation beyond the immediate region). Available resources also include the services, commodities or facilities made available by private organizations when:
 - a. The applicant voluntarily agrees to utilize such services;
 - b. The municipality has established a contractual relationship with the private organization to provide services or commodities when requested;
 - c. The municipality is able to secure the services or commodities needed by an applicant from the private organization for any consideration acceptable to both the organization and the municipality; and
 - d. The service is available and offered at no cost to the applicant and deemed necessary by a physician, psychologist or other professional retraining or rehabilitation specialist.

Charities may be considered private organizations which are available resources only if the charity places no unreasonable requirements on the applicant which are violative of the applicant's fundamental rights. (Fjeld v. Lewiston, Andro. Sup. Ct. CV 87-4; Bolduc v. Lewiston, Andro. Sup. Ct. CV 87-248)

- (2) *Potential resources.* Potential resources are programs, services, nonliquid assets, or trusts which typically require people to apply in writing and/or wait a period of time before eligibility is determined or the potential income is released. Potential resources include but are not limited to any state or federal assistance program, employment benefits, governmental or private pension program, available trust funds, support from legally liable relatives, child support payments, and jointly held resources where the applicant or recipient share may be available to the individual. Potential resources include TANF, food supplement, fuel assistance (HEAP), subsidized housing, and similar programs.

(Ord. No. 92-6, § 13-20, 3-5-92; Ord. No. 94-2, § 13-20, 5-5-94; 12-9, 8-16-12)

Cross references: Definitions generally, § 1-2.

State law references: Similar provisions, 22 M.R.S.A. §§ 4301(1), (2), (3), (4), (5), (6), (7), (8), (8-A), (9), (10), (11), (13), 4307, 4308, 4309(1), 4310, 4311, 4316-A(5), 4317, 26 M.R.S.A. § 1043(23).

Sec. 46-3. Confidentiality of information.

- (a) *Confidentiality.* Case records and all other information relating to an applicant or recipient of general assistance are confidential and will not be disclosed to the general public, unless the applicant or recipient states in writing what information is to be

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released. (Janak v. D.H.S., Aroostook Cty #CV-89-116).

- (b) *Release of information.* Applicants, recipients and their legal representatives have the right to review their case records. No record will be released to a legal representative or other third party, however, unless the administrator receives a consent form signed by the applicant expressly authorizing the release of his records. Whenever the administrator releases any information, he will make a notation in the applicant's file stating to whom the record was released and the date. The administrator may charge a reasonable fee for the reproduction of any records when appropriate.
- (c) *Information from other sources; penalty.*
 - (1) Information furnished to the municipality by the department of human services or any other agency or institution pursuant to 22 M.R.S.A. § 4314 is confidential. The general assistance administrator will also comply with laws relating to the confidentiality of records concerning birth, marriage and death.
 - (2) Any person who refuses to provide necessary information to the administrator in order to verify an applicant's eligibility must state in writing the reason for the refusal. Any person who refuses to provide information, without just cause, may be subject to a civil penalty in accordance with the city's policy manual as approved by the city council. Any person, including the applicant, who knowingly and willfully gives false information to the administrator is committing a class E crime.
- (d) *Misuse of information.* Misuse of any information relating to an applicant or recipient is a punishable offense.

(Ord. No. 92-6, § 13-30, 3-5-92; Ord. No. 94-2, § 13-30, 5-5-94; Ord. No. 08-06f, 8-14-08)

State law references: Similar provisions, 22 M.R.S.A. §§ 42(2), 2706, 4306, 4314, 4315.

Sec. 46-4. Maintenance of records.

- (a) *Purpose.* The general assistance administrator will keep complete and accurate general assistance records. These records are necessary to:
 - (1) Provide a valid basis of accounting for municipal expenditures;
 - (2) Document and support decisions concerning an applicant or recipient; and
 - (3) Assure the availability of all relevant information in the event of a fair hearing or judicial review of a decision by the general assistance administrator.
- (b) *Case records.* The administrator will establish and maintain a separate case record for each applicant or recipient. Each case record will include at least the household's applications, budget sheets, information concerning the types and amounts of assistance provided, narrative statements describing the nature of the emergency situation whenever general assistance is granted in amounts greater than the applicant's unmet need, written decisions, any requests for fair hearings and the fair hearing authority decisions. Workfare participation will also be recorded, as will any cash repayments to the municipality. The record may also include a narrative writings documenting the need for general assistance, the results of home visits, collateral information, referrals, changes in status, the reason(s) for the release of confidential information, adjustments in aid and

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suspension or termination of eligibility.

Case records will not include information or material that is irrelevant to an applicant's or recipient's application or to the general assistance administrator's decisions.

(Ord. No. 92-6, § 13-31, 3-5-92; Ord. No. 94-2, § 13-31, 5-5-94)

State law references: Similar provisions, 22 M.R.S.A. § 4306.

Secs. 46-5--46-30. Reserved.

ARTICLE II. APPLICATION PROCEDURE

Sec. 46-31. Right to apply.

- (a) *Who may apply.* Anyone may apply for general assistance. The head of the family, any other responsible household member, or an authorized representative must apply in person, except in special emergency situations as provided in section 46-39 or except when the applicant is a resident of an emergency shelter and the municipality has made an agreement with that emergency shelter to presume shelter residents to be eligible for general assistance. The administrator may require a duly authorized representative to present a signed statement documenting that he is in fact authorized to apply for general assistance on behalf of the named applicant. The applicant or representative must complete a written application and any other required forms so that the administrator can determine eligibility.
- (b) *Telephone applications.* When a person has an emergency but is unable to apply in person due to illness, disability, lack of transportation, lack of child care, or other good cause, and the person cannot send an authorized representative, the administrator will accept an application over the telephone. The telephone application process will include the administrator receiving written verification via mail or visiting the applicant's home with the applicant's permission.
- (c) *Written application upon each request.* Each request for assistance will be administered in accordance with these guidelines. The administrator will make an independent determination of eligibility for general assistance each time a person applies.
- (d) *Applications accepted; posted notice.* Applications will be processed during regular business hours at the municipal office and when the general assistance administrator is conducting interviews with applicants. Notice will be posted stating when and where people may apply for assistance, and will include the information on the emergency contact available to take emergency applications at all other times. Completed applications will be accepted and interviews given only during the regular hours established and posted by the administrator; however, in an emergency, the administrator will be available to accept applications for assistance whenever necessary.

(Ord. No. 92-6, § 13-40, 3-5-92; Ord. No. 94-2, § 13-40, 5-5-94; 12-9, 8-16-12)

State law references: Similar provisions, 22 M.R.S.A. §§ 4304, 4305, 4308, 4309.

Sec. 46-32. Application interview.

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Except when it is impractical, the general assistance administrator will interview each applicant personally before making a decision. The interview will be conducted in private, although the applicant may be accompanied by a legal representative, friend or family member.

(Ord. No. 92-6, § 13-41, 3-5-92; Ord. No. 94-2, § 13-41, 5-5-94)

Sec. 46-33. Contents of application.

At a minimum, the application will contain the following information:

- (1) Applicant's name, address, date of birth, Social Security Number, and phone number;
- (2) Names, dates of birth, and Social Security Numbers of other household members for whom the applicant is seeking assistance;
- (3) Total number of individuals in the building or apartment where the applicant is residing;
- (4) Employment and employability information;
- (5) All household income, resources, assets, and property;
- (6) Expenses;
- (7) Types of assistance being requested;
- (8) Penalty for false representation;
- (9) Applicant's permission to verify information;
- (10) Signature of applicant and date.

(Ord. No. 92-6, § 13-42, 3-5-92; Ord. No. 94-2, § 13-42, 5-5-94)

Sec. 46-34. General assistance administrator's responsibilities at time of application.

- (a) *Generally.* The administrator will make every effort to inform all applicants of their rights and responsibilities as well as the general program requirements associated with applying for and receiving general assistance, including application requirements, eligibility guidelines, applicant rights, and reimbursement obligations.
- (b) *Application requirements.* The administrator will fill out the application as described in section 46-33, with information and documentation provided by the applicant. The administrator will inform the applicant of any other information or documentation that the applicant will have to provide in order for the administrator to evaluate the applicant's eligibility for assistance. The administrator will fully explain the purpose of any release of information form or reimbursement agreement before seeking to obtain the applicant's signature or written authorization.
- (c) *Eligibility requirements.* The administrator will inform the applicant of the eligibility requirements of the program, including the income standard of need; the applicant's ongoing use-of-income, work related, and resource related responsibilities, as described in section 46-35; the financial reduction in assistance that is the consequence of spending household income on nonnecessities; and the disqualification penalties associated with

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committing fraud, failing to perform work related assignments without just cause, or failing to make a good faith effort to secure potential resources when the requirement to attempt to obtain those resources has been explained to the applicant in writing.

- (d) *Applicant rights.* The administrator will inform all applicants of their rights to, review this chapter and the state general assistance law, apply for assistance, receive a written decision concerning eligibility within 24 hours of applying for assistance, confidentiality, contact the department of health and human services, and challenge the administrator's decision by requesting a fair hearing.
- (e) *Reimbursement, recovery.* The administrator will inform the applicant that he must reimburse the municipality for the amount of general assistance he has been granted in the event of a subsequent ability to pay. In addition to seeking repayment from a recipient, the municipality also may recover the amount of assistance granted to a recipient during the previous 12 months from any relative legally liable for the applicant's support (spouses, parents of persons under the age of 25, see article VI, relative to recovery of expenses). Whenever applicable, the administrator will explain the various liens a municipality may place against a recipient's real or personal property, such as the mortgage or capital improvement lien, the workers' compensation lump sum payment lien or the SSI interim assistance agreement lien, as these liens are described in article VI.

(Ord. No. 92-6, § 13-43, 3-5-92; Ord. No. 94-2, § 13-43, 5-5-94; 12-9, 8-16-12)

State law references: Similar provisions, 22 M.R.S.A. §§ 4318, 4319.

Sec. 46-35. Responsibilities of applicant at time of application.

- (a) The applicant has the responsibility at the time of each application to provide accurate, complete and current information and verifiable documentation concerning the applicant's income, resources, assets, household employment, how the applicant has spent his income, the names and addresses of any relatives legally liable for the applicant's support, and any change in this information from a previous application that would affect the applicant's eligibility.
- (b) In addition, the applicant must accurately report and provide verifiable documentation that shows that the applicant:
 - (1) Has remained employed, if previously employed, and not quit work without just cause or been discharged from employment for misconduct;
 - (2) Has been seeking employment, if previously unemployed or employed on a part-time basis, has accepted any suitable offer of employment, and has satisfactorily performed all workfare assignments or had just cause not to perform those assignments;
 - (3) Has made use of all available and potential resources when directed in writing to such a program by the administrator, including but not limited to other government benefit programs or the assistance of liable relatives of sufficient means; and
 - (4) Has participated in any training, retraining, educational or rehabilitative program when appropriate and when directed in writing to such a program by the administrator, in order to diminish the applicant's need for general assistance.

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(Ord. No. 92-6, § 13-44, 3-5-92; Ord. No. 94-2, § 13-44, 5-5-94)

State law references: Similar provisions, 22 M.R.S.A. §§ 4309, 4316-A, 4317.

Sec. 46-36. Action on applications.

- (a) *Written decision.* The general assistance administrator will give a written decision to the applicant concerning his eligibility within 24 hours after he submits a written application and will furnish assistance to eligible applicants within that period except when the municipality is permitted by law (and pursuant to section 46-67) to issue assistance conditionally on the successful completion of a workfare assignment. A written decision will be given each time a person applies, whether assistance is granted, denied, reduced or terminated.
- (b) *Content of decision.* The written decision on the application will contain the following information:
- (1) The type and amount of aid the applicant is being granted or the applicant's ineligibility;
 - (2) The period of eligibility if the applicant is eligible for assistance;
 - (3) The specific reasons for the decision;
 - (4) The applicant's right to a fair hearing; and
 - (5) The applicant's right to notify the department of health and human services if he believes the municipality has acted illegally.

(Ord. No. 92-6, § 13-45, 3-5-92; Ord. No. 94-2, § 13-45, 5-5-94; 12-9, 8-16-12)

State law references: Similar provisions, 22 M.R.S.A. §§ 4305, 4321.

Sec. 46-37. Withdrawal of an application.

An application is considered withdrawn if:

- (1) The applicant requests, in writing, that his application be withdrawn; or
- (2) The applicant refuses to complete or sign the application, or any other form needed by the general assistance administrator.

(Ord. No. 92-6, § 13-46, 3-5-92; Ord. No. 94-2, § 13-46, 5-5-94)

Sec. 46-38. Temporary refusal to accept application.

Under special circumstances, the general assistance administrator may temporarily refuse to accept applications for 24 hours. Such circumstances may include, but are not limited to, the following:

- (1) When the applicant's conduct is abusive, disruptive, or harassing, or when the applicant is under the influence of drugs or alcohol. In these situations, the applicant will be requested to leave. If the applicant refuses to leave, the police may be summoned. The applicant will be informed that an application will be accepted when his conduct is under control;

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- (2) When a third person applies for assistance on behalf of the applicant. That person may be required to provide written verification that he has been duly authorized to act as a representative for the applicant.

(Ord. No. 92-6, § 13-47, 3-5-92; Ord. No. 94-2, § 13-47, 5-5-94)

State law references: Similar provisions, 22 M.R.S.A. § 4308.

Sec. 46-39. Emergencies.

An emergency is considered to be any life threatening situation or a situation beyond the control of the applicant which, if not alleviated immediately, could reasonably be expected to pose a threat to the health or safety of the applicant or a member of the household. Although applicants may be considered otherwise ineligible to receive general assistance, persons who apply for assistance to alleviate an emergency will be granted assistance, except as provided below, if they do not have sufficient income and resources to meet an actual emergency need and have not had sufficient income and resources to avert the emergency. The following exceptions and conditions apply when determining eligibility for emergency assistance.

- (1) *Disqualification.* A person who is currently disqualified from receiving general assistance due to a violation of sections 46-66, 46-67, 46-68 and 46-94 is ineligible to receive emergency assistance. Dependents of a disqualified person may be eligible for assistance. For the purposes of this section, "dependents" are defined as: (i) a dependent minor child; (ii) an elderly, ill or disabled person; or (iii) a person whose presence is required to provide care for any child under the age of six years or any ill or disabled member of the household. If one or more members of a household are disqualified and assistance is requested for the remaining dependents, the eligibility of those dependents will be calculated as though the household is comprised of the dependents only, except that all household income will be considered available to them.
- (2) *Assistance prior to verification.* Whenever an applicant informs the administrator that he needs assistance immediately, the administrator will grant, pending verification, the assistance within 24 hours, provided that:
 - a. After interviewing the applicant, the administrator has determined that he will probably be eligible for assistance after a verification of information is completed; and
 - b. The applicant submits documentation, when possible, to verify his need.

The administrator may contact at least one other person to confirm the applicant's statements about needing emergency assistance. No further assistance will be authorized until the applicant's eligibility has been confirmed.

- (3) *Telephone applications.* If a person has an emergency need and cannot apply in person due to illness, disability, lack of transportation, lack of child care, or other good cause, and if there is no authorized representative who can apply for the applicant, the administrator will accept an application over the telephone.

The administrator will not grant any assistance as the result of a telephone application if the applicant refuses to allow the administrator to verify the information either by visiting his home, or by mail, and the administrator cannot

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determine his eligibility through any other means.

- (4) *Limitation on emergency assistance.* Applicants are not automatically eligible for emergency assistance. If applicants had income which could have been used to prevent all or part of an emergency, but they spent that income on items which are not basic necessities, they will not be eligible to receive general assistance to replace that money. Applicants have the responsibility to provide the administrator with verifiable documentation demonstrating that the applicant did not have sufficient income to avert the emergency situation.

According to the following criteria, the administrator may limit emergency assistance to cover only the difference between the amount of money necessary for the household to avoid the emergency and the amount of income available to the household during the applicable time period.

- a. The applicable time period shall be the 30 days preceding the application for emergency assistance, except in those cases where the emergency was created by a negative account balance for a commodity or service (such as rent, mortgage or utility payments), and the negative account balance was created over a longer period of time. In such cases, the applicable time period shall be the consecutive length of time the account balance has been in the negative.
- b. The administrator shall seek from the applicant all information pertinent to the applicant's ability to provide for his basic necessities for the applicable time period, including evidence of all income and resources for the applicable time period.
- c. The administrator shall compute all costs for the household's basic necessities during the applicable time period, per month, in accordance with the maximum levels established by this chapter for the specific basic necessities or the actual monthly cost, whichever is less, including all costs associated with averting the particular emergency situation for which the applicant is seeking assistance.
- d. From the total household costs for basic necessities during the applicable time period, the administrator shall subtract the total income and lump sum payments available to the household for the applicable time period as well as the total general assistance actually received during the applicable time period.
- e. The administrator may restrict the issuance of emergency assistance to the difference yielded by the computation in subsection (4)d, above, even when such a grant will not totally alleviate the emergency situation.
- f. The administrator may waive this limitation on emergency assistance in life threatening situations or for first time applicants, that is, persons who have never before applied for general assistance.
- g. Nothing in these criteria may be construed as prohibiting a municipality from electing to alleviate an emergency situation in the most cost-effective manner available, provided such a determination of eligibility for

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emergency assistance is in conformance with general assistance law.

A municipality may provide emergency assistance when the municipality determines that an emergency is imminent and that failure to provide assistance may result in undue hardship and unnecessary costs.

The household of an initial applicant that is otherwise eligible for emergency assistance may not be denied emergency assistance to meet an immediate need solely on the basis of the proration of a lump sum payment. Upon subsequent applications, that household's eligibility is subject to all the standards established by this chapter.

(Ord. No. 92-6, § 13-48, 3-5-92; Ord. No. 94-2, § 13-48, 5-5-94; 12-9, 8-16-12)

State law references: Similar provisions, 22 M.R.S.A. §§ 4301(4), 4308, 4308(2)(A), 4308(3), 4309(3), 4310.

Sec. 46-40. Residence.

- (a) *Eligibility.* The administrator shall provide general assistance to all eligible persons applying for assistance who are residents of this municipality. A "resident" is a person who has no other residence and is physically present in this municipality and who intends to remain here and establish a household. The municipality also recognizes its responsibility to provide assistance to eligible persons who apply here and who are not residents of this municipality or any other municipality. If a person who is not a resident of any municipality applies in this municipality first, the administrator will determine his eligibility and, if eligible, will grant assistance until he establishes a residence in another municipality.
- (b) *Moving, relocating.* The municipality will not consider moving or transporting an applicant or recipient into another municipality unless the person requests assistance to relocate to another municipality. If the administrator determines the applicant is eligible and grants financial assistance to help with the requested relocation, this municipality will be responsible for providing assistance to the applicant for 30 days after the applicant moves, provided the recipient remains eligible.
- (c) *Institutions.* If a resident of this municipality enters an institution located in another municipality (such as a group home, shelter, rehabilitative center, nursing home, or hospital) and requests assistance while at the institution, he will be the responsibility of this municipality for up to six months after he enters the institution. The municipality thereafter retains responsibility for an applicant in an institution only if the applicant has maintained a home in this municipality to which he intends to return. The municipality also recognizes its responsibility for applicants residing in an institution in this municipality if such an applicant had no residence prior to entering the institution.
- (d) *Temporary housing.* Hotels, motels and similar places of temporary lodging are considered institutions if the municipality grants financial assistance for, makes arrangements for, or advises or encourages an applicant to stay in temporary lodging. [Note: Municipalities which illegally deny housing assistance, and as a result of the denial the applicant stays in temporary lodging, are responsible for the applicant for up to six months and may be subject to other penalties.]
- (e) *Disputes.* When the administrator believes that an applicant is a resident of another

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municipality, but that municipality disputes its responsibility, the administrator will notify the department of human services in Augusta (287-3654 or 1-800-442-6003). If the applicant applies in this municipality first, the administrator will determine his eligibility and, if eligible, will grant assistance until the department has concluded which municipality is responsible for providing assistance. If another municipality was responsible, the department will recover the amount due from the other municipality.

(Ord. No. 92-6, § 13-49, 3-5-92; Ord. No. 94-2, § 13-49, 5-5-94)

State law references: Similar provisions, 22 M.R.S.A. § 4307, 4307(4), (5), (6).

Secs. 46-41--46-60. Reserved.

ARTICLE III. ELIGIBILITY FACTORS

Sec. 46-61. Generally.

A person will be eligible for general assistance if he is in need and has complied with the eligibility requirements set forth in this article.

(Ord. No. 92-6, art. V, 3-5-92; Ord. No. 94-2, art. V, 5-5-94)

Sec. 46-62. Initial application; repeat applicants.

(a) *Initial application.*

- (1) For initial applicants, except as provided below, need will be the sole condition of eligibility. The exception to this general rule, as provided by law, applies to all applicants, including initial applicants, who are disqualified for a defined period for quitting employment without just cause or for being discharged from employment for misconduct. See section 46-66. An initial applicant is a person who has never before applied for general assistance in any Maine municipality.
- (2) *Need* means that the applicant's income, including pro-rated income where applicable, property, credit, assets or other resources are less than the overall maximum levels of assistance established in accordance with section 46-98 or the actual 30-day costs, whichever is less, and he doesn't have adequate income or other resources available to provide basic necessities.

- (b) *Subsequent applicants.* Persons who are not initial applicants are repeat applicants. Repeat applicants are people who have applied for general assistance at any time in the past. Repeat applicants are also people on whose behalf a general assistance application was made at any time in the past, provided that at such a time the applicant was not a dependent minor in the household. For repeat applicants to be eligible for general assistance, they must be in need, have used their income and resources to secure basic necessities, and meet all other eligibility requirements.

(Ord. No. 92-6, § 13-50, 3-5-92; Ord. No. 94-2, § 13-50, 5-5-94)

State law references: Similar provisions, 22 M.R.S.A. §§ 4308(1), 4316-A(1A).

Sec. 46-63. Eligibility for categorical assistance.

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- (a) Receipt of categorical assistance will not disqualify a person from receiving general assistance, if he is otherwise eligible. Benefits received from other assistance programs will be considered as income when determining need, with the exception of food stamps, which will not be counted as income or resources or otherwise taken into consideration when determining need (7 U.S.C. section 2017(b)). Also, any fuel assistance (HEAP/ECIP) received by an applicant will not be considered as income or resources; that is, the administrator will always compute the heating needs of an applicant who has received HEAP or ECIP as if that applicant paid for his total fuel costs (42 U.S.C. section 624(f); Dept. of Health and Welfare v. Block, 784 F.2d 895). The computation of general assistance for heating energy needs when an applicant has received HEAP or ECIP shall be accomplished in accordance with subsection (c) under types of income at section 46-96.
- (b) Applicants or recipients must apply for other program benefits within seven days after being advised in writing to do so by the general assistance administrator. Persons who, without just cause, fail to make a good faith effort to obtain a potential resource will be disqualified from receiving assistance until they make a good faith effort to obtain the benefit.

(Ord. No. 92-6, § 13-51, 3-5-92; Ord. No. 94-2, § 13-51, 5-5-94)

State law references: Similar provisions, 22 M.R.S.A. § 4317.

Sec. 46-64. Personal property.

- (a) *Liquid assets.* No person owning assets easily convertible into cash, including, but not limited to, bank deposits, stocks, bonds, certificates of deposit and other marketable security, will be eligible for general assistance unless and until he uses these assets to meet his basic needs and thereby exhausts them.
- (b) *Tangible assets.* No person owning or possessing personal property consisting of more than one motor vehicle, or a boat, trailer, recreation vehicle or other assets that are convertible into cash and are nonessential to the maintenance of the applicant's household will be eligible for general assistance. Exceptions may be made when a person is making an initial application and when reasonable efforts to convert assets to cash at fair market value are unsuccessful. Tools of a trade, livestock, farm equipment and other equipment used for the production of income are exempt from the above category and are not considered available assets.
- (c) *Automobile ownership.* Ownership of one automobile per household will not make a person ineligible for assistance, if such vehicle is essential for transportation to employment, medical care, rehabilitation or training facilities, or if it is essential to the maintenance of the applicant and his family. Recipients of general assistance who own an automobile with a market value greater than \$8,000.00 may be required, with written, 30-day notice, to make a good faith effort to trade that automobile in to a reputable automobile dealer for an automobile with a market value of less than \$8,000.00. Any income received by the applicant by virtue of such a trade-down must be used for his basic necessities. Failure to liquidate or trade down the excess value of an automobile asset can result in disqualification. The municipality will neither pay, nor consider as necessary expenses, any car payment for which the applicant is responsible. General assistance for travel-related needs shall be computed in accordance with section 46-98,

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regarding work related expenses.

- (d) *Insurance.* Insurance that is available to an applicant on a noncontributory basis, or that is required as a condition of employment, will not be a factor in determining eligibility for general assistance. Life insurance with a cash surrender value may be considered as a tangible asset when an applicant has received assistance for four weeks or more after an application for assistance.
- (e) *Transfer of property.* Applicants who transfer assets for less than fair market value to someone else solely for the purpose of establishing eligibility for general assistance will not be granted general assistance to replace the uncompensated value of the transferred asset. Assistance will be denied within a 120-day limit up to the uncompensated value of the asset which was transferred unless the transfer of asset is fraudulently misrepresented, in which case a 120-day disqualification will issue. There will be a presumption that the applicant transferred his assets in order to be eligible for general assistance whenever property is sold for less than the fair market value or when the transfer occurred within 30 days prior to applying for general assistance unless the applicant can demonstrate the existence of an arms-length transaction.

(Ord. No. 92-6, § 13-52, 3-5-92; Ord. No. 94-2, § 13-52, 5-5-94; 12-9, 8-16-12)

State law references: Similar provisions, 22 M.R.S.A. § 4317.

Sec. 46-65. Ownership of real estate.

- (a) If the applicant or dependents own real property other than that occupied as the principal home, continued eligibility will depend on the applicant making a reasonable effort to:
 - (1) Dispose of the property at fair market value in order to convert the property into cash which can be applied toward meeting present need; or
 - (2) Obtain a loan against such property which may be used to meet present need. Applicants who transfer their excess property to someone solely to appear eligible for general assistance will be ineligible.
- (b) If an applicant is granted assistance in the form of a mortgage payment or capital improvement payment, the municipality may claim a lien against the property. The lien shall not be enforceable until the time of sale of the property or upon the death of the recipient. See section 46-97.

(Ord. No. 92-6, § 13-53, 3-5-92; Ord. No. 94-2, § 13-53, 5-5-94)

State law references: Similar provisions, 22 M.R.S.A. § 4320.

Sec. 46-66. Work requirement.

All general assistance recipients are required to work, look for work, and fulfill the work requirements, unless they are exempt as provided in this section.

- (1) *Employment, rehabilitation.* All unemployed applicants and members of their households who are 16 years of age or older will be required to accept any suitable job offer or opportunity for rehabilitative services, except as provided in this article (see exemptions). Applicants must demonstrate to the administrator that they are available for work and are actively seeking full time employment.

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- a. *Suitable job* means any job (at a rate of at least the state's minimum wage) which the applicant is mentally and physically able to perform.
 - b. *Available for work* means that applicants must make themselves available for work during the normal business hours prevailing in the area and show that no circumstance exists which would prevent them from complying with the work requirement.
- (2) *Verification.* Unemployed applicants or applicants employed on a part-time basis will be required to provide verifiable documentation of their pursuit of employment at the time of each application. At a minimum, such documentation shall consist of a list of the employers contacted, the date and time of the application contact, and the name of the employer representative contacted. If employment is pursued online, an actual application must be completed, and a receipt for the completed application must be provided. *Pursuit of employment* means actually submitting a written application or applying for a job in person when reasonable, or submitting an online application. For the duration of any repeat applicant's period of unemployment or partial employment, each recipient will be responsible for providing documentation of their pursuit of employment according to the conditions set forth by the administrator. Fulfillment of these requirements will not be expected at the time of the initial application, but will be a condition of eligibility for subsequent assistance.
- (3) *Disqualification.* After being granted assistance at the time of initial application, applicants will be considered ineligible for further assistance for 120 days if they, without just cause:
- a. Refuse to register for employment with the state job service;
 - b. Refuse to search diligently for employment when the search is reasonable and appropriate. Recipients who unreasonably seek work at the same places repeatedly will not be considered to be performing a diligent work search and will be disqualified;
 - c. Refuse to accept a suitable job offer;
 - d. Refuse to participate in an assigned training, education or rehabilitative program that would assist the applicant in securing employment;
 - e. Fail to be available for work;
 - f. Refuse to participate, or participate in a substandard manner, in the municipal work program. See section 46-67.
- (4) *Disqualification for quitting job, discharge for misconduct.* No applicant, whether an initial or repeat applicant, who has quit his full-time or part-time job without just cause or who has been discharged from employment for misconduct will be eligible to receive general assistance of any kind for a 120-day period from the date of separation from employment.
- (5) *Just cause.* Applicants will be ineligible for assistance for 120 days if they refuse to comply with the work requirements of this section without just cause. Just cause will be considered to exist when there is reasonable and verifiable evidence

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that:

- a. The applicant has a physical or mental illness or disability, which prevents him from working;
 - b. Employment pays below minimum wage;
 - c. The applicant was subject to sexual harassment;
 - d. The applicant is physically or mentally unable to perform required job tasks, or to meet piece work standards;
 - e. The applicant has no means of transportation to or from work or a training or rehabilitation program;
 - f. The applicant is unable to arrange for necessary child care or care of ill or disabled family members;
 - g. Any reason found to be good cause by the state department of labor or any other verifiable reason which the administrator considers reasonable and appropriate will be accepted as just cause.
- (6) *Applicant's burden of establishing just cause.* If the administrator finds that the applicant has violated a work related rule without just cause, it shall be the responsibility of the applicant to establish the presence of just cause.
- (7) *Eligibility regained.* Persons who are disqualified for 120 days because they violated the work requirement may regain their eligibility if and only when they become employed or otherwise satisfy the administrator that they are complying with the work requirement by fulfilling the work requirement they violated. Persons who have been disqualified for 120 days for failing or refusing to participate in the municipal workfare program or for performing their workfare assignment in a substandard manner shall be limited to a single opportunity to regain eligibility. If a workfare participant fails to regain eligibility, without just cause, after being offered a distinct and separate opportunity to do so, the administrator shall enforce the 120-day disqualification for the term of its initial duration. If a workfare participant regains eligibility under this section but is subsequently disqualified within the initial period of disqualification for failing to comply with the municipal work program, that participant shall be ineligible for a new 120-day period beginning with a new disqualification date, but with no opportunity to requalify.
- (8) *Dependents.* Failure of an otherwise eligible person to comply with the work requirements shall not affect the eligibility of any member of the person's household who is not capable of working, including:
- a. A dependent minor child;
 - b. An elderly, ill, or disabled person; and
 - c. A person whose presence is required in order to provide care for any child under six years of age or for any ill or disabled member of the household.

If one or more members of a household are disqualified and assistance is requested for those remaining members of the household who are dependents, the

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eligibility of those dependents will be calculated as though the household is composed of the dependents only, except that all household income will be considered as available to them.

(9) *Exemptions.*

- a. The work requirements of this section do not apply to any person who is elderly, physically or mentally ill or disabled. Any person whose presence is required to care for any pre-school age child or for any ill or disabled member of the family residing in the household is also exempt from the requirements of this section.
- b. The requirements of this section will not be imposed so as to interfere with an applicant's existing employment, ability to pursue a bona fide job offer, ability to attend an interview for possible employment, classroom participation in a primary or secondary educational program intended to lead to a high school diploma, classroom or on site participation in a training program which is either approved or determined by the department of labor to be expected to assist the applicant in securing employment, or classroom participation in a degree-granting program under the control of the department of human services or department of labor.

(Ord. No. 92-6, § 13-54, 3-5-92; Ord. No. 94-2, § 13-54, 5-5-94; 12-9, 8-16-12)

State law references: Similar provisions, 22 M.R.S.A. § 4301(8), 4309(3), 4316-A(1A), (4).

Sec. 46-67. Municipal work program.

- (a) *Participation.* Each applicant and any member of the household who is capable of working may be required to perform work for the municipality, including work for a nonprofit organization, as a condition of receiving assistance. The work requirement provisions found in section 46-66 regarding just cause, dependents, and exemptions also apply to the municipal workfare program.
- (b) *Consent.* Persons assigned to the work program are required to sign a form stating that they understand the requirements of general assistance and the work program. Prior to signing the form, the administrator will read it to the applicants or the applicants will read it themselves. The form will also state the number of hours the applicants must work and the hourly rate by means of which the duration of the work assignment is calculated. In addition, the consent form shall describe the consequences of failing to adequately perform part or all of the workfare or workfare-first assignment.
- (c) *Limitations.* The work requirement is subject to the following limitations:
 - (1) No person shall, as a condition of eligibility, be required to do any amount of work that exceeds the value of the net general assistance that the person receives under municipal general assistance standards. Any person performing work under this subsection shall be provided with net general assistance the value of which is computed at the rate of at least the prevailing minimum wage under state or federal law.
 - (2) No workfare participant shall be required to work for a nonprofit organization if

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that work would violate the participant's basic religious beliefs.

- (3) In no case shall eligible persons performing work under this section replace regular municipal employees.
 - (4) In no case will work performed under this section interfere with an eligible person's:
 - a. Existing employment;
 - b. Ability to follow up on a bona fide job offer;
 - c. Attendance at an interview for possible employment;
 - d. Classroom participation in a primary or secondary educational program intended to lead to a high school diploma; or
 - e. Classroom or on-site participation in a training program which is approved or determined by the department of labor to be reasonably expected to assist the person in securing employment, or classroom participation in a degree granting program operated under the control of the department of human services or the department of labor.
 - (5) In no case may an eligible person be required to work more than 40 hours per week. An eligible person who has full- or part-time employment shall be exempt from the work requirement, to the extent that the work requirement in combination with his regular employment would result in the person working more than 40 hours per week.
 - (6) In no case will an eligible person be required to perform work beyond his capabilities. However, when an illness or disability is claimed, an eligible person may be required, as a condition of receiving assistance, to present a medical statement detailing the extent of the disability or illness. If the administrator requires a medical statement to verify an applicant's illness or disability, the municipality will pay for the doctor's evaluation if the applicant has no means to pay for the exam; however, in such a case, the administrator will choose the medical provider. The administrator will not require verification of medical conditions which are apparent or which are of such short duration that a reasonable person would not ordinarily seek medical attention.
 - (7) In no case may an eligible person with an immediate need (i.e., a person in an emergency situation who has not been disqualified from receiving assistance for committing a program violation) be required to perform work under this section prior to receiving general assistance. The administrator shall meet immediate needs upon receiving written assurance from the eligible person that he is willing to perform workfare in order to continue to be eligible for general assistance. When the recipient has no immediate need, workfare participation may be required prior to receiving general assistance in accordance with the following workfare first policy.
- (d) *Workfare first policy.* Under the authority of 22 M.R.S.A. § 4316-A(2)(D), the administrator may, in accordance with the following guidelines, require a recipient of general assistance to perform a workfare assignment prior to the actual issuance of the

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general assistance benefit conditionally granted.

- (1) In no circumstance will emergency general assistance for which an applicant is eligible be withheld pending the satisfactory performance of workfare.
- (2) All workfare participants under this policy will be provided a written decision, as otherwise required by law, within 24 hours of submitting an application for general assistance and prior to performing any workfare for the municipality associated with that request for assistance. That written decision must include:
 - a. A specific description of the amount of general assistance being conditionally granted to the household, and for which basic needs;
 - b. The period of eligibility for which the general assistance grant is being issued, in days or weeks but not to exceed 30 days;
 - c. The rate, at a dollar-per-hour basis, but not less than the prevailing minimum wage, upon which the duration of the workfare assignment is calculated;
 - d. The actual duration of the workfare assignment that must be performed, in hours, before the general assistance grant will be actually issued;
 - e. The specifics of the workfare assignments, including the general nature of the type of work being assigned, locations of work sites, dates and times of assigned workfare, workfare supervisors' names and contact telephone numbers; and
 - f. Any other pertinent information related to the workfare assignments the recipient will be expected to perform.
- (3) As previously provided in this section, all workfare participants under this policy must sign a consent form that informs the participant of his workfare related rights and responsibilities, including the consequences of failing to perform all or part of the workfare assigned without just cause.
- (4) In addition to any disqualification penalty that may apply, the consequences of refusing to perform or failing to completely perform the workfare assignment, without just cause, or performing the entire workfare assignment below the average standards for that job, without just cause, will be the termination of the entire general assistance grant. Notice of the grant termination will be provided to the workfare participant in accordance with section 46-99.
- (5) If some of the workfare first assignment is satisfactorily performed but there has been a failure to perform the remainder of the assignment, without just cause, the administrator shall issue a grant of general assistance in the amount of the number of workfare hours satisfactorily performed times the hourly rate used to calculate the duration of the workfare assignment. In addition to any disqualification penalty that may apply, the remaining value of the conditionally issued general assistance grant shall be terminated, and notice of the partial termination and the reasons therefore will be issued to the workfare participant in accordance with section 46-99.
- (6) Any amount of the workfare assignment that is not performed because the

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workfare participant was temporarily unable to perform the assignment for just cause reasons shall be reassigned.

- (e) *Work-related expenses.* A participant's expenses related to work performed under this section will be added to the amount of net general assistance to be provided to the person. The municipality will provide any special clothes or equipment the recipient needs to perform his work assignment, if they are not available through other sources.
- (f) *Disqualification.* Any person who willfully fails to perform or willfully performs below average standards the work assigned by the municipality, without just cause, will be ineligible for 120 days. As soon as the administrator knows that a recipient failed to fulfill the work assignment, the administrator will notify the recipient that he is disqualified for 120 days unless the recipient can show just cause. The burden of demonstrating a just cause failure to perform a workfare assignment falls on the workfare participant.
- (g) *Eligibility regained.* Recipients who are disqualified from receiving assistance because they have violated the requirements of the municipal work program may regain their eligibility under the following conditions:

- (1) Recipients who fail to complete the first municipal work assignment they have been given will be disqualified from receiving assistance during the next 120 days, although dependents in the household may be eligible (see section 46-66).

If during the 120-day disqualification period the recipient makes a timely and reasonable request to perform the work assignment which he, without just cause, failed to perform, the disqualified recipient will be given an opportunity to regain his eligibility. The administrator will give the recipient a work assignment as soon as possible. If under such a set of circumstances the recipient has an emergency need and the administrator is unable to schedule a work assignment in time to alleviate the emergency, the administrator will provide sufficient assistance to the recipient to avert the emergency but the provision of such emergency assistance will not bar the administrator from subsequently enforcing the 120-day disqualification if the recipient fails to regain eligibility by satisfactorily performing the work assignment. The amount of emergency assistance granted will be considered in the computation of the total number of hours the recipient must work.

Recipients who have asked to regain their eligibility during a 120-day disqualification period and who agree to fulfill the assignment which they previously failed to perform and who, without just cause, fail to fulfill their municipal work assignment will be considered to have acted in bad faith. In such a circumstance, the administrator will enforce the 120-day disqualification for the term of its initial duration.

- (2) If a workfare participant regains eligibility under this section but is subsequently disqualified within the initial 120-day period of disqualification for failing to comply with the municipal work program, that participant will be ineligible for a new 120-day period beginning with the new disqualification date, but with no opportunity to requalify.
- (3) Any recipient who intentionally causes damage to property or harms other

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employees by his actions and is discharged by the work supervisor will not be entitled to regain eligibility by returning to the work program. Eligibility may be regained by otherwise becoming employed and meeting the definition of need.

- (4) For the purposes of regaining eligibility under section 46-66 and this section by becoming employed, "employment" shall mean employment by an employer as defined in 26 M.R.S.A. § 1043 et seq., or a service performed for an employer who withholds from the employee a social security tax pursuant to federal law.
- (h) *Reports.* The administrator will itemize the assistance that has been provided to persons who work for the municipality in reports to the department of human services.

(Ord. No. 92-6, § 13-55, 3-5-92; Ord. No. 94-2, § 13-55, 5-5-94)

Cross references: Nonemergency assistance issued conditionally upon successful completion of workfare assignment, § 46-1(d).

State law references: Similar provisions, 22 M.R.S.A. §§ 4309, 4316(5), 4316-A(1), (2), (3).

Sec. 46-68. Use of resources.

- (a) *Required.* Each applicant has the responsibility to make a good faith effort to utilize every available or potential resource which may reduce his need for general assistance (see definition of resources, section 46-2). People who refuse or fail to make a good faith effort to secure a potential resource after receiving written notice to do so are disqualified from receiving assistance until they make an effort to secure the resource. Applicants are required to prove that they have made a good faith effort to secure the resource.
- (b) *Minors.* A minor under the age of 18 years who has never married and is applying independently for general assistance and who is pregnant or has a dependent child or children will be eligible to receive general assistance only if the minor is residing in the home of his parent, legal guardian or other adult relative, in which case the entire household will be evaluated for eligibility. Exceptions to this limitation on eligibility will be made when:
- (1) The minor is residing in a foster home, maternity home, or other adult-supervised supportive living arrangement;
 - (2) The minor has no living parent or the whereabouts of the parents are unknown;
 - (3) No parent will permit the minor to live in the parent's home;
 - (4) The minor has lived apart from both parents for at least one year before the birth of any dependent child;
 - (5) The department of human services determines that the physical or emotional health or safety of the minor or the minor's dependent child or children would be jeopardized if the minor and his child or children lived with a parent; or
 - (6) The department of human services determines, in accordance with its regulations, that there is good cause to waive this limitation on eligibility.

Any person under the age of 25 years who is applying independently from his parents for general assistance will be informed that until he reaches the age of 25, the applicant's parents are still legally liable for his support, and the municipality has the right to seek recovery from the parents

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of the cost of all assistance granted to such a recipient to the extent his parents are financially capable of repaying the municipality. With regard to any such application, the municipality may seek verification of the applicant's need for general assistance by contacting his parents (City of Bangor v. DHS, Penob. Cty #CV-90-28). If the applicant's parents declare a willingness to provide the applicant with his basic needs directly, and there is no convincing evidence that the applicant would be jeopardized by relying on his parents for basic needs, the administrator may find the applicant to be in no need for general assistance for the reason that his needs are being provided by a legally liable relative.

- (c) *Mental or physical disability.* Any applicant who has a mental or physical disability must make a good faith effort to utilize any medical or rehabilitative services which have been recommended by a physician, psychologist or other professional retraining or rehabilitation specialist when the services are available to the applicant provided they would not constitute a financial burden or create a physical risk to the individual.
- (d) *Written notice; disqualification.* The administrator will give each applicant written notice that he is required to utilize any and all potential resources. Any applicant who refuses to utilize potential resources, without just cause, after receiving a written seven-day notice, will be ineligible for further assistance until he has made a good faith effort to utilize the resources. General assistance will not be withheld from the applicant pending receipt of a resource if the applicant has made, or is in the process of making, a good faith effort to obtain the resource.
- (e) *Forfeiture of benefits.* Any applicant who forfeits receipt of or causes a reduction in benefits from another public assistance program due to fraud, misrepresentation, a knowing or intentional violation of program rules or a refusal to comply with that program's rules without just cause will be ineligible to receive general assistance to replace the forfeited benefits. To the extent the forfeited benefits can be considered income under general assistance law, the worth of the forfeited benefits will be considered income that is available to the applicant for the duration of the forfeiture.

(Ord. No. 92-6, § 13-56, 3-5-92; Ord. No. 94-2, § 13-56, 5-5-94)

State law references: Similar provisions, 19 M.R.S.A. §§ 441--443, 22 M.R.S.A. §§ 4309(4), 4317, 4319.

Sec. 46-69. Period of disqualification.

- (a) *Notice; hearing.* No one will have his assistance terminated, reduced or suspended prior to being given written notice and an opportunity for a fair hearing. Each person will be notified in writing of the reasons for his ineligibility, and any person disqualified for not complying with this chapter will be notified in writing of the period of disqualification.
- (b) *Work requirement.* People who do not comply with a work requirement are disqualified from receiving assistance for a period of 120 days (unless they regain their eligibility; see section 46-66). Recipients who do not comply with the work requirement and are disqualified before the period covered by the grant of assistance expires shall be disqualified for 120 days following the end of the period covered by the assistance grant. People who do not comply with a work requirement and are disqualified after the period covered by the grant of assistance expires will be disqualified for 120 days from the date of the written notice of disqualification. The administrator shall give recipients written notice that they are disqualified as soon as the administrator has sufficient knowledge and

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information to render a decision of disqualification.

- (c) *Fraud.* People who commit fraud are disqualified from receiving assistance for a period of 120 days (see section 46-94, fraud). The administrator shall give recipients written notice that they are disqualified as soon as the administrator has sufficient knowledge and information to render a decision. If a disqualification for fraud is issued before the expiration of a grant of assistance, the period of disqualification shall commence on the day following the end of the period covered by the grant of assistance or on the day the fair hearing authority renders its decision, whichever is later. If fraud is discovered after the period covered by the grant of assistance has expired, the period of ineligibility will commence on the day of the written notice of disqualification, unless subsequently modified by the fair hearing authority.

(Ord. No. 92-6, § 13-57, 3-5-92; Ord. No. 94-2, § 13-57, 5-5-94)

State law references: Similar provisions, 22 M.R.S.A. §§ 4321, 4322.

Secs. 46-70--46-90. Reserved.

ARTICLE IV. DETERMINATION OF ELIGIBILITY

Sec. 46-91. Recognition of dignity and rights.

Any determination or investigation into an applicant's eligibility will be conducted in a manner that will not violate the applicant's privacy or personal dignity or violate his individual rights.

(Ord. No. 92-6, § 13-60, 3-5-92; Ord. No. 94-2, § 13-60, 5-5-94)

Sec. 46-92. Determination; redetermination.

- (a) The administrator will make an individual, factual determination of eligibility each time a person applies or reapplies for general assistance. The administrator will make a redetermination of eligibility at least monthly, but may do so as often as necessary to administer the program efficiently and meet the needs of the applicants. Upon any application, the administrator will determine the applicant's eligibility on the basis of a 30-day prospective analysis, but may elect to disburse that applicant's assistance periodically, e.g., weekly, throughout a 30-day period of eligibility pursuant to that initial eligibility determination.
- (b) The administrator may redetermine a person's eligibility at any time during the period he is receiving assistance if the administrator is notified of any change in the recipient's circumstances that may alter the amount of assistance the recipient may receive. Once a recipient has been granted assistance, the administrator may not reduce or rescind the grant without giving prior written notice to the recipient explaining the reasons for the decision and offering the recipient an opportunity to appeal the decision to the fair hearing authority.

(Ord. No. 92-6, § 13-61, 3-5-92; Ord. No. 94-2, § 13-61, 5-5-94)

State law references: Similar provisions, 22 M.R.S.A. § 4309.

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Sec. 46-93. Verification.

- (a) *Applicant's responsibility.* Each applicant and recipient has the responsibility at the time of application and continuing thereafter to provide complete, accurate and current information and documentation concerning his need, income, use of income, expenses, and any changes in information previously reported on the application. The administrator will require documentation of the applicant's income, use of income, assets and resources plus actual bills and receipts for rent, utilities, fuel, telephone, medical services and other basic necessities that are reasonably obtainable. The recipient is responsible for notifying the administrator of any changes in his household or income that may affect his eligibility. When determining an applicant's eligibility, the administrator will seek all necessary information first from the applicant. Information needed from other sources, with the exception of public records, will be gathered only with the knowledge and consent of the applicant.
- (b) *Decision.* If an applicant does not have the necessary information at the time of application, the administrator will give the applicant the opportunity to provide the information prior to the expiration of the 24-hour period within which the administrator must act on the application. Except when assistance is conditionally granted pursuant to this municipality's workfare first policy (see section 46-67). If all the necessary information has been provided and the applicant is eligible, assistance will be granted. If the applicant does not provide the required information needed within the 24-hour period, and the administrator cannot determine the applicant's eligibility, the applicant will be denied assistance for that reason.
- (c) *Denial of assistance.* The administrator will not grant assistance to any applicant who refuses to supply necessary information and documentation concerning his needs, income and other resources, or who refuses to grant permission for the administrator to contact other persons to verify the information. If the administrator has attempted to verify the information but is unable to determine if the applicant is eligible because the applicant has refused to provide or allow the administrator to verify the necessary information, the applicant will be denied assistance until the necessary verification has been accomplished.
- (d) *Right to verify.* It is the administrator's responsibility to determine and verify the eligibility of each applicant. The administrator may seek and verify information from all appropriate sources including, but not limited to: The department of human services and any other department of the state having information that has a bearing on an applicant's eligibility, financial institutions, employers and landlords, physicians, and legally liable relatives. The administrator will request the applicant's written consent authorizing the administrator to receive the necessary information.
- (e) *Penalty for refusing to release information.* Any person who refuses to provide necessary information to the administrator, after it has been requested, must state in writing the reasons for the refusal within three days of receiving the request. Any person who refuses to provide the information, without just cause, commits a civil violation and may be subject to a fine of not less than \$25.00 nor more than \$100.00, which may be adjudged in any court of competent jurisdiction. Any person who willfully renders false information to the administrator is guilty of a class E crime.

(Ord. No. 92-6, § 13-62, 3-5-92; Ord. No. 94-2, § 13-62, 5-5-94)

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State law references: Similar provisions, 22 M.R.S.A. §§ 4309(1-B), 4314, 4315.

Sec. 46-94. Fraud.

- (a) *Generally.* It is unlawful for a person to make knowingly and willfully a false representation of a material fact to the administrator in order to receive general assistance or cause someone else to receive general assistance. A "material fact" is any information which has direct bearing on the person's eligibility. "False representation" shall consist of any individual knowingly and willfully:
- (1) Making a false statement to the general assistance administrator, either orally or in writing, in order to obtain assistance to which the applicant or the applicant's household is not entitled;
 - (2) Concealing information from the general assistance administrator in order to obtain assistance to which the applicant or applicant's household is not entitled; or
 - (3) Using general assistance benefits for a purpose other than that for which they were intended.

No person may be denied assistance solely for making a false representation prior to being given an opportunity for a fair hearing.

- (b) *Period of ineligibility.* When the general assistance administrator finds that a person has knowingly and willfully misrepresented material facts for the purpose of making himself eligible for general assistance, the administrator shall notify the applicant in writing that he has been disqualified from receiving assistance for up to 120 days. For the purpose of this section, a "material misrepresentation" is a false statement about an eligibility factor in the absence of which some or all of the assistance would not be or would not have been granted. The notification of disqualification issued by the administrator shall inform the applicant of his right to appeal the administrator's decision to the fair hearing authority within five working days of receipt. Unless modified by the fair hearing authority, the period of ineligibility shall commence on the day following the end of the period covered by the grant of assistance fraudulently received or upon the date of notification of disqualification, whichever is later.
- (c) *Right to a fair hearing.* Any applicant who is denied assistance for making a false representation will be afforded the opportunity to appeal the decision to the fair hearing authority in accordance with article V of this chapter. No recipient shall have his assistance reduced or revoked during the period of eligibility before being notified and given the opportunity to appeal the decision. Any person who is dissatisfied with the decision of the fair hearing authority may appeal that decision to the superior court pursuant to rule 80-B.
- (d) *Reimbursement.* If a recipient does not appeal the decision or if the fair hearing authority determines that a recipient did make a false representation, the recipient will be required to reimburse the municipality for any assistance received to which he was not entitled.
- (e) *Dependents.* In no event will the disqualification of a person under this section serve to disqualify any eligible dependent in that household. If one or more members of a household are disqualified and assistance is requested for the remaining dependents, the eligibility of those dependents will be calculated as though the household is comprised of

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the dependents only, except that the entire household income will be considered available to them.

(Ord. No. 92-6, § 13-63, 3-5-92; Ord. No. 94-2, § 13-63, 5-5-94)

State law references: Similar provisions, 22 M.R.S.A. § 4315.

Sec. 46-95. Period of eligibility.

The administrator will grant assistance to all eligible persons for a period that is sufficient to meet their need but in no event may a grant of assistance cover a period in excess of one month. Upon any application the administrator will determine the applicant's eligibility on the basis of a 30-day prospective analysis. For reasons of administrative efficiency, however, the administrator may elect to disburse that applicant's assistance for shorter periods of time, such as weekly, throughout the 30-day period of eligibility. When the administrator elects to disburse general assistance for a period of time less than 30 days, subsequent grants of assistance during that 30-day period may be issued pursuant to the initial determination of need unless the applicant's financial situation changes substantially enough to warrant a redetermination of eligibility.

(Ord. No. 92-6, § 13-64, 3-5-92; Ord. No. 94-2, § 13-64, 5-5-94)

State law references: Similar provisions, 22 M.R.S.A. § 4309.

Sec. 46-96. Determination of need.

The period of time used to calculate need will be the next 30-day period from the date of application. The administrator will calculate applicants' expenses according to the actual expense of the basic necessity or the maximum levels for the specific necessities allowed in the general assistance policy, whichever is less. Applicants will not be considered eligible if their income and other resources exceed this calculation, except in an emergency. See section 46-39.

Applicants will also not be considered in need of general assistance if their income, property, credit, assets or other resources available to provide basic necessities for their household are greater than the applicable overall maximum level of assistance set forth in the general assistance policy. The difference between the applicant's income/resources and the overall maximum levels of assistance established by this chapter is the applicant's deficit. Once an applicant's deficit has been determined, the specific maximum levels of assistance for each basic necessity listed in the general assistance policy shall be used by the administrator to guide the distribution of assistance for which the applicant is eligible. The specific maximum levels of assistance for each basic necessity are intended to be reasonable and sufficient to help recipients maintain a standard of health and decency.

- (1) *Income for basic necessities.* Applicants are required to use their income for basic necessities. Except for initial applicants, no applicant is eligible to receive assistance to replace income that was spent within the 30-day period prior to the application for assistance on goods and services that are not basic necessities. All income spent on goods and services that are not basic necessities will be considered available to the applicant and combined with the applicant's prospective 30-day income for the purposes of computing eligibility. Applicants who have sufficient income to provide their basic necessities, but who use that income to purchase goods or services which are not basic necessities will not be

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considered eligible for assistance. Persons who exhaust their income on basic necessities and who still need assistance with other basic necessities will be eligible, provided that their income does not exceed the overall maximum levels of assistance.

- (2) *Use-of-income requirements.* Anyone applying for general assistance must document his use of income to the administrator. This documentation can take the form of cancelled checks and/or receipts which demonstrate that the applicant has exhausted all household income received over the last 30-day period. Any repeat applicants must verify that such an expenditure of income was for basic necessities.
- a. Allowable expenditures include reasonable shelter costs (rent/mortgage); the cost of heating fuel, electricity, and food up to the ordinance maximums; nonprescription drugs up to the ordinance maximums; telephone costs at the base rate if the household needs a telephone for medical reasons; the costs of nonelective medical services as recommended by a physician which are not otherwise covered by medical entitlement or insurance; the reasonable cost of essential clothing; and the costs of any other commodity or service determined essential by the administrator.
 - b. Cable television, cigarettes, alcohol, gifts purchased, costs of trips or vacations, court fines paid, repayments of unsecured loans, credit card debt, costs associated with pet care, etc., are not considered basic necessities and will not be included in the budget computation.
 - c. The municipality reserves the right to apply specific use-of-income requirements to any applicant, other than an initial applicant, who fails to use his income for basic necessities or fails to reasonably document his use of income. Those additional requirements will be applied in the following manner:
 1. The administrator may require the applicant to use some or all of his income, at the time it becomes available, toward specific basic necessities. The administrator may prioritize such required expenditures so that most or all of the applicant's income is applied to housing (i.e., rent/mortgage), energy (i.e., heating fuel, electricity), or other specified basic necessities.
 2. The administrator will notify applicants in writing of the specific use-of-income requirements placed on them.
 3. If upon subsequent application it cannot be determined how the applicant's income was spent, or if it is determined that some or all of applicant's income was not spent as directed and was also not spent on basic necessities, the applicant will not be eligible to receive either regular or emergency general assistance to replace that income.
 4. If the applicant does not spend his income as directed, but can show with verifiable documentation that all income was spent on

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basic necessities up to allowed amounts, the applicant will remain eligible to the extent of the applicant's eligibility and need.

- (3) *Computation of income and expenses.* In determining eligibility, the administrator will subtract the applicant's net income from the overall maximum level of assistance found at the beginning of section 46-98. If income is greater than the overall maximum level of assistance, the applicant will not be eligible except in an emergency (see section 46-39).

The municipality will provide assistance in an amount up to the deficit to the extent the applicant is in need of basic necessities. The municipality will not grant assistance in excess of the maximum amounts allowed in section 46-98 for specific basic necessities except in an emergency or when the administrator elects to consolidate the applicant's unmet need, as provided in subsection (4) of this section.

- (4) *Consolidation of deficit.* As a general rule and to the extent of their deficit, applicants will be eligible for assistance for any basic necessity up to, but not exceeding, the maximum amount allowed for that necessity in this chapter or the actual 30-day cost of the necessity, whichever is less. Under certain circumstances, however, and in accordance with the following conditions, the administrator may consolidate the applicant's deficit and apply it toward a basic necessity in an amount greater than the ordinance maximum for that necessity.
- a. The practice of consolidating the deficit and applying it toward a basic necessity in amounts greater than the ordinance maximum shall be the exception rather than the rule;
 - b. The total general assistance grant cannot exceed the total deficit unless the applicant is in an emergency situation; and
 - c. The need for the application of the recipient's consolidated deficit toward a basic necessity was not created by the recipient mispending his income or resources in violation of the use-of-income requirements of this chapter.

(Ord. No. 92-6, § 13-65, 3-5-92; Ord. No. 94-2, § 13-65, 5-5-94)

State law references: Similar provisions, 22 M.R.S.A. §§ 4301(7), (10), 4305(3-A), (3-B), 4308(2), 4315-A.

Sec. 46-97. Income.

- (a) *Income standards.* Applicants whose income exceeds the overall maximum level of assistance provided in the general assistance policy shall not be eligible for general assistance except in an emergency. The administrator will conduct an individual factual inquiry into the applicant's income and expenses each time they apply.
- (b) *Calculation of income.* To determine whether applicants are in need, the administrator will calculate the income they will receive during the next 30-day period commencing on the date of application and identify any assets or resources that would alleviate their need. For all applicants other than initial applicants, the administrator will also consider as available income any income that was spent during the previous 30-day period on basic necessities, as well as any income that was spent on basic necessities in unreasonable excess of the ordinance maximums for specific basic necessities. If a household's income

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exceeds the amount of the household's need for basic necessities, up to the maximum levels contained in the general assistance policy, applicants will not be considered in need. Exceptions will be made in emergency situations which may necessitate that the maximum levels be exceeded. See section 46-39. To calculate weekly income and expenses, the administrator will divide the applicant's monthly income and expenses by 4.3.

- (c) *Types of income.* Income which will be considered in determining an applicant's need includes:
- (1) *Earned income.* Income in cash or in-kind earned by the applicant through wages, salary, commissions, or profit, whether self-employed or as an employee, is considered earned income. If a person is self-employed, total income will be computed by subtracting reasonable and actual business expenses from gross income. When income consists of wages, the amount computed will be the income available after taxes, social security and other payroll deductions required by state, federal and local law. Rental income and profit from produce that is sold is considered earned income. Income that is held in trust and unavailable to the applicant or the applicant's dependents will not be considered as earned income. Note: Actual work-related expenses such as union dues, transportation to and from work, special equipment or work clothes, and child care costs will not be considered available income and will be deducted.
 - (2) *Income from other assistance or social services programs.* State/federal categorical assistance benefits, SSI payments, social security payments, VA benefits, unemployment insurance benefits, and payments from other government sources will be considered as income, unless expressly prohibited by federal law or regulation. Federal law prohibits food stamps and fuel assistance payments made by the home energy assistance program (HEAP) from being considered income. The value of the food stamps or fuel assistance will not be used to reduce the amount of general assistance the applicant is eligible to receive, although applicants may have only a limited or reduced need for general assistance for heating fuel or electricity if a recently received HEAP benefit has sufficiently credited their account or otherwise obliterated an actual fuel-related cost over the prospective 30-day period. The administrator's obligation is to always compute the heating needs of an applicant who has received HEAP as if that applicant paid for his total fuel costs. Accordingly, in such cases, the administrator will budget for the household's heating energy needs according to actual usage, up to the ordinance maximums, but the administrator may, with written notice to the applicant, hold in reserve the heating energy portion of the applicant's deficit until such a time during the period of eligibility that the applicant has a demonstrable need for the disbursement of heating energy assistance; that is, the applicant's fuel tank can accept a minimum fuel delivery or the applicant no longer has a positive credit balance with his utility company. The municipality is not obligated to divert any recipient's heating energy allowance toward nonheating purposes solely on the basis of the recipient's receipt of HEAP.
 - (3) *Court-ordered support payments.* Alimony and child support payments will be considered income only if actually received by the applicant. The general assistance administrator will refer cases where support payments are not actually

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received to the state department of human services' support enforcement location unit.

- (4) *Income from other sources.* Payments from pensions and trust funds will be considered income. Payments from boarders or lodgers will be considered income as will cash or in-kind contributions provided to the household from any other source, including relatives.
- (5) *Earnings of a son or daughter.* Earned income received by sons and daughters below the age of 18 years who are full-time students and who are not working full-time will not be considered income. The unearned income of a minor in the household will be considered available to the household.
- (6) *Income from household members.* Income from household members will be considered available to the applicant, whether or not the household member is legally obligated for the support of the applicant, if the household members pool or share their income and expenses as a family or intermingle their funds so as to provide support to one another. (Boisvert v. Lewiston, CV#80-436, Androscoggin County Superior Court)
- (7) *Pooling or nonpooling of income.* When two or more individuals share the same dwelling unit but not all members of the household are applying for general assistance, the administrator shall make a finding under a rebuttable presumption that the entire household is pooling income. One or more applicants for assistance can successfully rebut the presumption that all household income is being pooled by providing the administrator with verifiable documentation affirmatively demonstrating a pattern of nonpooling for the duration of the shared living arrangement. Such documentation would include evidence of the entire household expenses as well as bank statements, cancelled checks, receipts, landlord statements or other vendor accounts clearly supporting a claim that the applicant has been and is presently solely and entirely responsible for his pro rata share of household costs. If the applicant is unable to successfully rebut the municipality's presumption that all household income is being pooled, eligibility of the entire household will be determined based on total household income. If the applicant successfully rebuts the municipality's presumption that all household income is being pooled, the applicant's eligibility will be determined on the basis of his income and his pro rata share of actual household expenses.
- (8) *Lump sum income.* A lump sum payment received by an applicant or recipient, prior to or subsequent to applying for assistance shall be considered as income available to the household, with the exception of any required payments (i.e., any third party payment which is required as a condition of receiving the lump sum payment, or any payments of bills earmarked for the purpose for which the lump sum payment was made) and any amount of the lump sum payment which the applicant or recipient can document was spent on basic necessities, as described below. The lump sum payment must be prorated over future months according to the following criteria:

The period of proration is determined by disregarding any portion of the lump sum payment that the applicant or recipient has spent to purchase basic

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necessities, including but not limited to: all basic necessities provided by general assistance; reasonable payment of funeral or burial expenses for a family member; reasonable travel costs related to the illness or death of a family member; repair or replacement of essentials lost due to fire, flood or other natural disaster; repair or purchase of a motor vehicle essential for employment, education, training or other day-to-day living necessities; repayments of loans or credit, the proceeds of which can be verified as having been spent on basic necessities; and payment of bills earmarked for the purpose for which the lump sum is paid. All income received by the household between the receipt of the lump sum payment and the application for assistance is added to the remainder of the lump sum. The period of proration is then determined by dividing the remainder of the lump sum payment by the greater of the verified actual monthly amounts for all of the household's basic necessities or 150% of the applicable federal poverty guidelines. That dividend represents the period of proration determined by the administrator to commence on the date of receipt of the lump sum payment. The prorated sum for each month must be considered available to the household for 12 months from the date of application or during the period of proration, whichever is less.

(Ord. No. 92-6, § 13-66, 3-5-92; Ord. No. 94-2, § 13-66, 5-5-94; 12-9, 8-16-12)

State law references: Similar provisions, 22 M.R.S.A. §§ 4301(7), (8-A), (12-A), 4308.

Sec. 46-98. Basic necessities; maximum levels of assistance.

- (a) *Overall maximum levels of assistance.* Notwithstanding any of the maximum levels of assistance for specific basic necessities listed in this section, an applicant's eligibility for general assistance will be first determined by subtracting his income from the overall maximum level of assistance, established in Title 22, section 4305, subsection 3-C, as set in the general assistance policy for the applicable household size. The difference yielded by this calculation shall be the applicant's deficit. Applicants will be eligible for general assistance up to the calculated deficit to the extent the applicant is unable to otherwise provide the basic necessities essential to maintain themselves or their families. Applicants with no deficit shall be found ineligible for general assistance unless they are in an emergency, in which case eligibility for emergency general assistance will be determined according to section 46-39.
- (b) *Maximum levels of assistance for specific basic necessities.* The municipality will grant assistance to eligible applicants for basic necessities according to the maximum levels for specific types of assistance as set forth in the general assistance policy. The administrator, in consultation with the applicant, may apply the amount of the applicant's deficit toward assistance with any one or combination of necessities not to exceed the total deficit. These maximum levels will be strictly adhered to unless the administrator determines that there are exceptional circumstances and an emergency is shown to exist, in which case these absolute levels will be waived in order to meet immediate needs (*Glidden v. Town of Fairfield, et al, CV79-17, Somerset County Superior Court*). In all cases, either the actual expenses the applicant incurs for basic necessities or the maximum amount allowed in each category, whichever is less, will be used in determining need. The applicant's need for common living expenses for food, rent, fuel, etc., will be presumed to be reduced by an amount equal to the other household members'

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proportionate fair share of the common living expenses. This presumption may be rebutted by evidence that the other household members had no income with which to pay their share of common expenses. No applicant will be allowed to claim a need for any expense which has been or will be paid by another person, or which has been incurred in another person's name.

- (1) *Food.* The administrator will provide food assistance to eligible persons up to the allowed maximum amounts as established by the city council in the general assistance policy, such amounts being as designated by the U.S.D.A. Thrifty Food Plan for the appropriate household size, and distributed by the state department of human services on or about October of each year. In determining need for food, the administrator will not consider the value of food stamps an applicant receives as income (7 USC sec. 2017(b); Dupler, et al v. City of Portland, et al, CV-74-134 SD). The municipality will authorize vouchers to be used solely for approved food products.
- (2) *Housing.* The administrator will provide assistance with rent or mortgage payments that are reasonable and within the allowed maximum levels established by the city council in the general assistance policy, and in accordance with the housing assistance limits provided in Title 22, section 4308, subsection 1-A; and in accordance with the housing exceptions provided in Title 22, section 4308, subsection 1-B. It is the applicant's responsibility to find suitable housing, although the administrator may help the applicant find housing when appropriate. The administrator will inform the applicant of the allowed housing maximums to assist the applicant in his search for housing. The allowed maximum for any applicant will be the categorical housing maximum representing the minimum dwelling unit space necessary to adequately shelter the applicant household. Applicants requesting assistance for housing that contains more bedrooms than are necessary for the number of household members will be provided assistance according to the maximum level for the number of rooms actually needed. Single individuals will be required to live in rooms, boardinghouses or shelters when such housing is available. Persons will be required to find rooms or apartments that have utilities furnished, unless they are residing in subsidized housing. Persons will be required to apply for, and accept, subsidized housing. The municipality will not pay security deposits or back bills, except in an emergency as provided in section 46-39.
- (3) *Rental payments to relatives.* The municipality may elect to not issue any rental payment to an applicant's relatives unless the rental relationship has existed for at least three months and the applicant's relatives rely on the rental payment for their basic needs. For the purpose of this section, a "relative" is defined as the applicant's parents, grandparents, children, grandchildren, siblings, parent's siblings, or any of those relatives' children.
- (4) *Rental payments to private homes.*
 - a. When applicants are living in private homes or sharing dwelling units with other people who are not requesting general assistance, the amount allowed as the applicant's shelter expense will be the applicant's pro rata share of the actual, total shelter cost, up to the ordinance maximum.

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- b. Any housing assistance issued to a recipient in such a circumstance will be issued, whenever reasonably possible, to the landlord or property owner with most superior legal or equitable interest in the property.
 - c. When the municipality issues in aggregate more than \$600.00 in rental payments to any landlord in any calendar year, a 1099 form declaring the total amount of rental payments during the calendar year will be forwarded to the Internal Revenue Service (IRS) pursuant to IRS regulation. See section 6041(a) of the Internal Revenue Code.
 - d. Any landlord wishing to regularly receive rental payments from the municipality on behalf of applicants renting rooms from the landlord's own residence must, at a minimum, make a good faith effort to obtain a lodging license from the department of human services, division of health engineering, pursuant to 10-144A Code of Maine Regulations, chapter 201, as a condition of that landlord receiving future general assistance payments on behalf of his tenants.
- (5) *Mortgage payments.*
- a. In the case of a request for assistance with a mortgage payment, the general assistance administrator will make an individual factual determination of whether the applicant has an immediate need for such aid. In making this determination, the administrator will consider the extent and liquidity of the applicant's proprietary interest in the housing. Factors to consider in making this determination include:
 - 1. The marketability of the shelter's equity;
 - 2. The amount of equity;
 - 3. The availability of the equity interest in the shelter to provide the applicant an opportunity to secure a short-term loan in order to meet immediate needs;
 - 4. The extent to which liquidation may aid the applicant's financial rehabilitation;
 - 5. A comparison between the amount of mortgage obligations and of anticipated rental charges the applicant would be responsible for if he were to be dislocated to rental housing;
 - 6. The imminence of the applicant's dislocation from owned housing because of his inability to meet the mortgage payments;
 - 7. The likelihood that the provision of housing assistance will prevent such dislocation; and
 - 8. The applicant's age, health and social situation.
 - b. These factors shall be considered when determining whether the equity in the shelter is an available asset which may be substituted for the assistance the municipality would otherwise be required to provide. If after reviewing the above criteria the administrator determines that the payment

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of the mortgage is not necessary to meet the applicant's immediate shelter needs, the administrator may elect not to make any mortgage payment unless the applicant has been served a notice of foreclosure, although mortgage payments, up to the ordinance maximum for housing, will be budgeted as an expense.

- c. If a mortgage payment is necessary, the administrator will pay the actual amount due, up to the amount allowed according to the maximum levels established by the city council in the general assistance policy, whichever is less. After an initial application, assistance with such payments will be given only after the applicant has made all reasonable efforts to borrow against the equity of his home. If there is not sufficient equity in the home with which to secure a loan, and if the monthly mortgage payments are not realistically in line with the rental rates for similar housing in the area that could meet the applicant's needs, the administrator will inform the applicant that he is responsible for finding alternative housing within his ability to pay and will be obligated to make all reasonable efforts to secure such housing.

(6) *Liens.*

- a. The municipality may place a lien on the property in order to recover its costs of granting assistance with mortgage payments. No lien may be enforced against a recipient, except upon his death or the transfer of the property. Further, no lien may be enforced against a person who is currently receiving any form of public assistance or who would again become eligible for general assistance if the lien were enforced.
- b. If the municipality determines that it is appropriate to place a lien on a person's property to recover its costs of providing general assistance for a mortgage payment, it must file a notice of the lien with the county register of deeds where the property is located within 30 days of making the mortgage payment. That filing shall secure the municipality's or the state's interest in an amount equal to the sum of that mortgage payment and all subsequent mortgage payments made on behalf of the same eligible person, plus interest and costs. Not less than ten days prior to filing the lien notice in the registry, the municipal officers must send a different notice to the owner of the real estate, the general assistance recipient, and any record holder of the mortgage by certified mail, return receipt requested, that a lien on the property is going to be filed with the registry. This notice must clearly inform the recipient of the limitations upon enforcement plus the name, title, address and telephone number of the person who granted the assistance. The municipal officers must also give written notice to the recipient each time the amount secured by the lien is increased because of an additional mortgage payment or the imposition of interest. This notice must include the same information that appeared on the original notice of proposed filing sent to the recipient.
- c. The municipality will charge interest on the amount of money secured by the lien. The city council will establish the interest rate, not to exceed the

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maximum rate of interest allowed by the state treasurer to be charged against delinquent taxes. The interest will accrue from the date the lien is filed.

- (7) *Property taxes.* If an applicant requests assistance with his property taxes, the administrator will inform the applicant that there are two procedures on the local level to request that relief: the poverty abatement process and general assistance. If the applicant chooses to seek property tax assistance through general assistance, or if the applicant is denied a poverty tax abatement, the administrator may consider using general assistance to meet this need only if:
- a. The property tax in question is for the applicant's place of residence;
 - b. There is a tax lien on the property which is due to mature within 60 days of the date of application;
 - c. As a matter of policy or practice it is reasonably certain that a tax lien foreclosure will result in subsequent eviction from the residential property; and
 - d. The applicant, with sufficient notice, applies for property tax relief through the state resident property tax program, when available.
- (8) *Housing maximums.* The maximum levels of housing assistance contained in this chapter have been derived either from a locally accomplished fair market rental survey or the fair market rental values developed by the United States Department of Housing and Urban Development (HUD). If the maximum levels of housing are derived from the HUD values as those values are prepared and distributed by the state department of human services on or about November 1 of each year, those levels are hereby incorporated by reference. If and when the maximum levels of housing contained in this chapter are derived from a locally developed fair market rental survey, a record of that survey will be submitted to the department of human services, general assistance unit, and the maximum levels of housing assistance will be incorporated into this chapter pursuant to the ordinance adoption and amendment procedures found at 22 M.R.S.A. § 4305. The maximum amounts allowed for housing are as established by the city council in the general assistance policy.
- (9) *Utilities.*
- a. Expenses for lights, cooking and hot water will be budgeted separately if they are not included in the rent. Applicants are responsible for making arrangements with the utility company regarding service, including entering into a special payment arrangement if necessary.
 - b. Assistance will be granted to eligible applicants on the basis of their most recent bill. The municipality is not obligated to pay back bills or utility security deposits. Exceptions may be made in emergency situations pursuant to section 46-39. Disconnection of utility service will not be considered an emergency in all cases. The administrator will make an individual, factual analysis to determine if the termination of utility service constitutes an emergency. The administrator will consider the

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household composition, the time of year, the age and health of the household members, and other appropriate factors in reaching a decision. Applicants who had sufficient income, money, assets or other resources to pay their utility bill when it was received, but who spent all or part of their income on items which were not basic necessities, will not be eligible to receive general assistance to replace those funds. Applicants have the burden of providing evidence of their income and use of income for the applicable time period. See section 46-39. The administrator will notify applicants in writing that they must give the administrator prompt notice if their utility service is to be terminated or if their fuel supply is low. It is the applicants' responsibility to attempt to make arrangements with the utility company to maintain their service and to notify the administrator if assistance is needed with a utility bill prior to service being terminated.

- c. In accordance with the following conditions, the administrator may allow as a budgetable expense the amount of an applicant's summer-loaded special payment arrangement (SPA) or budget payment arrangement (BPA), as calculated by the electric utility and entered into by the applicant:
 - 1. The SPA or BPA, when annualized, does not exceed the above monthly maximums, when annualized, for nonelectrically heated dwelling units.
 - 2. The SPA or BPA, when annualized, does not exceed the above monthly maximums and the fuel assistance maximums, when annualized, for electrically heated dwelling units.
 - 3. The administrator determines, in consultation with the utility, that the payment arrangement does not include in any part the installment payment of past debt unless the municipality guaranteed to the utility the allowance of such an arrangement as a condition of averting a disconnection.
 - d. Pursuant to the use-of-income requirements in section 46-96, whenever the administrator budgets for SPAs or BPAs under this section, the recipient will be required to pay the SPA or BPA himself to the extent of the income capacity of the household.
- (10) *Nonelectric utilities.* The allowed amount for water and sewer utility service will be budgeted at the actual 30-day cost for those services.
- (11) *Fuel.*
- a. Expenses for home heating will be budgeted according to the actual need for fuel during the heating season (September through May), provided such expenses are reasonable, and at other times during the year when the administrator determines the request for fuel assistance is reasonable and appropriate.
 - b. Assistance will be granted to eligible applicants on the basis of their most recent bill. The municipality is not responsible for back bills, except in an

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emergency as provided in section 46-39. Applicants are responsible for monitoring their fuel supply and requesting assistance prior to depleting their fuel supply. When applicants who have been informed of this responsibility run out of fuel nonetheless, and can show no just cause for failing to give the administrator timely notice of their need for fuel, the administrator shall find that the emergency was not beyond the applicant's control, and process the emergency request accordingly, pursuant to section 46-39. Running out of fuel will not necessarily be considered an emergency unless the applicants have just cause for failing to give the administrator timely notice of their need for fuel.

- c. When the dwelling unit is heated electrically, the maximum amount allowed for heating purposes will be calculated by multiplying the number of gallons of fuel allowed for that month by the current price per gallon.
 - d. When fuel such as wood, coal and/or natural gas is used to heat, they will be budgeted at actual rates, if they are reasonable. No eligible applicant shall be considered to need more than seven tons of coal per year, eight cords of wood per year, 126,000 cubic feet of natural gas per year, or 1000 gallons of propane.
- (12) *Personal/household supplies.* Expenses for ordinary personal and household supplies will be budgeted and allowed according to the applicant's actual need for these items, up to the maximums. Personal and household supplies include hand soap, toothpaste, shampoo, shaving cream, deodorant, dish detergent, laundry supplies and costs, household cleaning supplies, razors, paper products such as toilet paper, tissues, paper towels, garbage/trash bags, and lightbulbs.
- (13) *Other basic necessities.* Expenses falling under this subsection may be granted when they are deemed essential to an applicant's or recipient's health and safety by the general assistance administrator and, in some cases, upon verification by a physician. Assistance will be granted only when these necessities cannot be obtained through the utilization of available resources.
- a. *Clothing.* The municipality may assist a household with the purchase of adequate clothing, although, in most instances, clothing will be a postponable item. Exceptions to this would be, for example, if fire or unusually cold weather makes extra clothing an immediate necessity, special clothing is necessary for the applicant's employment. Before assistance will be granted for clothing, the general assistance administrator must be satisfied that the applicant has utilized all available resources to secure the necessary clothing. Clothing will be budgeted at a fee as determined by the city council in the general assistance policy when the general assistance administrator finds it necessary to authorize clothing.
 - b. *Medical.* The municipality will pay for essential medical expenses, other than hospital bills (see hospital bills), provided that the municipality is notified and approves the expenses and services prior to their being made or delivered. The municipality will grant assistance for medical service only when assistance cannot be obtained from any other source and the applicant would not be able to receive necessary medical care without the

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municipality's assistance. The applicant is required to utilize any resource, including any federal or state program, that will diminish his need to seek general assistance for medical expenses. The municipality will grant assistance for nonemergency medical services only if a physician verifies that the services are essential. All medical costs authorized by the municipality will be at Medicaid rates. The administrator may require a second medical opinion from a physician designated by the municipality at the municipality's expense to verify the necessity of the service. In order for telephone service to be considered an allowable expense, the applicant must provide a written statement from a physician certifying that the telephone is absolutely essential to the applicant's health and safety. Only the basic rate will be considered.

c. *Hospital bills.*

1. In the event of an emergency admission to the hospital, the hospital must notify the administrator within five business days of the admission. Notification must be by telephone, confirmed by certified mail, or by certified mail only. If a hospital fails to give timely notice to the administrator, the municipality will have no obligation to pay the bill.
2. Any person who cannot pay his hospital bill must apply to the hospital for consideration under the hospital's charity care program as provided in 22 M.R.S.A. § 396-F(1). Anyone who is not eligible for the hospital's charity care program may apply for general assistance. Applicants must apply for assistance within 30 days of being discharged from the hospital and provide a notice from the hospital certifying that they are not eligible for the hospital's charity care program.
3. Before the administrator will consider whether to allow a hospital bill as a necessary expense, the applicant must enter into a reasonable payment arrangement with the hospital. The payment arrangement will be based upon the Medicaid rate. In determining an applicant's eligibility, the municipality will budget the monthly payment to the hospital the applicant has agreed to pay. The applicant's need for assistance with a hospital bill will be considered each time he applies by including the amount of the bill in the applicant's monthly budget, but the recipient will be responsible for making any necessary payments to the hospital pursuant to the use-of-income requirements found at section 46-96 of this chapter.

- d. *Dental.* The municipality will not furnish dental services, except in cases of emergency. If full mouth extractions are necessary, the municipality will pay for dentures provided the applicant has no other resources to pay for dentures. The applicant will be referred to a dental clinic in the area whenever possible. The administrator will expect the applicant to bear a reasonable part of the cost for dental services, including extractions and

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dentures, taking into account the applicant's ability to pay.

- e. *Eye care.* In order to be eligible to receive general assistance for eyeglasses, an applicant must have his medical need certified by a person licensed to practice optometry. The general assistance administrator will provide assistance for eyeglasses to eligible persons only after the applicant has exhausted all other available resources.
- f. *Work-related expenses.* In determining need, reasonable and actual work-related expenses will be deducted from earned income. These expenses include child care costs, work clothes, supplies and transportation (if it is not available by the local bus service or car pooling) at the actual costs, not to exceed the ordinance maximum as established by the city council in the general assistance policy. The applicant is required to provide documentation substantiating the costs and that the expenses were necessary.
- g. *Burial, cremations.*
 - 1. Under the circumstances and in accordance with the procedures and limitations described below, the municipality recognizes its responsibility to pay for the burial or cremation of eligible persons. The administrator will provide for burial and cremation services to eligible persons up to the allowed maximum amounts as established by the city council in the general assistance policy.
 - 2. Funeral directors must give timely notice. In order for the municipality to be liable for a burial or cremation expense, the funeral director must notify the administrator prior to the burial or cremation or by the end of 3 business days following the funeral director's receipt of the body, whichever is earlier. This contact by the funeral director shall begin the process of developing an application for burial/cremation assistance on behalf of the deceased. It is the funeral director's responsibility to determine if the family or any other persons are going to pay all or part of the burial expenses. If family members or others are unable to pay the expenses and the funeral director wants the municipality to pay all or part of the expenses, the funeral director must make timely contact with the municipal administrator. In addition, the funeral director may refer legally liable relatives to the administrator so that a timely determination of financial capacity may be accomplished.
 - 3. Application for assistance shall be created on behalf of the deceased. For the purposes of determining residency, calculating eligibility and issuing general assistance for burial or cremation purposes, an application for assistance shall be created by the administrator on behalf of the deceased.
 - 4. With regard to residency, the municipality of responsibility for burial expenses shall be the municipality in which the eligible

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deceased person was a resident at the time of death as residency is determined under section 46-40.

5. Although legally liable relatives may be asked to provide information regarding their income, assets, and basic living expenses, that information will not be construed as an application for general assistance inasmuch as living persons are not eligible for burial assistance. To clarify this point of law, although legally liable relatives have a financial responsibility to pay for the burial or cremation of their relatives, that financial responsibility only exists to the extent the legally liable relatives have a financial capacity to do so. Therefore, legally liable relatives who are eligible for general assistance, by virtue of their eligibility, have no legal obligation to pay for the burial or cremation of their relatives. For these reasons, all general assistance issued for burial or cremation purposes shall be issued on behalf of, and in the name of, the deceased.
6. The financial responsibility of certain family members. Grandparents, parents, children and grandchildren of the deceased, who live in the state or own property in the state, are financially responsible for the burial or cremation of the deceased to the extent those relatives, individually or as a group, have a financial capacity to pay for the burial or cremation either in lump sum or by means of a budgeted payment arrangement with the funeral home. Accordingly, at the request of the administrator, all legally liable relatives must provide the municipal administrator, with any reasonable requested information regarding their income, assets, and basic living expenses. If any responsible family members refuse to provide the requested information or refuse to allow the municipality to investigate their resources, the municipality will not grant the requested burial or cremation assistance. If the administrator makes a finding that one or more legally liable relatives has a financial capacity to pay for the burial or cremation, the municipality will not grant the requested burial or cremation assistance.
7. Eight days to determine eligibility. The administrator may take up to eight days from the date of contact by the funeral director to issue a written decision regarding the amount of the municipal contribution toward the burial or cremation.
8. The municipal obligation to pay when legally liable relatives or others can contribute. The figures provided in the general assistance policy are the maximum benefits provided by the municipality when no contributions toward the burial or cremation are available from any other source.
- h. *Burial expenses.* The administrator will respect the wishes of family members with regard to whether the deceased is interred by means of

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burial or cremation. Burial services required, at a minimum, shall include removal of the body from a local residence or institution, a secured death certificate and obituary, preparation of the body, a minimum casket, and necessary transportation. Other reasonable and necessary specified direct costs may be approved for reimbursement by the administrator, and may include the wholesale cost of a cement liner if the cemetery bylaws require one, the opening and closing of the gravesite, and a lot in the least expensive section of the cemetery. If the municipality is able to provide a cemetery lot in a municipally owned cemetery, or in a cemetery under municipal control, or in a cemetery that donates the lots to the city, the cost of the cemetery lot in any other cemetery will not be paid by the municipality.

- i. *Cremation expenses.* In the absence of any objection by any family members of the deceased, the administrator will issue general assistance for cremation services. Cremation services required, at a minimum, shall include removal of the body from a local residence or institution, a secured death certificate and obituary, an appropriate container for cremation, and necessary transportation. Other reasonable and necessary specified direct costs may be approved for reimbursement by the administrator, and may include the wholesale cost of a liner if the cemetery bylaws require one, and a cremation lot in the least expensive section of the cemetery. If the municipality is able to provide a cemetery lot in a municipally owned cemetery, or in a cemetery under municipal control, or in a cemetery that donates the lots to the city, the cost of the cemetery lot in any other cemetery will not be paid by the municipality.
- j. *Capital improvements.* The costs associated with capital improvements/repairs (e.g., heating/water/septic system repair) will generally not be budgeted as a basic necessity. Exceptions can be made only when the capital improvement/repair has been preapproved by the administrator as a necessary expense and the monthly cost of the capital improvement/repair has been reduced as far as reasonably possible, for example, by means of the applicant entering into an installment payment arrangement with the contractor. The administrator may grant general assistance for capital improvements when:
 1. The failure to do so would place the applicant(s) in emergency circumstances;
 2. There are no other resources available to effect the capital repair; and
 3. There is no more cost-effective alternative available to the applicant or municipality to alleviate an emergency situation.

In some cases, the entire immediate cost of the capital improvement can be mitigated by the applicant entering into an installment payment arrangement with a contractor. The municipality reserves the right to place a lien on any property pursuant to 22 M.R.S.A. § 4320 when general assistance has been used to effect a capital improvement. The lien process

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shall be accomplished in the same manner as for mortgage payments, as described in subsection (b)(2) of this section.

(Ord. No. 92-6, § 13-67, 3-5-92; Ord. No. 94-2, § 13-67, 5-5-94; Ord. No. 99-8, 4-15-99; Ord. No. 12-06, 7-5-12; 12-9, 8-16-12)

State law references: Similar provisions, 22 M.R.S.A. §§ 4301(6), (7-A), 4305, 4308(2), 4309, 4313(2), 4319(2), 4320, 36 M.R.S.A. § 841(2).

Sec. 46-99. Notice of decision; disbursements.

- (a) *Written decision.* The administrator will give a written decision to each applicant after making a determination of eligibility each time a person applies. The decision will be given to the applicant within 24 hours of receiving an application. See section 46-36.

In order to ensure that applicants understand their rights, it is the responsibility of the general assistance administrator to explain the applicant's right to a fair hearing in the written notice of decision.

- (b) *Contents.* After an application has been completed, applicants will be given written notice of any decision concerning their eligibility for assistance. In addition to the contents of a written decision listed in section 46-36, the notice will state that applicants:
- (1) Have the right to a fair hearing and the method by which they may obtain a fair hearing;
 - (2) Have the right to contact the department of human services if they believe the municipality has violated the law. The decision will state the method for notifying the department.
- (c) *Disbursement of general assistance.* Except when determined impractical by the administrator, all general assistance will be provided in the form of a voucher or purchase order payable to a vendor or through direct municipal payment to a provider of goods or services. General assistance will not be issued in the form of a cash payment to an applicant unless there is no alternative to making such a cash payment, in which case the administrator shall document the circumstances for issuing general assistance in the form of cash.

(Ord. No. 92-6, § 13-68, 3-5-92; Ord. No. 94-2, § 13-68, 5-5-94)

State law references: Similar provisions, 22 M.R.S.A. § 4305(3), (6).

Secs. 46-100--46-120. Reserved.

ARTICLE V. FAIR HEARING

Sec. 46-121. Right to fair hearing.

Within five working days of receiving a written notice of denial, reduction or termination of assistance, or within ten working days after any other act or failure to act, the applicant or his authorized representative has the right to request a fair hearing. The right to review a decision by the general assistance administrator is a basic right of the applicant to a fully evidentiary hearing and is not limited solely to a review of the decision. (*Carson v. Oakland*, 442 A.2d 170 (Me.

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1982); *Thibodeau v. Lewiston*, Androscoggin Superior Court, 1979, CV78-388)

(Ord. No. 92-6, § 13-70, 3-5-92; Ord. No. 94-2, § 13-70, 5-5-94)

State law references: Similar provisions, 22 M.R.S.A. § 4322.

Sec. 46-122. Method of obtaining.

Upon receiving notification of the decision of the general assistance administrator, all claimants will be informed of the method of obtaining a fair hearing. All complaints that are not clear requests for a fair hearing will be answered by a personal interview or in writing by the general assistance administrator. If the client is satisfied with the adjustment or explanation, the administrator will make an entry in the case record and file any correspondence involved.

- (1) *Written request.* To obtain a fair hearing, the claimant must make a written request within five working days of receiving the administrator's decision to deny, reduce or terminate assistance, or within ten working days after any other act or failure to act. The administrator will make available a printed form for requesting a fair hearing and will assist the claimant in completing it if necessary. On the printed form, the claimant will give the following information:
 - a. The decision on which review is sought;
 - b. The reasons for the claimant's dissatisfaction and why the claimant believes he is eligible to receive assistance; and
 - c. The relief sought by the claimant.

The administrator cannot deny or dismiss a request for a hearing unless it has been withdrawn by the claimant.

- (2) *Scheduling the fair hearing.* Upon receipt of the completed written request, the fair hearing authority must meet and hold the hearing within five working days. The administrator will notify the claimant in writing when and where the hearing will be held. In addition to the date, time and place of the hearing, the notice of fair hearing sent to the claimant shall include, at a minimum, the claimant's rights to:
 - a. Be his own spokesperson at the fair hearing or be represented by legal counsel or other spokesperson at the hearing, at the claimant's own expense;
 - b. Confront and cross examine any witnesses presented at the hearing against the claimant;
 - c. Present witnesses on his own behalf.

Arrangements for the date, time, and place of the hearing will take into consideration the convenience of the claimant and hearing authority. The claimant will be given notice early enough to allow preparation and will also be given adequate preliminary information about the hearing procedure to allow for effective preparation of the claimant's case.

(Ord. No. 92-6, § 13-71, 3-5-92; Ord. No. 94-2, § 13-71, 5-5-94)

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State law references: Similar provisions, 22 M.R.S.A. § 4322.

Sec. 46-123. The fair hearing authority.

- (a) The municipal officers will appoint a fair hearing authority, which will review decisions of the general assistance administrator when requested by any claimant. The authority is charged with the responsibility of ensuring that general assistance is administered in accordance with state law and local ordinance.
- (b) The fair hearing authority may consist of the municipal officers, one or more persons appointed by the municipal officers to act as the hearing authority or, if designated, the board of appeals created under 30-A M.R.S.A. § 2691. In determining the organization of the fair hearing authority, the municipal officers will use the following criteria. The person(s) serving as fair hearing authority must:
 - (1) Not have participated in the decision which is the subject of the appeal;
 - (2) Be impartial;
 - (3) Be sufficiently skilled in interviewing techniques to be able to obtain evidence and the facts necessary to make a fair determination;
 - (4) Be capable of evaluating all evidence fairly and realistically, explaining to the claimant the laws and regulations under which the administrator operated, and interpreting to the administrator any evidence of unsound, unclear or inadequate policies, practices or actions.

(Ord. No. 92-6, § 13-72, 3-5-92; Ord. No. 94-2, § 13-72, 5-5-94)

State law references: Similar provisions, 22 M.R.S.A. § 4322.

Sec. 46-124. The fair hearing procedure.

When a claimant requesting a fair hearing is notified of the date, time and place for the hearing in writing, he will also be given adequate preliminary information about the hearing procedure to allow for effective preparation of his case. The claimant shall be permitted to review his file prior to the hearing. At a minimum, the claimant will be told the following information, which will govern all fair hearings. All fair hearings will:

- (1) Be conducted privately, and will be open only to the claimant, witnesses, legal counsel, or others whom the claimant wants present, and the general assistance administrator, his agents, counsel and witnesses;
- (2) Be opened with a presentation of the issue by the fair hearing authority;
- (3) Be conducted informally, without technical rules of evidence, but subject to the requirements of due process;
- (4) Allow the claimant and the administrator the option to present their positions for themselves or with the aid of others, including legal counsel;
- (5) Give all participants an opportunity to present oral or written testimony or documentary evidence, offer rebuttal, question witnesses presented at the hearing, and examine all evidence presented at the hearing;

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- (6) Result in a decision, based exclusively on evidence or testimony presented at the hearing;
- (7) Be tape recorded, and result in a written decision that is given to the claimant and filed with evidence introduced at the hearing. The fair hearing authority will allow the claimant to establish all pertinent facts and circumstances, and to advance any arguments without undue interference. Information that the claimant does not have an opportunity to hear or see will not be used in the fair hearing decision or made part of the hearing record. Any material reviewed by the fair hearing authority must be made available to the claimant or his representative. The claimant will be responsible for preparing a written transcript if he wishes to pursue court action.

The fair hearing authority shall admit all evidence if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs.

(Ord. No. 92-6, § 13-73, 3-5-92; Ord. No. 94-2, § 13-73, 5-5-94)

State law references: Similar provisions, 22 M.R.S.A. § 4322.

Sec. 46-125. The fair hearing decision.

- (a) The decision of the fair hearing authority will be binding on the general assistance administrator, and will be communicated in writing to the claimant within five working days after completion of the hearing. Written notice of the decision will contain the following:
 - (1) A statement of the issue;
 - (2) Relevant facts brought out at the hearing;
 - (3) Pertinent provisions in the law or general assistance ordinance related to the decision;
 - (4) The decisions and reasons for it.
- (b) A copy of the notice of the decision will be given to the claimant. The hearing record and the case record will be maintained by the general assistance administrator.
- (c) The written notice of the decision will state that if the claimant is dissatisfied with the fair hearing decision, he has a further legal right to appeal the decision, pursuant to the Maine Rules of Civil Procedure, rule 80B. To take advantage of this right, the claimant must file a petition for review with the superior court within 30 days of receipt of the fair hearing decision.
- (d) When the decision by the fair hearing authority or court authorizes assistance to the claimant, that assistance will be provided within 24 hours.

(Ord. No. 92-6, § 13-74, 3-5-92; Ord. No. 94-2, § 13-74, 5-5-94)

Secs. 46-126--46-145. Reserved.

ARTICLE VI. RECOVERY OF EXPENSES

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Sec. 46-146. Recipients.

- (a) *Generally.* The municipality may recover the full amount of assistance granted to a person from either the recipient or from any person liable for the recipient, or from his executors or administrators in a civil action. Prior to taking a recipient to court to recover the amount of assistance, the municipality will seek voluntary repayment from the recipient by notifying him in writing and discussing it with the recipient. The municipality shall not attempt to recover such costs if, as a result of the repayment, the person would again become eligible for general assistance.
- (b) *Recipients anticipating workers' compensation benefits.* The municipality shall claim a lien for the value of all general assistance payments made to a recipient on any lump sum payment made to that recipient under the workers' compensation act or similar law of any other state. After issuing a general assistance payment on behalf of a recipient who has applied for or is receiving workers' compensation, the municipality shall file a notice of the municipal lien with the general assistance recipient and the office of secretary of state, uniform commercial code division. The notice of lien shall be filed on a UCC-1 form. The municipality shall also send a photocopy of that filing to the recipient's workers' compensation attorney, if known, the applicant's employer or the employer's insurance company, and, at the administrator's discretion, to the workers' compensation board. The lien shall be enforced at the time any lump sum workers' compensation benefit is issued.
- (c) *Recipients of SSI.* All applicants who receive general assistance while receipt of their supplemental security income (SSI) assistance is pending or suspended, and which therefore may be retroactively issued to the applicant at a later date, will be required to sign a statement on an interim assistance agreement form distributed by the department of human services that authorizes the Social Security Administration to direct a portion of any retroactive SSI payment to the municipality and/or the state in repayment for the general assistance granted. Any general assistance applicant who has applied for or who may be applying for SSI, or who may be required to apply for SSI pursuant to 22 M.R.S.A. § 4317 and who refuses to sign the interim agreement SSI authorization form will be found ineligible to receive general assistance until he provides the required signature.

(Ord. No. 92-6, § 13-80, 3-5-92; Ord. No. 92-14, § 1, 7-23-92; Ord. No. 94-2, § 13-80, 5-5-94)

State law references: Similar provisions, 22 M.R.S.A. § 4318, 39 M.R.S.A. § 106.

Sec. 46-147. Relatives.

The spouse of an applicant and the parents of any applicant under the age of 25 years are liable for the support of the applicant. In addition, children, grandchildren, parents and grandparents are liable for the burial costs of each other. The municipality considers these relatives to be available resources and liable for the support of their relatives in proportion to their respective ability. The municipality may complain to any court of competent jurisdiction to recover any expenses made on the behalf of a recipient if the relatives fail to fulfill their responsibility.

(Ord. No. 92-6, § 13-81, 3-5-92; Ord. No. 94-2, § 13-81, 5-5-94; 12-9, 8-16-12)

State law references: Similar provisions, 22 M.R.S.A. § 4319.

Chapter 48

LIBRARY*

Article I. In General

Sec. 48-1. Established.

Sec. 48-2. Failure to return library property.

Secs. 48-3--48-20. Reserved.

Article II. Board of Trustees

Sec. 48-21. Membership, vacancies on board of trustees.

Sec. 48-22. Responsibilities.

LIBRARY

ARTICLE I. IN GENERAL

Sec. 48-1. Established.

The act of the legislature entitled "An Act authorizing the City of Lewiston to accept donations of money and property to establish and maintain a Free Public Library in Lewiston and to accept conveyances of land for a site there," approved February 20, 1901, is hereby accepted. The trustees provided for in this act shall be known as the trustees of the Free Public Library of Lewiston.

(Code 1982, § 16-1)

State law references: Authority for a town to establish a free public library, 27 M.R.S.A. § 101; municipal authority to accept gifts and devices, 27 M.R.S.A. § 109.

Sec. 48-2. Failure to return library property.

It shall be unlawful for any person to retain any book, pamphlet, magazine, newspaper, manuscript, or other property belonging to the Lewiston Public Library for a period exceeding 15 days after such library has given written notice to return the same. Such notice shall be given in accordance with the library policy on overdue materials.

(Code 1982, § 16-4)

Secs. 48-3--48-20. Reserved.

ARTICLE II. BOARD OF TRUSTEES*

***Cross references:** Boards, commissions, committees and bureaus, § 2-151 et seq.

Sec. 48-21. Membership, vacancies on board of trustees.

- (a) In accordance with the provisions of the act mentioned in section 48-1, the board of trustees shall consist of ten members of whom the mayor, ex officio, shall be one, and the remaining nine members shall be such other suitable persons as the mayor may select; provided, however, that all members shall be residents of the city. All non ex-officio members shall serve a term of three years. Members of the board of trustees shall not be eligible to serve for more than three full successive terms. The terms of office of members of the board of trustees appointed following the adoption of the amendment of this Code shall be established by the mayor who shall appoint one member to serve a one-year term; one member to serve a two-year term; and one member to serve a three-year term. Thereafter, all members shall be appointed for three-year terms.
- (b) After the first election, the vacancies occurring annually in the board of trustees under the provisions of the act shall be filled by the mayor in January of each year, and in case of a vacancy during the year, the mayor shall select a successor for the residue of the term. In case a member of the board of trustees is elected to and accepts the office of mayor, his office as trustee shall be vacated and such vacancy shall be filled as above provided.

(Code 1982, § 16-2; Ord. No. 04-01, 2-19-04; Ord. No. 05-19, 12-15-05; Ord. No. 07-04, 5-17-07; Ord. No. 11-12, 12-15-11)

LIBRARY

Sec. 48-22. Responsibilities.

- (a) The board shall act in an advisory capacity for the purpose of providing assistance to other municipal officials charged with the responsibility of furnishing quality public library service, except that the trustees shall have the authority to decide policy as to the following:
 - (1) Identification and promotion of general library objectives;
 - (2) Establishing the character and quality of books and other materials to be contained in the library collection;
 - (3) Promoting cooperation with other libraries;
 - (4) Providing effective programs and services to schools and other specialized groups in need of library service; and
 - (5) Establishing and supporting cultural programs sponsored by the library.
- (b) The board may receive such property or other valuables as may be left to the library and shall advise the library director about their retention, sale or disposition. The retention, sale or disposition of any property or valuables shall be subject to the approval of the city administrator and the City Council, with regard to expenditures, in accordance with existing city policies.
- (c) The trustees may solicit and receive cash donations made to the library to be used for library purposes. They shall advise the library director as to the investment and use of such funds, such use to be in accordance with any conditions imposed by the donor. They may also solicit and accept donations to the library's permanent endowment fund and advise the library director as to the investment and use of the endowment in accordance with existing city policies. The expenditure of any donated funds shall be subject to the approval of the city administrator and/or designee, and the City Council where appropriate, who shall ensure that applicable policies are adhered to.
- (d) The trustees may authorize the library director to apply for and accept grants to the extent that such grants do not require a cash match from the City or the commitment of City resources in future years. Where such match is required or future resources must be committed, the trustees may request that the City Council authorize and accept such grants.
- (e) Whenever a vacancy occurs in the position of library director, the trustees shall act in an advisory capacity and assist the city administrator in the selection of a new director.

(Code 1982, § 16-3; Ord. No. 01-5, 5-3-01; Ord. No. 11-12, 12-15-11)

Chapter 50

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OFFENSES AND MISCELLANEOUS PROVISIONS

ARTICLE I. IN GENERAL

Sec. 50-1. Aiding or abetting.

The prohibition of any act by any ordinance of the city, or in any amendment thereof, shall include the causing, securing, aiding or abetting of another person to do such act.

(Code 1982, § 19-1)

Sec. 50-2. False information to police.

It shall be unlawful for any person to give any information or report to the department of police or to any member of such department, relating to any crime or offense, which information or report is false and which information or report such person knows to be false.

(Code 1982, § 19-3)

Sec. 50-3. Obedience to police.

No person shall willfully fail or refuse to comply with any lawful order or direction of a police officer.

(Code 1982, § 19-4)

Sec. 50-4. Loitering, lurking for malicious, unlawful purposes; peeping Toms.

- (a) No person shall loiter or lurk in any of the streets or public places adjacent thereto for malicious or unlawful purposes.
- (b) No person shall loiter unnecessarily in or about any private dwelling or peep into the window of any private dwelling to the discomfort or alarm of the occupants of such dwelling, the neighbors or any person going to and from such dwelling.

(Code 1982, § 19-8)

Sec. 50-5. Loitering generally.

- (a) It shall be unlawful for any person to loiter, loaf, wander, stand or remain idle either alone and/or in consort with others in a public place in such manner so as to commit in or upon any public street, public highway, public sidewalk or any other public place or building any act or thing which is an obstruction or interference to the free and uninterrupted use of property or with any business lawfully conducted by anyone in or upon or facing or fronting on any such public street, public highway, public sidewalk or any other public place or building, all of which prevents the free and uninterrupted ingress, egress and regress therein, thereon and thereto.
- (b) When any person causes or commits any of the conditions enumerated in subsection (a) of this section, a police officer or any law enforcement officer shall order that person to stop causing or committing such conditions and to move on or disperse. Any person who fails or refuses to obey such orders shall be guilty of a violation of this section.

(Code 1982, § 19-9)

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Sec. 50-6. Desecration and defacement.

- (a) A person is guilty of desecration and defacement if he intentionally desecrates any public monument or structure, any place of worship or burial, or any private structure not owned by him.
- (b) As used in this section, "desecrate" means marring, defacing, damaging or otherwise physically mistreating, in a way that will outrage the sensibilities of an ordinary person likely to observe or discover the actions.
- (c) Desecration is an offense.

(Code 1982, § 19-13)

State law references: Similar provisions, 17-A M.R.S.A. § 507.

Sec. 50-7. Removing or destroying public plants, fixtures.

No person shall climb, peel, cut, remove or in any way deface or destroy any tree, shrub, plant, sign or fixture on the commons, cemeteries, parks or in any street or public place of the city; nor deface any public building or any building not his own, by cutting, breaking, dashing with paint or in any manner defacing or injuring such building.

(Code 1982, § 19-11)

Cross references: Parks and recreation, ch. 54.

Sec. 50-8. Defacing fences.

No person shall deface any fence around the parks, commons or public squares by putting up billboards or posting bills thereon, or in any other way.

(Code 1982, § 19-12)

Sec. 50-9. Public indecency.

- (a) A person is guilty of public indecency if:
 - (1) In a public place:
 - a. He engages in sexual intercourse or a sexual act, as defined in 17-A M.R.S.A. § 251; or
 - b. He knowingly exposes his genitals under circumstances which, in fact, are likely to cause affront or alarm; or
 - (2) In a private place, he exposes his genitals with the intention that he be seen from a public place or from another private place.
- (b) For purposes of this section "public place" includes, but is not limited to, motor vehicles which are on a public way.
- (c) Public indecency is an offense.

(Code 1982, § 19-14)

State law references: Similar provisions, 17-A M.R.S.A. § 854.

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Sec. 50-10. Police supervision of public gatherings; fee.

- (a) The chief of police when notified of the plans for any public gathering shall, if in his judgment police supervision of such public gathering shall be required in order to maintain and preserve the public health, safety and morals, assign such number of police officers to supervise such public gathering as may be necessary in his judgment to carry out the provisions of this section.
- (b) The fee to be paid any officer acting in accordance with this section shall be determined by the city council and shall be paid by the person conducting the event causing such public gathering.

(Code 1982, § 19-15)

Cross references: Outdoor pageants, music festivals, concerts, etc., § 10-3.

Sec. 50-11. Improper conduct; dispersing of assembly.

If a policeman at a public gathering has probable cause to believe any illegal or unlawful conduct is occurring in the place of assembly, he shall order the assembly dispersed.

(Code 1982, § 19-16)

Sec. 50-12. Fire supervision of public gatherings; fee.

- (a) The Fire Chief when notified of the plans for any public gathering shall, if in his judgment fire supervision of such public gathering shall be required in order to maintain and preserve the public health, safety and morals, assign such number of fire guards to supervise such public gathering as may be necessary in his judgment to carry out the provisions of this section.
- (b) The fee to be paid any fire guard acting in accordance with this section shall be determined by the city council and shall be paid by the person conducting the event causing such public gathering.

(Ord. No. 11-11, 10-20-11)

Secs. 50-13--50-35. Reserved.

ARTICLE II. CITATION SYSTEM OF CODE ENFORCEMENT

Sec. 50-36. Purpose.

The purpose of this article is to provide additional and alternative methods and processes to enforce the provisions of this Code in a just, speedy and inexpensive manner, to improve compliance with the provisions of this Code and thereby to protect, preserve and enhance the public health, safety and general welfare.

(Code 1982, § 2-700)

Sec. 50-37. Applicability.

Lewiston Code

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This article shall provide a method for enforcing and securing compliance with the various provisions of the Code of Ordinances, which is in addition to those methods otherwise contained in the Code. Any and all inspectors and enforcement officials under the various provisions of this Code are referred to in this article collectively as enforcement officials.

(Code 1982, § 2-701)

Sec. 50-38. Investigations.

Upon receipt of information indicating the likelihood of a violation of any provision of this Code, the enforcement official shall investigate the facts and may make an inspection of the premises when legally authorized to do so.

(Code 1982, § 2-702)

Sec. 50-39. Notice of violation.

If an investigation reveals that a code violation has occurred, the enforcement official shall give written notice of such violation to the person (hereinafter "violator") having control of any land, building, structure, sign, licensed or permitted business or operation which is in violation and order that the violation be corrected. Notice of the violation may be served in hand to the violator or left with a person of suitable age and discretion at the residence or place of business of the violator or mailed by certified mail, return receipt requested, to his last known address. If the return receipt is not returned, a notice shall be conclusively presumed to have been served if it is also sent by regular mail, postage prepaid, which is not returned as undeliverable by the postal service. If the enforcement official finds that the violation is one which requires immediate correction to protect the public health or safety, he may provide notice under this article by means of telephone or facsimile transmission to the violator or to a person of suitable age and discretion at the residence or place of business of the violator. Any notice under this article shall describe the violation, including a reference to the ordinance section violated, specify that reasonable period within which the violation must be corrected, and state the potential consequences if the violation is not corrected. The notice shall also advise the violator of any right to appeal to the board of appeals with respect to the enforcement official's determination that a violation exists for which the violator is responsible.

(Code 1982, § 2-703)

Sec. 50-40. Civil proceedings.

If the violation has not been corrected within the period established in the notice, the enforcement official or city attorney may initiate appropriate legal proceedings to compel the violator to correct the violation and seek whatever other relief to which the city may be entitled. Such legal proceedings may include the initiation of a land use complaint pursuant to Rule 80K of the Maine Rules of Civil Procedure and 30-A M.R.S.A. § 4452 et seq., as amended.

(Code 1982, § 2-704)

Sec. 50-41. Citations--Issuance.

If the violation has not been corrected within the period established in the notice, the enforcement official may issue, as an alternative to initiating a civil proceeding pursuant to

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section 50-40, a citation to the violator.

(Code 1982, § 2-705)

Sec. 50-42. Same--Contents.

The citation shall be in writing, describe the nature of the violation, including the ordinance section violated, state the date by which the violation must be corrected, that a civil penalty set in accordance with the city's policy manual as approved by the city council is imposed for the violation, the date by which the penalty must be paid and to whom and the consequences of failing to pay the penalty within the period stated. The time period allowed by the enforcement official within which the violation must be corrected shall be reasonable and shall take into consideration any notice period previously given to the violator, the nature of the violation to be corrected and the time which the enforcement official estimates will be reasonably required to correct the violation. The citation shall state the penalties which may be imposed if the violation is not corrected within the time period set forth in the first citation and shall also state the penalties which may be imposed if any additional citation must be issued for the same violation. The citation shall also state that all additional penalties are cumulative.

(Code 1982, § 2-706; Ord. No. 08-06g, 8-14-08)

Sec. 50-43. Same--Service of.

A citation may be served upon the violator by giving the citation to the violator in hand, by leaving it with a person of suitable age and discretion at the residence or place of business of the violator or mailed by certified mail, return receipt requested, to his last known address. If the return receipt is not returned, the citation shall be conclusively presumed to have been served if it is also sent by regular mail postage prepaid, which has not been returned as undeliverable by the postal service.

(Code 1982, § 2-708)

Sec. 50-44. Time limits for corrective action.

The time period specified in a citation within which a violation must be corrected shall be reasonable in consideration of:

- (1) The threat posed by such violation to the health, safety and welfare of the public;
- (2) The nature of the work required to correct the violation; and
- (3) Any notice period given to the violator in a previous citation for the same violation or pursuant to section 50-39.

(Code 1982, § 2-707)

Sec. 50-45. Penalty.

The civil penalty set in accordance with the city's policy manual as approved by the city council shall be imposed for the issuance of citations. The civil penalties imposed are cumulative.

(Code 1982, § 2-709; Ord. No. 08-06g, 8-14-08)

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Sec. 50-46. Further violations.

If the violation has not been corrected within the time specified in the first citation, the enforcement official may issue a second citation. The second citation shall contain the same information set forth in the first citation regarding the nature of the violation but may do so by reference to the first citation. It shall also state that, in addition to the civil penalty imposed for the first citation, as set in accordance with the city's policy manual as approved by the city council, a civil penalty has been imposed for the second citation as set in accordance with the city's policy manual as approved by the city council. The second citation shall also state that the continued failure to correct the violation may result in the issuance of further citations and shall indicate the penalties provided for the issuance of subsequent citations. The time limits specified for correcting the violation may be the same as that allowed in the first citation or may be altered if there has been a change in circumstances. The same procedure shall be followed with regard to the issuance of subsequent citations.

(Code 1982, § 2-710; Ord. No. 08-06g, 8-14-08)

Sec. 50-47. Penalty for nonpayment of penalty; collection proceedings.

All civil penalties imposed by citation shall be due within five days after the date by which the violation was ordered to be corrected. All civil penalties not paid when due shall bear interest at the rate of 18 percent per annum. The failure to pay when due any civil penalty imposed for violation of any of the laws, ordinances or rules set forth in 30-A M.R.S.A. § 4452(5), as amended, shall itself constitute a violation of such law, ordinance or rule for which the violator shall be liable for the penalties provided for in 30-A M.R.S.A. § 4452(3). The enforcement official or city attorney may initiate appropriate proceedings to collect any civil penalty which is not timely paid together with all interest thereon. Such legal action may include proceedings pursuant to 30-A M.R.S.A. § 4452.

(Code 1982, § 2-711)

Sec. 50-48. Repeat violations.

If a violator has been previously served with a notice of violation with regard to a specific violation, he shall not be entitled to receive any further notice of the same violation if it is repeated. If the enforcement official determines that a violator has repeated the same violation, he may proceed in accordance with section 50-43 without further notice.

(Code 1982, § 2-712)

Sec. 50-49. Appeals.

Appeals from a determination by the enforcement official that a violation of the Code has been committed may be taken to the board of appeals in accordance with the specific provisions of the particular ordinance alleged to have been violated.

(Code 1982, § 2-713)

Sec. 50-50. Effect of article on other ordinances.

This article does not supersede or repeal any other provision of the Code, nor preclude

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the initiation of any other legal proceeding which may be provided by applicable state or federal law.

(Code 1982, § 2-714)

Sec. 50-51. Severability of provisions.

If any provision of this article is declared invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to that provision of this article directly involved in the controversy which gave rise to the judgement and shall not affect or impair the validity of any other provision of this article.

(Code 1982, § 2-715)

Secs. 50-52--50-70. Reserved.

ARTICLE III. MINORS

DIVISION 1. GENERALLY

Sec. 50-71. Employment of underaged persons in alcoholic beverage establishments.

- (a) No licensee for the sale of liquor to be consumed on licensed premises may employ any person under the age of 17 years in the serving or selling of liquor on the premises where liquor is sold. The licensee may employ a person who is 17 years of age but less than 21 years of age in the serving or selling of liquor only in the presence of an employee who is at least 21 years of age and is in a supervisory capacity or who was at least 18 years of age prior to January 1, 1994 and was employed in a supervisory capacity by the employer before that date.
- (b) If upon complaint and investigation by the police department, the chief of police reasonably believes that any provision of subsection (a) of this section has been or is being violated, or upon conviction for any violation of subsection (a), the city council may, upon recommendation of the chief of police, revoke its approval of such special permit for dancing or entertainment, and direct the city clerk to communicate such fact to the state liquor commission, with recommendation that such special license or permit, issued by it, be revoked; provided, however, that the revocation of any license as above set forth, or of its approval by the city council, shall not prevent any criminal prosecution under section 1-8.

(Code 1982, § 19-7)

State law references: Similar provisions, 28-A M.R.S.A. § 704(1).

Secs. 50-72--50-80. Reserved.

DIVISION 2. CURFEW*

***Editor's note:** Ord. No. 96-12, effective Oct. 31, 1996, amended this division in its entirety, in effect repealing

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former §§ 50-81--50-84 and enacting similar new provisions as herein set out. Formerly, such sections derived from §§ 19-51--19-54 of the city's 1982 Code.

Sec. 50-81. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Curfew hours means 10:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 5:00 a.m. of the following day, and 12:01 a.m. on any Saturday or Sunday until 5:00 a.m. of the following day.

Emergency means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, a natural disaster, or automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.

Establishment means any privately owned place of business operated for a profit to which the public is invited, including, but not limited to any place of amusement or entertainment.

Guardian means a person who, under court order, is the guardian of the person of a minor, or a public or private agency with whom a minor has been placed by a court.

Minor means any person under 18 years of age.

Operator means any individual, firm, association, partnership, or corporation operating, managing, or conducting any establishment. The term includes the members or partners of an association or partnership and the officers of a corporation.

Parent means a person who is a natural parent, adoptive parent, or step-parent of another person, or at least 18 years of age and authorized by a parent or guardian to have the care and custody of a minor.

Public place means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities and shops.

Remain means to linger or stay, or fail to leave premises when requested to do so by a police officer or the owner, operator, or other person in control of the premises.

Serious bodily injury means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(Ord. No. 96-12, 10-31-96)

Cross references: Definitions and rules of construction, § 1-2.

Sec. 50-82. Offenses.

- (a) A minor commits an offense if he remains in any public place or on the premises of any establishment within the city during curfew hours.
- (b) A parent or guardian of a minor commits an offense if he knowingly permits, or by

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insufficient control allows, the minor to remain in any public place or on the premises of any establishment within the city during curfew hours.

- (c) The owner, operator or any employee of an establishment commits an offense if he knowingly allows a minor to remain upon the premises of the establishment during curfew hours.

(Ord. No. 96-12, 10-31-96)

Sec. 50-83. Defenses.

- (a) It is a defense to prosecution under subsection 50-82(b) that the minor was:
 - (1) Accompanied by the minor's parent or guardian;
 - (2) On an errand at the direction of the minor's parent or guardian, without any detour or stop;
 - (3) In a motor vehicle involved in interstate travel;
 - (4) Engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;
 - (5) Involved in an emergency;
 - (6) On the sidewalk abutting the minor's residence or abutting the residence of a next-door neighbor if the neighbor did not complain to the police department about the minor's presence;
 - (7) Either; (i) attending an official school, religious, or other recreational activity supervised by adults and sponsored by the city, a civic organization, or another similar entity that takes responsibility for the minor; or (ii) within 45 minutes after the termination of an official school, religious, or other recreational activity supervised by adults and sponsored by the city, a civic organization, or another similar entity that takes responsibility for the minor, going to or returning home from such activity;
 - (8) Exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech and the right of assembly;
 - (9) Exercising rights protected under Article I, Section 2, 3, 4 or 5 of the Maine Constitution; or
 - (10) Married or had been married or had disabilities of minority removed in accordance with 15 M.R.S.A. § 3306A.
- (b) It is a defense to prosecution under subsection 50-82(c) that the owner, operator, or employee of an establishment promptly notified the police department that a minor was present on the premises of the establishment during curfew hours and refused to leave.

(Ord. No. 96-12, 10-31-96)

Sec. 50-84. Enforcement.

Before taking any enforcement action under this section, a police officer shall ask the

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apparent offender's age and reason for being in the public place. The officer shall not issue a citation or make an arrest under this section unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense in subsection 50-83(a) is present.

(Ord. No. 96-12, 10-31-96)

Sec. 50-85. Penalties.

A person who violates a provision of this division is guilty of a separate offense for each day or part of a day during which the violation is committed, continued or permitted. Each offense, upon conviction, is punishable by a civil penalty set in accordance with the city's policy manual as approved by the city council.

(Ord. No. 96-12, 10-31-96; Ord. No. 08-06g, 8-14-08)

Sec. 50-86. Severability.

The terms and provisions of this division are severable and are governed by chapter 1 of the Lewiston Code of Ordinances, as amended.

(Ord. No. 96-12, 10-31-96)

Sec. 50-87. Effective date.

This division shall take effect in accordance with the provisions of subsection 2.11(c) of the Charter of the City of Lewiston.

(Ord. No. 96-12, 10-31-96)

Secs. 50-88--50-105. Reserved.

ARTICLE IV. WEAPONS AND EXPLOSIVES*

***Cross references:** Fire prevention and protection, ch. 38.

State law references: Authority to regulate the discharge of firearms, 25 M.R.S.A. § 2011(3).

Sec. 50-106. Permit to carry concealed weapons.

The chief of police is designated as the issuing authority for permits issued under 25 M.R.S.A. § 252.

(Ord. No. 92-23, § 30, 10-15-92)

Sec. 50-107. Discharging firearms.

- (a) *Purpose.* The purpose of this section is to regulate the discharge of firearms within the city in order to promote and enhance the safety and welfare of its inhabitants. This section is intended to protect the rights of landowners and the interests of persons who use firearms in work and recreation while meeting these objectives.

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- (b) *Zones created.* For the purposes of this section, the city is divided into two zones denominated as zone 1 and zone 2. The boundaries of the zones are as follows:
- Zone 1.* Zone 1 includes the area between the corporate boundaries of the City of Lewiston and lying southeasterly, easterly and northeasterly of a line delineated by the centerline of the Maine Turnpike from the point where the turnpike crosses the Androscoggin River to the point where Grove Street crosses the turnpike; then northwesterly on Grove Street to the point where the Central Maine Power Company double transmission lines cross Grove Street; then by the centerline of the right-of-way of the double transmission lines northerly and then northwesterly to the point where they cross the Androscoggin River.
- Zone 2.* Zone 2 is that area within the corporate bounds of the City of Lewiston and not included in zone 1.
- (c) *Zone 1 discharge restrictions.* In zone 1, no person shall discharge a firearm unless that person is in possession of the written permission of the owner of the land on which such discharge occurs. The form of such written permission shall contain the following information:
- (1) Name of landowner;
 - (2) Name of permittee;
 - (3) General description of size and location of land; and
 - (4) Dates and times for which such permission is valid.
- (d) *Zone 2 discharge restrictions.* In zone 2, no person shall discharge any firearm.
- (e) *Exceptions.* No provision of this section shall be construed to limit the authority to discharge a firearm by a person who is:
- (1) A law enforcement officer, or a government official, acting within the scope of his official duties.
 - (2) Acting in lawful defense of person.
 - (3) Within the physical confines of a duly authorized firing range, rifle range, pistol range, target range or shooting gallery.
 - (4) A member of the National Guard, veterans' organizations and similar organizations in connection with public ceremonials.
 - (5) Discharging a firearm for signalling purposes.
 - (6) Discharging a firearm with blank cartridges for theatrical purposes or for signal purposes in athletic contests or sport events.
 - (7) A property owner, or his authorized agent, engaged in commercial agriculture acting in lawful defense of his own crops from damage or destruction by wild animals.
- (f) *"Firearm" defined.* A "firearm" includes any instrument used in the propulsion of pellet, shot, slug, or bullet by the action of gunpowder, compressed air or gas exploded or released within it.

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- (g) *Penalties for violation.* Violations of this section shall be punishable by a penalty set in accordance with the city's policy manual as approved by the city council.
- (h) *Prima facie evidence of violation.* It shall be prima facie evidence of a violation of this section if a person carries a firearm on his person, the discharge of which is prohibited in the zone in which the person is located, unless that firearm is unloaded and rendered incapable of firing without further assembly or is unloaded and enclosed in a case. Nothing in this subsection shall be construed to limit the authority to carry a concealed firearm by a person licensed to do so.

(Ord. No. 92-23, § 30, 10-15-92; Ord. No. 95-13, 10-19-95; Ord. No. 08-06g, 8-14-08)

Sec. 50-108. Blasting restricted; permit.

- (a) No person shall blast any rock or other substance at any time within the city limits without first obtaining a written permit from the fire prevention bureau, which permit shall specify the terms and conditions on which it is granted. Such permit shall be granted if the blasting will be conducted in accordance with all laws and ordinances. The remedy of persons injured by a blast of rocks shall not be affected by this section or any permit granted thereunder, nor shall it be construed as applying to the superintendent of streets in the discharge of his official duties.
- (b) As provided by 17 M.R.S.A. § 2791, persons engaged in blasting limerock or other rocks shall, before each explosion, give reasonable notice thereof, so that all persons or teams approaching shall have time to retire to a safe distance from the place of such explosion; and no such explosion shall be made after sunset. Whoever violates the provisions of this section shall be punished as provided by 17 M.R.S.A. § 2791.

(Code 1982, § 30-3)

Sec. 50-109. Storage limit on gunpowder unless licensed.

No person shall keep or have in any shop, store, dwelling house or tenement in the city, at any one time, a larger quantity of gunpowder than one pound, unless he is licensed by the bureau of fire prevention to keep and sell gunpowder, or except as provided in this article.

(Code 1982, § 30-4)

State law references: State regulation of the keeping, dispensing or transporting of gunpowder, 25 M.R.S.A. § 2441.

Sec. 50-110. License to sell gunpowder; appeal.

It shall not be lawful for any person to sell at retail or wholesale gunpowder in any form (bulk or cartridges, etc.) without having first obtained from the bureau of fire prevention a license to sell gunpowder. Every such license shall be in force for one year from the date thereof, unless revoked by the bureau. Any person aggrieved by any decision of the bureau shall have the right of appeal to the city council, such appeal to be in writing and filed with the city clerk.

(Code 1982, § 30-5)

State law references: Municipal authority to regulate the keeping, dispensing or transporting of explosives, 25 M.R.S.A. § 2441.

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Sec. 50-111. Exception.

This article shall not apply to any person on military duty in the public service of the United States or of this state.

(Code 1982, § 30-6)

Secs. 50-112--50-160. Reserved.

ARTICLE V. OBSCENITY

Sec. 50-161. Definitions.

As used in this article, the following words shall have the following meanings:

Material means anything tangible that is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound, or in any other manner, but does not include an actual three-dimensional obscene device.

Obscene means material or a performance that:

- (1) The average person, applying contemporary community standards, would find that taken as a whole appeals to the prurient interest in sex;
- (2) Depicts or describes:
 - a. Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy and sexual bestiality; or
 - b. Patently offensive representations or descriptions of masturbation, excretory functions, sadism, masochism, lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal, covered male genitals in a discernibly turgid state or a device designed and marketed as useful primarily for stimulation of the human genital organs; and
- (3) Taken as a whole, lacks serious literary, artistic, political or scientific value.

Obscene device means a device including a dildo or artificial vagina, designed or marketed as useful primarily for the stimulation of human genital organs.

Patently offensive means so offensive on its face as to be intolerable to the average person, applying contemporary community standards.

Performance means a play, motion picture, dance, or other exhibition performed before an audience.

Promote means to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same.

Prurient interest in sex means a shameful or morbid interest in sex.

Wholesale promote means to manufacture, issue, sell, provide, mail, deliver, transfer,

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transmit, publish, distribute, circulate, disseminate, or to offer or agree to do the same for purpose of resale.

(Ord. No. 03-06, 7-3-03)

Sec. 50-162. Wholesale promotion of obscene material or devices.

- (a) A person commits an offense if, knowing its content and character, he wholesale promotes or possesses with intent to wholesale promote any obscene material or obscene device.
- (b) A person commits an offense if, knowing its content and character, he:
 - (1) Promotes or possesses with intent to promote any obscene material or obscene device; or
 - (2) Produces, presents, or directs an obscene performance or participates in a portion thereof that is obscene or that contributes to its obscenity.
- (c) A person who promotes or wholesale promotes obscene material or an obscene device or possesses the same with intent to promote or wholesale promote it in the course of his business is presumed to do so with knowledge of its content and character.
- (d) A person who possesses six or more obscene devices or six or more obscene articles, whether such devices or articles are similar or identical, is presumed to possess them with intent to promote the same.
- (e) This section does not apply to a person who possesses or distributes obscene material or obscene devices or participates in conduct otherwise proscribed by this section when the possession, participation, or conduct occurs in the course of law enforcement activities.

(Ord. No. 03-06, 7-3-03)

Sec. 50-163. Validity.

If any of the depictions or descriptions of sexual conduct described in this article are declared by a court of competent jurisdiction to be unlawfully included herein, this declaration shall not invalidate this article as to other patently offensive sexual conduct included herein.

(Ord. No. 03-06, 7-3-03)

Sec. 50-164. Penalty.

The violation of any provision of this article shall be punished by a fine set in accordance with the city's policy manual as approved by the city council. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense. In addition to such penalty, the city may enjoin or abate any violation of this article by appropriate action. In addition to such penalty, if the court finds for the city, the city shall recover its costs of suit including reasonable experts' fees, reasonable attorneys' fees and reasonable investigative costs.

(Ord. No. 03-06, 7-3-03; Ord. No. 08-06g, 8-14-08)

Sec. 50-165. Application of violations to liquor licenses and special amusement permits.

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Any violation of this article may result in the nonrenewal by the city council of the liquor license held by the violator at the time the council first considers the liquor license following adjudication under this article. Additionally, any violation of this article may result in suspension or revocation of any special amusement permit pursuant to the provisions of 28A MRSA § 1054(7).

(Ord. No. 03-06, 7-3-03)

Secs. 50-166--50-180. Reserved.

ARTICLE VI. OPERATION OF NOISE-CREATING DEVICES UPON PUBLIC RIGHTS-OF-WAY*

***Editor's note:** Ord. No. 04-04, effective April 1, 2004, provided for the inclusion of art. V, §§ 50-130--50-135. Inasmuch as Ord. No. 03-06, effective July 3, 2003, provided for the inclusion of art. V, currently codified as §§ 50-161--50-165, the provisions of Ord. No. 04-04 have been included as art. VI, §§ 50-181--50-185 at the discretion of the editor.

Sec. 50-181. Purpose.

The City of Lewiston City Council finds that excessive noise on public ways may:

- (1) Cause distraction to other drivers which impairs the safe operation of motor vehicles;
- (2) Unreasonably disturb the quiet and normal functioning of the city's residential neighborhoods;
- (3) Threaten and/or intimidate pedestrians; and
- (4) Project a negative image of the city, all to the detriment of the health, welfare and safety of Lewiston's citizens and guests.

Accordingly, it is the policy of the City of Lewiston to prohibit unnecessary, excessive, annoying or distracting noise on any public right-of-way within the City of Lewiston Maine.

(Ord. No. 04-04, 4-1-04)

Sec. 50-182. Definitions.

For the purposes of this article, the following words and phrases shall have the following meanings:

- (1) *City* means the City of Lewiston, Maine.
- (2) *Noise-creating device* means any electrical, mechanical or chemical device or instrument, or combination thereof that creates noise during its operation.
- (3) *Motorcycle* means an unenclosed motor vehicle, having a saddle/seat for the use of the operator, with two or three wheels in contact with the ground, including, but not limited to, motorcycles, motorscooters and minibikes.

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- (4) *Operation* means actual control by a person.
- (5) *Public right-of-way* means any street, roadway, alley, sidewalk or any other area deeded or dedicated for public travel or transportation purposes.
- (6) *Straight pipe exhaust system* means any muffler that does not contain baffles, including, but not limited to, glass packs, steel packs, straight pipes, modified baffle systems, and drag pipes.
- (7) *Internal combustion engine vehicle* means a vehicle that uses a mechanical engine of any type that requires fuel combustion to propel the vehicle.
- (8) *Vehicle*. For the purpose of this section, a vehicle will include, and is not limited to, an automobile, a truck, a motorcycle, a snowmobile, an ATV, a go-cart, a minibike, an engine-propelled skateboard, and any other propelled unit that falls into this category.

(Ord. No. 04-04, 4-1-04)

Sec. 50-183. Creation of certain noises upon a public right-of-way prohibited.

- (a) No person, while occupying any public right-of-way in the city, shall operate any noise-creating device in such a manner that the level of noise causes the public's attention to be drawn to the source of the noise, subject to the exceptions hereafter provided.
- (b) The prohibition of this section shall include, but not be limited to, the following activity or conduct:
 - (1) Discharging fireworks or any exploding device;
 - (2) Firing a starter pistol or firearm;
 - (3) Sounding a bell or whistle, alarm or horn for so extended a period of time as to cause annoyance to others;
 - (4) Rapid throttle advance, rapid acceleration and/or revving of an internal combustion engine resulting in increased noise from the engine and exhaust system, to include, but not limited to the practice of motorcycle "blipping"; and
 - (5) Operation of an unmuffled motor vehicle or vehicle, including motorcycles, with a straight pipe exhaust system, an exhaust system with a cutout, bypass or similar device or an exhaust system that does not meet the requirements of Maine law, including, but not limited to 29-A M.R.S.A. subsection 19.

(Ord. No. 04-04, 4-1-04)

Sec. 50-184. Exceptions.

The provisions of this section shall not apply to the following activity or conduct:

- (1) Expression or communication protected by the United States Constitution, including the First Amendment, or the Maine Constitution.
- (2) Any activity or conduct the regulation of which has been preempted by Maine Statute.

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- (3) Any noise created by a governmental entity in the performance of an official duty.
- (4) Any noise for which a permit has been issued by an authority having jurisdiction to issue the permit, or any noise that is allowable under other sections of the City Code.
- (5) The sounding of any signaling device permitted by law.
- (6) Properly licensed common carriers and service vehicles in the performance of their customary duties.
- (7) Any vehicle equipped with a factory installed, original and untampered with exhaust system, not being operated in such a fashion as to accentuate the sound of the exhaust.

(Ord. No. 04-04, 4-1-04)

Sec. 50-185. Penalty.

Violations of this article constitute civil violations, punishable in accordance with the city's policy manual as approved by the city council.

(Ord. No. 04-04, 4-1-04; Ord. No. 08-06g, 8-14-08)

Secs. 50-186--50-199. Reserved.

ARTICLE VII. GRAFFITI VIOLATIONS

Sec. 50-200. Purpose.

The city council has determined that graffiti creates a visual blight and can adversely impact property owners financially as well as their enjoyment and value of property. This article is intended to deter graffiti and to establish penalties for graffiti.

(Ord. No. 07-08, 10-04-07)

Sec. 50-201. Definitions.

Graffiti means any inscription, word, figure, design, painting, writing, drawing or carving that is marked, etched, scratched, drawn, painted or otherwise applied to property without the prior authorization of the owner of the property regardless of the content or nature of the material used.

Graffiti implement means an aerosol paint container, a broad-tipped marker, gum label, paint stick or graffiti stick, etching equipment, brush or any other device capable of scarring or leaving a visible mark on any natural or manmade surface.

Graffiti removal means the removal or attempted removal or painting over of graffiti by the owner of the affected property or by another person with the consent of the owner or owner's designee or by court order.

Immediately adjacent means near enough to the property to apply graffiti.

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Owner means the person listed on the assessor's records for the City of Lewiston as the owner of property.

Property means any real or personal property, including, but not limited to, any portion of any premises, structure, house, building, fence or vehicle.

(Ord. No. 07-08, 10-04-07)

Sec. 50-202. Prohibited acts.

The following acts are prohibited:

- (1) Applying graffiti to any private or public property without the permission of the owner;
- (2) Soliciting or commanding another person to apply graffiti to any private or public property without the permission of the owner; or
- (3) Aiding or abetting or agreeing to aid or abet another person in planning to apply or applying graffiti to any private or public property without the permission of the owner.

(Ord. No. 07-08, 10-04-07)

Sec. 50-203. Prohibited possession of graffiti implements.

Possession of graffiti implements in the following situations and under reasonable suspicion is deemed to be evidence of an intent or attempt to commit a prohibited act and is prohibited:

- (1) By minors on or near school facilities. No person under the age of 18 years may possess any graffiti implement while on or within 50 feet of any school property. Notwithstanding this provision, a person under 18 may possess a broad-tipped marker if traveling to or from a school in which the minor is participating in a class or activity that requires the possession of a broad-tipped marker. The burden of proof shall be on the minor to demonstrate that possession was required for a school class or activity.
- (2) By any person on or immediately adjacent to private property without the permission of the owner of the property.
- (3) By any person in any public facility, park, playground, swimming pool, recreational facility, or other public building, structure, premises or vehicle without the city's permission, or within 50 feet of any underpass, bridge abutment, or similar infrastructure without permission of the owner.

(Ord. No. 07-08, 10-04-07)

Secs. 50-204--50-210. Reserved.

Sec. 50-211. Penalties.

- (a) Any person violating this article shall be subject to a fine set in accordance with the city's

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policy manual as approved by the city council. Each day any violation shall continue shall constitute a separate violation.

- (b) In addition to the fine stated in subsection (a), any person found to have committed a violation of section 50-202 shall be subject to restitution for all costs of graffiti removal, and/or to perform community service to the City of Lewiston.

(Ord. No. 07-08, 10-04-07; Ord. No. 08-06g, 8-14-08)

ARTICLE VIII. SALE AND USE OF CONSUMER FIREWORKS

Sec. 50-220. Definitions.

The following definitions shall apply in this section:

- (1) *Consumer fireworks* shall have the same meaning as in 27 Code of Federal Regulations, Section 555.11 or subsequent provision, but includes only products that are tested and certified by a 3rd-party testing laboratory as conforming with United States Consumer Product Safety Commission standards in accordance with 15 United States Code, Chapter 47. “Consumer fireworks” does not include the following products:
- a. Missile-type rockets, as defined by the State Fire Marshal by rule;
 - b. Helicopters and aerial spinners, as defined by the State Fire Marshal by rule; and
 - c. Sky rockets and bottle rockets. For purposes of this paragraph, “sky rockets and bottle rockets” means cylindrical tubes containing not more than 20 grams of chemical composition, as defined by the State Fire Marshal by rule, with a wooden stick attached for guidance and stability, that rise into the air upon ignition, and that may produce a burst of color or sound at or near the height of flight.
- (2) *Display* means an entertainment feature where the public or a private group is admitted or permitted to view the display or discharge of fireworks or special effects.

Sec. 50-221. Fireworks Restricted Use.

The use, discharge or ignition of fireworks within the City of Lewiston’s restricted fire arms zone, Zone 2 as defined in Chapter 50, Section 107 of this Code, is prohibited.

The use, discharge or ignition of fireworks within the City of Lewiston’s restricted fire arms zone, Zone 1 as defined in Chapter 50, Section 107 of this Code, is permitted on and only on the dates of December 31, January 1, and July 4 provided, however, that:

- (1) The use, discharge, or ignition of fireworks is prohibited on all public property, including all public parks, public rights of way, and School Department property;

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- (2) The use, discharge, or ignition of fireworks is prohibited on any day specified by the Fire Chief as presenting a high fire danger as identified by posting such designation on the City website;
- (3) The use, discharge, or ignition of fireworks shall not be permitted in close proximity to any building in the City of Lewiston by maintaining a distance of no less than 75' from said building;
- (4) No fireworks will be permitted before 10 a.m. and after 10 p.m. on July 4th;
- (5) No fireworks will be permitted before 10 a.m. on December 31st; and
- (6) No fireworks will be permitted between the hours of 1 a.m. and 10 a.m. or after 10 p.m. on January 1st.
- (7) The use of fireworks must be approved by the owner of the property where they are to be used.

Sec. 50-222. Exception.

This section does not apply to a person issued a fireworks display permit by the City of Lewiston and/or the State of Maine pursuant to 8 M.R.S.A. §227-A.

Sec. 50-223. Violations.

- (1) Any person who uses consumer fireworks or possesses consumer fireworks with the intent to use in the City of Lewiston in violation of this ordinance shall receive a citation.
- (2) The civil penalty set in accordance with the city's policy manual as approved by the city council shall be imposed for the issuance of citations. The Civil penalties imposed are cumulative.

Sec. 50-224. Sale of Fireworks.

The sale of fireworks in the City of Lewiston shall be prohibited within the City of Lewiston.

Sec. 50-225. Seizure and disposal of fireworks.

The City may seize consumer fireworks that the City has probable cause to believe are used, possessed, or sold in violation of this section. Seized consumer fireworks shall be forwarded to the State for disposal.

(Ord. No. 12-02, 04-05-2012)

Chapter 54

PARKS AND RECREATION*

- Sec. 54-1. Public park established; commercial uses forbidden.
- Sec. 54-2. Lewiston City Park or Common defined.
- Sec. 54-3. Riding and driving on public grounds regulated.
- Sec. 54-4. Reserved.
- Sec. 54-5. Depositing of offensive substances; committing nuisances.
- Sec. 54-6. Unlawful to be in Kennedy Park during certain hours; exception.
- Sec. 54-7. Unlawful to be in the following city parks during certain hours; exception.
- Sec. 54-8. Public drinking of alcoholic beverages prohibited.
- Sec. 54-9. Designation of Drug-Free “Safe Zones”.
- Sec. 54-10. Smoking on athletic fields during certain times and on city playgrounds prohibited.
- Sec. 54-11. Penalties.

***Cross references:** Department of recreation, § 2-386 et seq.; removing or destroying public plants or fixtures prohibited, § 50-7.

State law references: Authority to establish parks, 30-A M.R.S.A. § 3252.

PARKS AND RECREATION

Sec. 54-1. Public park established; commercial uses forbidden.

The Lewiston City Park, or Common, so-called, which was conveyed to the Town of Lewiston by the Franklin Company on December 18, 1861, shall at all times be kept open for a public park, or common, to be used by the public in general; no building whatsoever shall at any time be erected thereon, and the park shall not at any time be used by any person for commercial purposes. No license or permission shall be granted for the use of such park or common in violation of the above restrictions without the approval of the city administrator or deputy city administrator.

(Code 1982, § 20-1; Ord. No. 01-8, 7-5-01; Ord. No. 01-16, 10-18-01; Ord. No. 05-24, 2-16-06)

Sec. 54-2. Lewiston City Park or Common defined.

The term "Lewiston City Park" or "Common" when used in this chapter shall mean Kennedy Park.

(Code 1982, § 20-2)

Sec. 54-3. Riding and driving on public grounds regulated.

No person shall ride, lead or drive any horse or vehicle in or on the open grounds of the city, nor in or upon any enclosed public square, unless by permission of the council.

(Code 1982, § 20-3)

Cross references: Traffic and vehicles, ch. 70.

Sec. 54-4 Reserved.

Editor's note – Ord. No. 09-03, effective 7-02-09, repealed § 54-4 in its entirety. Formerly, said section pertained to depositing substances likely to cause injury while in or adjacent to park.

Sec. 54-5. Depositing of offensive substances; committing nuisances.

No person shall, in any manner, carry or cause to be carried into the commons, parks or public squares or places of the city any dead carcass, filth or any offensive matter or substance whatsoever; and no person shall commit any nuisance on such commons, parks, public squares or places of the city.

(Code 1982, § 20-5)

Cross references: Nuisances, § 34-26 et seq.

State law references: Maine Litter Control Act, 17 M.R.S.A. § 2261 et seq.

Sec. 54-6. Unlawful to be in Kennedy Park during certain hours; exception.

It shall be unlawful for any person to be or remain in Kennedy Park in the city between the hours of 1:00 a.m. and 5:00 a.m., unless such person is in lawful employment making it necessary to be in Kennedy Park between 1:00 a.m. and 5:00 a.m.

(Code 1982, § 20-6)

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Sec. 54-7. Unlawful to be in the following city parks during certain hours; exception.

It shall be unlawful for any person to be or remain in Chasey Park, Franklin Pasture Athletic Complex, Gaslight Park, Judge Armand A. Dufresne, Jr. Plaza, a section of Kennedy Park bounded by Spruce Street, Park Street, and the extension of Chestnut Street to Bates Street, Knox Street Park, Leeds Park, Lewiston Athletic Park, Lincoln Street Boat Launch and Park, Lionel Potvin Park, Marcotte Park, Mark W. Paradis Park, Mayher Park, Randall Road Softball Complex, Raymond Park, Ricker Park, Simard-Payne Police Memorial Park, Smiley Park, St. Mary's playground (Oxford Street), Sunnyside Park and Veterans Memorial Park in the city between the hours of 9:00 p.m. and 5:00 a.m., unless such person is in lawful employment, participating in a program or activity sponsored or authorized by the city.

(Code 1982, § 20-7; Ord. No. 94-11, 10-6-94; Ord. No. 01-8, 7-5-01; Ord. No. 01-16, 10-18-01; Ord. No. 09-03, 7-02-09; Ord. No. 13-02a, 3-21-13)

Sec. 54-8. Public drinking of alcoholic beverages prohibited.

(a) *Definitions.* As used in this section, the following terms have the following meanings:

Liquor means and includes any alcoholic, spirituous, vinous, fermented or other alcoholic beverage or combination of liquors and mixed liquors, intended for human consumption, which contains more than one-half of one percent of alcohol by volume.

Open container means not having a cap, stopper or other cover in place.

Public park, playground or recreational facility means any of the following city-owned or operated public fields, parks, playgrounds and recreational facilities:

Chasey Park;

Child's Park;

Couture Park;

Farwell School grounds;

Franklin Pasture Athletic Complex;

Gaslight Park;

Holy Family athletic field;

Judge Armand A. Dufresne, Jr. Plaza;

Kennedy Park;

Knox Street Park;

Leeds Park;

Lewiston Athletic Park;

Lewiston Memorial Armory;

Lincoln Street Boat Launch and Park;

Lionel Potvin Park;

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Longley School grounds;
Marcotte Park;
Mark W. Paradis Park;
Martel School grounds;
Mayer Park;
McMahon School grounds;
Montello School grounds;
Pettengill School grounds;
Randall Road Softball Complex;
Raymond Park;
Ricker Park;
Simard-Payne Police Memorial Park;
Smiley Park;
St. Mary's playground (Oxford Street);
Sunnyside Park;
Veterans Memorial Park.

- (b) *Penalty.* A person is guilty of public drinking if he drinks liquor while at any public park or playground, unless at specific events authorized by the city council.
- (c) *Evidence.* The possession of an open container of liquor at a public park or playground is prima facie evidence of a violation of this section.

(Code 1982, § 20-8; Ord. No. 94-11, 10-6-94; Ord. No. 01-8, 7-5-01; Ord. No. 01-16, 10-18-01; Ord. No. 09-01, 3-19-09; Ord. No. 13-02a, 3-21-13)

Sec. 54-9. Designation of Drug-Free “Safe Zones”.

- (a) *Definitions.* As used in this section, the following terms have the following meanings:

Drug means any natural or synthetic substance or chemical compound recognized as having a pharmaceutical or chemical effect process used in the diagnosis, treatment, or prevention of a disease or other abnormal condition, or as a component of a medication; such a substance as recognized or defined by the US Food and Drug Administration; a substance used recreationally, such as a narcotic or hallucinogen, which affects the central nervous system, causing changes in behavior and often addiction.

Dealer means any person(s) illegally engaged in buying, selling and distribution; trafficking or administration the use of a drug.

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Public park, playground or recreational facility means any of the city-owned or operated public fields, parks, playgrounds and recreational facilities frequented by minors.(see listing in Sec.54-8)

(b) *Penalty.* A person found to be engaging in drug dealing activity within 1000 feet of a designated “safe zone” will be made subject to an enhanced penalty as specified by legislation.

(c) *Evidence.* Informational signs posted at a public athletic field, park, playground or recreational facility, being conspicuously marked using wording provided by the Commissioner of Public Safety which designate the area to be a Drug-Free Safe Zone with increased penalties for drug crimes committed within this zone as specified by legislation.

(Ord. No. 09-01, 3-19-09)

Sec. 54-10. Smoking on athletic fields during certain times and on city playgrounds prohibited.

Smoking and all other use of tobacco products will not be permitted on city-owned athletic fields for the period commencing one half-hour prior to and for the duration of any city or school department scheduled or sanctioned activity or event.

Smoking and all other use of tobacco products in all city-owned playground areas, to include playgrounds, aquatic areas, skateparks and basketball courts as outlined in Section 14-39 (c) is prohibited.

(Ord. No. 09-03, 7-02-09)

Sec. 54-11. Penalties

A person who violates a section of this chapter (except section 54-9) is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. Each offense, upon conviction, is punishable by a civil penalty of not less than \$25.00 and not more than \$100.00. First time violators may have the penalty waived upon proof of receipt of tobacco education materials. The effective date of this section shall be June 2, 2010.

(Ord. No. 09-03, 7-02-09)

Chapter 58

PERSONNEL*

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Division 3. Police Department Retirement and Disability

- Sec. 58-151. Retirement; permanent disability.
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- Sec. 58-155. Application for ordinary or nonservice connected disability.
- Sec. 58-156. Granting of pensions.
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- Sec. 58-158. Petition for retirement.
- Sec. 58-159. Pension benefits; computation of service credit.
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- Sec. 58-161. Pensions previously granted to remain valid.
- Sec. 58-162. Limitations.
- Sec. 58-163. Sick leave.
- Secs. 58-164--58-175. Reserved.

Division 4. Public Works Department Retirement and Disability

- Sec. 58-176. Pensions for widows and children of deceased employees.
- Sec. 58-177. Sick leave; compensation for unused sick leave upon retirement.
- Secs. 58-178--58-190. Reserved.

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Division 5. State Retirement System

- Sec. 58-191. Membership.
- Sec. 58-192. Teachers excluded.
- Sec. 58-193. Certification of creditable prior service.
- Sec. 58-194. Determining retirement allowance.
- Sec. 58-195. Purchasing creditable prior membership service.
- Sec. 58-196. State laws adopted.
- Sec. 58-197. Human resources director's duty to assist.

***Charter references:** Personnel ordinance required, § 4.02; personnel board, § 4.03.

Cross references: Administration, ch. 2; officers and employees, § 2-76 et seq.

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ARTICLE I. IN GENERAL

Secs. 58-1--58-25. Reserved.

ARTICLE II. PERSONNEL SYSTEM

DIVISION 1. GENERALLY

Sec. 58-26. Purpose.

A comprehensive personnel system is hereby being established and designed to create an equitable and uniform system of personnel administration governing employment with the city.

(Code 1982, § 2-231)

Sec. 58-27. Political activities.

The city encourages every employee to exercise the right to vote in all legal elections. However, city employees shall not:

- (1) Engage in political activities while on duty;
- (2) Be required as a duty of office or employment, or as a condition for employment, promotion or tenure of office, to contribute funds for political or partisan purposes;
- (3) Coerce or compel contributions for political or partisan purposes by other city employees or use office or influence to coerce the political action of any person;
- (4) Use any supplies or equipment of the city for political purposes; or
- (5) Be a candidate for political or partisan elected office, unless on unpaid leave of absence authorized for such purpose.

(Code 1982, § 2-231)

Sec. 58-28. Residency.

In considering applications for employment, all municipal authorities empowered to employ personnel shall give preference, whenever practicable, to qualified persons who have been inhabitants of the city for at least three months. (Code 1982, § 2-233)

Sec. 58-29. Compliance with applicable laws.

The city shall comply with all requirements of state and federal laws which apply to persons applying for jobs or employed by the city. (Code 1982, § 2-234)

Sec. 58-30. Personnel policies.

The director of human resources, with the advice of the city administrator, shall prepare and propose such changes through the personnel committee for city council approval to the

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personnel policies as necessary to ensure effective administration of the personnel system. The personnel policies and revisions thereof shall be filed in the human resources department and available for public inspection during normal business hours. The policies shall cover specific procedures covering the following phases of the personnel system:

Classification and pay plan.

Education and training.

Leaves (paid and unpaid.)

Outside employment.

Probationary period.

Reimbursements.

Safety.

Terminations.

Wage supplementals.

Working hours.

(Code 1982, § 2-235; Ord. No. 99-7, 4-15-99)

Secs. 58-31--58-70. Reserved.

DIVISION 2. APPEALS*

***Editor's note:** Ord. No. 06-16, effective Feb. 8, 2007, renumbered div. 3 as div. 2 to read as herein set out. Formerly, div. 2 consisted of sections 58-41--58-59 and pertained to civil service and derived from Code 1982, §§ 2-261--2-279.

Sec. 58-71. Generally.

The appeals procedure established in this division is intended to provide full opportunity for permanent noncontractual employees to bring to the attention of management, acts or omissions, working conditions or administrative actions that the employee feels need either adjustment or information. It is the intent and desire of the city to adjust complaints or grievances informally, and both supervisors and employees are expected to make every effort to resolve problems as they arise. However, it is recognized that there will be matters which can only be resolved after an appeal and review. The submission of a grievance by an employee shall in no way adversely affect the employee or his future employment with the city.

(Code 1982, § 2-251; Ord. No. 06-16, 2-8-07)

Sec. 58-72. Grievance procedure.

In order to ensure the employee of a method in which he/she may obtain review of his/her particular grievance effectively, the following steps are provided:

- (1) The aggrieved employee shall, within ten working days of the incident, discuss and explain his/her grievance orally with the immediate supervisor. The

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supervisor shall make a decision and notify the employee within ten working days after the discussion.

- (2) If the aggrieved employee feels that the matter has not been settled or adjusted to his/her satisfaction by the immediate supervisor, he/she then may submit the matter in writing within ten days to the department head. The department head shall schedule a meeting within ten working days after receipt of the grievance from the employee. If the matter is not resolved at this meeting, the department head shall submit the written answer within ten working days after the scheduled meeting.
- (3) If the decision of the department head is not satisfactory to the aggrieved employee, the grievance may then be submitted in writing within ten working days thereafter to the city administrator. The hearing shall be held within ninety working days after receipt of the request. The city administrator shall have the right to issue subpoenas, to examine witnesses under oath and to require the production of evidence. At such hearing, either party may be represented or assisted by counsel. The decision of the city administrator shall be final and may include any remedy appropriate to the dispute, including partial or complete restitution of back pay and/or benefits. The decision shall be submitted in writing within thirty working days after the close of the hearing.
- (4) In the event of a suspension, demotion or dismissal of an employee, the employee shall commence the grievance procedure at the city administrator level (subsection (3) of this section).

(Code 1982, § 2-252; Ord. No. 02-26, 2-6-03; Ord. No. 06-16, 2-8-07)

Secs. 58-73--58-85. Reserved.

ARTICLE III. RETIREMENT AND DISABILITY*

***Charter references:** Prior retirement benefits preserved, § 8.06.

State law references: Pension system authorized, 30-A M.R.S.A. § 3007(4).

DIVISION 1. GENERALLY

Sec. 58-86. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Average final compensation means the annual average of the pay received for a period of five consecutive years of service preceding retirement.

State law references: Similar provisions, 5 M.R.S.A. § 1001(3).

Beneficiary means any person in receipt of a pension or benefit under the provisions of the retirement system.

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Board means the pension board provided for in section 58-89 to administer the retirement system.

Creditable service means service after the establishment of the retirement system plus prior service.

Disability, as a basis for retirement, means permanent disability or disability of extended and uncertain duration, as determined by the board upon the basis of competent medical and other information.

Employee means any person who is regularly and permanently in the employ of the city.

Prior service means service rendered prior to the date of establishment of the retirement system.

Retirement system means the retirement system as defined in this article.

Service means service as an employee for which compensation is paid by the city.

(Code 1982, § 2-301)

Cross references: Definitions generally, § 1-2.

Sec. 58-87. Minimum requirements for pension plan for city employees.

- (a) The powers to promulgate, enact and amend, by ordinance, a pension plan for the employees of the city who prior to the year 1945 were not provided for in a system of retirement or disability benefits, shall be vested in the city council, subject, however, to the provision that no such ordinance, or amendment thereto, involving a matter of cost, expense or finances, shall be enacted by the city council without the approval or the recommendation of the finance committee. Provided, also, that such pension plan shall include the following:
- (1) Pension to be not over one-half of employees' average final compensation, at the time of retirement:
 - a. Retired for disability received while acting in the scope of employment, provided the employee has ten or more years of creditable service. Any amount paid to employee under state workmen's compensation law shall be deducted from employee's annual allowable pension.
 - b. Reaches age 65 and/or has served not less than 25 years.
 - c. Reaches age 65 and has served 20 years or more, the employee shall be entitled to a pension equal to 1/50 of his average final compensation multiplied by the number of years of his creditable service.
 - (2) "Average final compensation" shall mean the annual average of the highest pay received for a period of five consecutive years of service preceding retirement.
 - (3) No less than 190 days' service of eight hours duration shall constitute one year of service, nor shall more than one year of service be creditable for all service in any one calendar year.
 - (4) "Creditable service" shall mean service after establishment of the retirement system plus prior service.

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- (5) "Prior service" shall mean service rendered prior to the date of establishment of the retirement system.
 - (6) The provisions of this section shall not apply to any employee of the city who elects to participate in any contributory employees' retirement system which may be established, authorized or approved by the city council upon the recommendation of the finance committee nor to any person who shall become employed by the city after the date of the establishment of any contributory employees' retirement system which may be established, authorized or approved by the city council upon the recommendation of the finance committee.
- (b) Any person who shall become employed by the city after the effective date of the establishment of any contributory employees' retirement system which may be established, authorized or approved by the city council upon the recommendation of the finance committee shall, as a condition of employment, become a participating member in such contributory employees' retirement system.

(Code 1982, § 2-302)

Sec. 58-88. Established.

A retirement system is hereby established in accordance with the provisions of 30-A M.R.S.A. § 3007(4), for the purpose of providing retirement and disability benefits for employees of the city not presently provided for.

(Code 1982, § 2-303)

Sec. 58-89. Administration; pension board.

- (a) The general administration and the responsibility for the operation of the retirement system and for making effective the provisions of this division are hereby vested in a board to be known as the pension board.
- (b) The pension board shall consist of the city finance committee. The pension board may employ such medical and other services as shall be required, which services shall be charged to and paid out of the retirement fund.

(Code 1982, § 2-304)

Sec. 58-90. Rules and regulations authorized.

Subject to the limitations of this article, the pension board may from time to time establish such rules and regulations as may be necessary to regulate its activities.

(Code 1982, § 2-305)

Sec. 58-91. Record of pension board's proceedings.

The pension board established pursuant to this article shall keep a record of all of its proceedings, which shall be open to public inspection.

(Code 1982, § 2-306)

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Sec. 58-92. Legal advisor to pension board.

The city attorney shall be the legal advisor of the pension board. (Code 1982, § 2-307)

Sec. 58-93. Fraud prohibited.

Any person who shall knowingly make any false statement, or shall falsify or permit to be falsified any record of this retirement system, in any attempt to defraud such system as a result of such act, shall be guilty of an offense.

(Code 1982, § 2-308)

Sec. 58-94. Corrections in retirement records authorized.

Should any change or error in the records result in any member or beneficiary receiving from the retirement system more or less than he would have been entitled to receive had the records been correct, the pension board shall have the power to correct such error and to adjust as far as practicable the payments which such member or beneficiary was correctly entitled to.

(Code 1982, § 2-309)

Sec. 58-95. Appeals.

Any person aggrieved by any decision or ruling of the pension board shall have the right of appeal from such decision or ruling to the next term of the superior court to be held in the county, held not less than 30 days after the rendition of such decision or ruling. The appellant shall file a written notice of his appeal from such decision or ruling with the board and with the clerk of the superior court. Certified copies of the ruling or decision, together with a copy of the appeal, shall be forwarded by the board to the clerk of the superior court. The city attorney shall appear for and in behalf of the board. The procedure in such court shall be the same as in appeal from decisions of the district courts. (Code 1982, § 2-310)

Sec. 58-96. Persons subject to regulations.

Each member and beneficiary shall be subject to all the provisions of this division and to all the rules and regulations adopted by the pension board, and shall furnish to the board such information affecting his status as a member or beneficiary of the system as the board may from time to time require. (Code 1982, § 2-311)

Sec. 58-97. Appropriations.

The retirement fund shall be the fund provided by the city in the annual appropriation resolve. Each municipal department shall furnish annually to the board a list of their respective employees who have attained or shall attain the retirement age within the next ensuing fiscal year. The board, after verification, shall then submit to the city administrator an estimate of the sum or sums necessary for the retirement fund for the ensuing fiscal year. (Code 1982, § 2-312)

Sec. 58-98. Departments to furnish employee information to pension board.

It shall be the duty of the head of each department to submit to the pension board a statement showing the name, title, compensation, duties, date of birth, and length of service of each

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member, and such other information regarding employees in his department as the board may require. (Code 1982, § 2-313)

Sec. 58-99. Certification of creditable prior service of municipal employees.

It shall be the duty of the pension board to establish and institute the procedure and machinery necessary to investigate and properly certify the creditable prior service of all the employees in the various departments of the city now subject to any existing noncontributory retirement or pension plan, and of those employees who shall participate in any contributory employees' retirement plan which may be established, authorized or approved by the city council upon the recommendation of the finance committee, and to maintain a complete file of the data pertaining to the employment and service of all employees in the employment of the city. It shall be the duty of the finance committee to certify to the proper authorities the creditable prior service of all employees in the employ of the city under any retirement or pension system.

(Code 1982, § 2-314)

Sec. 58-100. Employee's claim for prior service; service certificates.

- (a) Under such rules and regulations as the pension board shall adopt, each employee in service on February 14, 1980, shall file a detailed statement of all service as an employee rendered by him prior to such date for which he claims credit, and of such other facts as the board may require for the proper operation of the retirement system.
- (b) The board shall verify, as soon as practicable after the filing of such statement of service under subsection (a), the service therein claimed. Upon verification of the statement of service, the board shall issue prior service certificates certifying to each employee the length of prior service rendered with which he is credited. So long as membership continues, a prior service certificate shall be final and conclusive for retirement purposes as to such service; provided, however, that any employee may, within one year from the date of issuance or modification of such certificate, request the board to modify or correct his prior service certificate.

(Code 1982, § 2-315)

Sec. 58-101. Eligibility for credit for prior service; year's service defined.

- (a) Credit for prior service shall be granted to each employee who has rendered such service as defined in this division and who was employed on February 14, 1980, or who becomes employed thereafter, provided that prior service rendered prior to a discontinuance of city service followed by reentrance into city service after a lapse of three years shall not be credited; except, that the three-year limitation shall not apply to city employment prior to the adoption of the City Charter in 1939, nor to city employees who were employed on federal projects during the years between 1933 and 1942, both inclusive; and except that any absence from city service by reason of service in the military or naval services of the United States in any war in which the United States has engaged shall not be considered as a break in city service, and the period of such absence shall count as city service.
- (b) No less than 190 days' service of eight hours duration shall constitute one year's service, nor shall more than one year of service be creditable for all service in any one calendar year.

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(Code 1982, § 2-316)

Sec. 58-102. Leave of absence.

No employee shall be entitled to or be credited with prior service upon discontinuance of city service unless such employee before such discontinuance of service obtains a leave of absence. No leave of absence shall be granted to any employee at any one time for more than one year's duration, except if, for good reason shown and upon the written application of the employee, the leave of absence is further extended. Such extension shall not exceed the further term of one year.

(Code 1982, § 2-317)

Sec. 58-103. Requirements to receive retirement benefits.

Any employee may retire upon his written application to the pension board, stating at what time, not less than 30 days nor more than 90 days subsequent to the filing thereof, he desires to be retired, provided that such employee shall be credited, at the time so specified for his retirement, with the following:

- (1) Reaching age 65 or having served not less than 25 years, in which case he shall be entitled to one-half of his average final compensation at the time of his retirement.
- (2) Reaching age 65 and having served 20 years or more, in which case the employee shall be entitled to 1/50 of his average final compensation multiplied by the number of years of his creditable service, but in no case shall he receive more than one-half of his average final compensation at the time of his retirement.

(Code 1982, § 2-318)

Sec. 58-104. Service beyond retirement.

The pension board may allow any city department to retain the services of any member of their department after the age of retirement, from year to year, if he consents, while it deems it for the best interest of the city. In such cases, the employee shall be entitled to his pension from the date of actual retirement.

(Code 1982, § 2-319)

Sec. 58-105. Payment of retirement benefits.

Retirement benefits granted under the provisions of this article shall be payable in equal monthly installments.

(Code 1982, § 2-320)

Sec. 58-106. Retirement benefits exempt from execution and unassignable.

Retirement benefits granted under the provisions of this article shall not be subject to execution, garnishment, attachments or any other process whatsoever, and shall be unassignable.

(Code 1982, § 2-321)

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Sec. 58-107. Application for disability retirement; medical examination; computation of benefits.

Upon written application to the board, any employee who has had ten or more years of creditable service may be retired because of total and permanent disability as the natural and proximate result of an injury or disease arising out of and in the course of employment without willful negligence on his part, provided that after a medical examination of such employee, the medical examiners shall certify in writing to the board that such employee is mentally or physically totally incapacitated for the further performance of duty, that such incapacity is likely to be permanent, and that such employee should be retired; in which case, the employee shall be entitled to one-half of his average final compensation at the time of his retirement. The retirement benefits granted because of disability as a result of injury or disease arising out of and in the course of employment shall be reduced by the amount of any benefits, other than medical benefits, payable to or on account of such employee under the workmen's compensation laws, because of the disability resulting in his retirement.

(Code 1982, § 2-322)

Sec. 58-108. Subsequent to retirement for disability physical examinations may be required.

The pension board may, at its pleasure, require any beneficiary who has been retired for disability and who has not attained the age of 65 to undergo medical examination, such examination to be made by a physician or surgeon appointed by the board, at the place of residence of such beneficiary or other place mutually agreed upon. Upon the basis of such examination and report, the board shall determine whether such disabled beneficiary is still incapacitated, physically or mentally, for service in the office or department of the city where he was employed and in the position held by him when retired for disability. If the board shall determine that such beneficiary is not so incapacitated, his retirement benefits shall be cancelled forthwith, and he shall be reinstated to the same position or employment as that held by him when retired for disability.

(Code 1982, § 2-323)

Sec. 58-109. Refusal to take physical examination.

Should any beneficiary retired for disability refuse to submit to medical examination, as provided in this division, his pension or retirement benefits may be discontinued until his withdrawal of such refusal, and should such refusal continue for one year, his retirement benefits may be cancelled.

(Code 1982, § 2-324)

Sec. 58-110. Reentry into service after disability retirement.

Should a beneficiary, after retirement for disability, reenter the city service, he shall receive credit for prior service in the same manner as if he had never been retired for disability.

(Code 1982, § 2-325)

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Sec. 58-111. Cost of living adjustments for retired employees and beneficiaries.

Notwithstanding any other provision in the Charter, on any or all general wage adjustments in city salaries made to active city employees on or after January 2, 1968, the same percent increase or decrease shall be applied to all retired city employees or their beneficiaries retired under the noncontributory city pension programs. The provisions of this section shall apply to city employees who were retired prior to the enactment of this section and their beneficiaries as well as to those city employees who are retired after such enactment and their beneficiaries, except that no decrease shall be applied to retired city employees who were retired prior to the enactment of this section or to their beneficiaries.

(Code 1982, § 2-326)

Sec. 58-112. Sick leave.

- (a) Employees of the city, except teachers, employees of the department of public works, members of the police department and members of the fire department, shall be allowed to accumulate one day of sick leave per month, a total of 12 days per year, accumulating to a maximum of 120 days.
- (b) Upon retirement pursuant to the state employees retirement system or the city pension plan, an employee shall receive compensation at his rate of pay at the time of retirement for one-half of the number of days of his unused sick leave. This clause will be retroactive to January 1, 1969.

(Code 1982, § 2-327)

Secs. 58-113--58-125. Reserved.

DIVISION 2. FIRE DEPARTMENT RETIREMENT AND DISABILITY

Sec. 58-126. Retirement age.

Any member of the fire department who shall have arrived at the age of 65 years in active service and who shall have served not less than 25 years shall be retired and shall be entitled to a pension equal to one-half of the pay which such member received at the time of his retirement. The city administrator may retain the services of any member of the department who has reached the age of retirement, from year to year, if he consents, while they deem it for the best interests of the department. In such cases he shall be entitled to his pension from the date of actual retirement.

(Code 1982, § 2-351)

Sec. 58-127. Pension for retirement.

- (a) Any member of the fire department who shall have served not less than 25 years shall be retired upon his petition, and thereupon shall be entitled to a pension equal to one-half of the pay which such member received at the time of his retirement.
- (b) The death of an active member of the fire department resulting from injury or illness incurred in the line of duty shall entitle the beneficiaries described in this division to

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pension benefits. If such member so meets his death, the pension benefits payable as a result thereof shall be the continued payment of one-half of the salary he was then receiving. The death of a member of the department retired under the provisions of this section or section 58-126 shall entitle the beneficiaries described in this division to pension benefits. The pension benefits payable as a result thereof shall be the continued payment of the full pension he was then receiving. In either event such benefits shall be paid to his widow until her death or remarriage, and if there be no such widow, then to his minor child or children in accordance with section 58-151.

(Code 1982, § 2-352)

Sec. 58-128. Qualifications of permanent members for disability pensions.

Any permanent member of the fire department who has become permanently disabled while in the actual performance of duty in the department shall be entitled to a pension equal to one-half of the pay which such member received at the time of his permanent disability.

(Code 1982, § 2-353)

Sec. 58-129. Pensions for ordinary or nonservice connected disability.

- (a) Any permanent member of the fire department who has completed ten or more but less than 25 years of total service in such department, and who has become permanently disabled, mentally or physically, for further performance of duty in the fire department because of injury or illness which was not incurred while in the actual performance or discharge of his duties as a member of such department, or which was not connected with his service as a member of such department, shall be retired and shall be entitled to a pension equal to $1/50$ of the annual pay he was receiving at the time of such permanent disability, multiplied by the total number of years of service completed. For the purpose of computing the amount of pension to be paid, half and whole years as defined in this section shall be counted. Six months but less than nine months shall be deemed a half year, and nine months or more through 12 months shall be deemed a full year. For the purpose of computing years of service under this section, service rendered prior to the enactment of this section shall also be counted.
- (b) The death of a member retired under this section shall entitle his beneficiaries, as defined in section 58-127, to the continued payment of the full pension in the amount the member was receiving under this section at the time of his death.

(Code 1982, § 2-354)

Sec. 58-130. Pensions.

The death of an active member of the department who shall have served not less than 17 years therein shall entitle the beneficiaries described in section 58-127 to pension benefits equaling one-half of the salary he was last receiving. (Code 1982, § 2-355)

Sec. 58-131. Payment of pensions.

The pensions specified in this division shall be paid monthly by the city treasurer and no pension shall be allowed unless application therefor shall have been approved by the pension board.

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(Code 1982, § 2-356)

Sec. 58-132. Application for disability pensions.

When application is made for pension because of permanent disability incurred while in the performance of duty in the fire department, the applicant shall satisfy the pension board that he is permanently disabled and that his disability was incurred in the discharge of his duties as a member of the department.

(Code 1982, § 2-357)

Sec. 58-133. Pensions, applications for ordinary or nonservice connected disability.

When application is made for a pension as provided in section 58-129, the applicant shall satisfy the pension board that he is permanently disabled, mentally or physically, for further performance of duty in the fire department and that he is otherwise qualified for such pension under the provisions of section 58-129.

(Code 1982, § 2-358)

Sec. 58-134. Granting of pensions.

The pension board shall investigate and pass upon all matters pertaining to the pensions of firefighters, in accordance with the provisions of this division, and shall have authority to grant such pensions as provided in this division.

(Code 1982, § 2-359)

Sec. 58-135. Pensions previously granted to remain valid.

Nothing contained in this division shall be held to deprive any member of the fire department who may be receiving a pension when the 1939 Charter took effect of the benefits of such pension.

(Code 1982, § 2-360)

Sec. 58-136. Limitations.

- (a) The provisions of this article with reference to the retirement benefits in favor of the members of the city fire department shall not apply to the members thereof who elect to participate in any contributory employees' retirement system which may be established, authorized or approved by the city council upon the recommendation of the finance committee, nor to any person who shall become employed in the fire department after the date of the establishment of any contributory employees' retirement system which may be established, authorized or approved by the city council upon the recommendation of the finance committee.
- (b) Any person who shall become a permanent member of the fire department after the effective date of the establishment of any contributory employees' retirement system which may be established, authorized or approved by the city council upon recommendation of the finance committee shall, as a condition of employment, become a participating member in such contributory employees' retirement system.

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(Code 1982, § 2-361)

Sec. 58-137. Sick leave.

- (a) Members of the fire department shall be allowed to accumulate 1 1/2 days of sick leave per month, a total of 18 days per year, accumulating to a maximum of 120 days.
- (b) Upon retirement pursuant to the state employees retirement system or city pension plan, an employee shall receive compensation at his rate of pay at the time of retirement for one-half the number of days of his unused sick leave. This clause will be retroactive to January 1, 1969.

(Code 1982, § 2-362)

Secs. 58-138--58-150. Reserved.

DIVISION 3. POLICE DEPARTMENT RETIREMENT AND DISABILITY

Sec. 58-151. Retirement; permanent disability.

- (a) Any member of the police department who shall have arrived at the age of 65 years in active service, or any member who while in the performance of duty has become permanently disabled, or any police officer of the city who was a member of the police department at the time of the enactment of chapter 37 of the Private and Special Laws of 1917 and who thereafterwards, but prior to the enactment of chapter 8 of the Private and Special Laws of 1939, arrived at the age of 65 years, while in active service, shall be retired and shall be entitled to a pension equal to one-half of the pay which such member received at the time of his retirement or permanent disability.
- (b) The death of an active member of the police department resulting from injury or illness incurred in the line of duty shall entitle the beneficiaries described in this section to pension benefits. If such member so meets his death, the pension benefits payable as a result thereof shall be the continued payment of one-half of the salary he was then receiving. The death of a member of the department retired under this section or section 58-158 shall entitle the beneficiaries described in this section to pension benefits. The pension benefits payable as a result thereof shall be the continued payment of the full pension he was then receiving. In either event, such benefits shall be paid to his widow until her death or remarriage, and if there is no such widow, then to the guardian of his child until that child reaches the age of 18 years. When two or more children under the age of 18 years are the survivors, such pension or compensation shall be divided pro rata, and the pro rata share due each child shall be paid to the guardian of that child until the child shall reach the age of 18 years.

(Code 1982, § 2-376)

Sec. 58-152. Pensions.

The death of an active member of the police department who shall have served not less than 17 years therein shall entitle the beneficiaries described in section 38-151 to pension benefits equaling one-half of the salary he was last receiving.

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(Code 1982, § 2-377)

Sec. 58-153. Pensions, ordinary or nonservice connected disability.

- (a) Any permanent member of the police department who has completed 19 or more but less than 25 years of total service in such department, and who has become permanently disabled, mentally or physically, for further performance of duty in the police department because of injury or illness which was not incurred while in the actual performance or discharge of his duties as a member of such department, or which was not connected with his service as a member of such department, shall be retired and shall be entitled to a pension equal to $1/50$ of the annual pay he was receiving at the time of such permanent disability, multiplied by the total number of years of service completed. For the purpose of computing the amount of pension to be paid, half and whole years as defined in this section shall be counted. Six months but less than nine months shall be deemed one-half year, and nine months or more through 12 months shall be deemed a full year. For the purpose of computing years of service under this section, service rendered prior to the enactment of this section shall also be counted.
- (b) The death of a member retired under this section shall entitle his beneficiaries, as defined in section 38-151, to the continued payment of the full pension in the amount the member was receiving under this section at the time of his death.

(Code 1982, § 2-378)

Sec. 58-154. Application for disability pensions.

When application is made for pension because of permanent disability while in active service, or while on authorized leave, the applicant shall satisfy the pension board that he is permanently disabled and that his disability was incurred in the discharge of his duties as a member of the department.

(Code 1982, § 2-379)

Sec. 58-155. Application for ordinary or nonservice connected disability.

When application is made for a pension as provided in section 58-153, the applicant shall satisfy the pension board that he is permanently disabled, mentally or physically, for further performance of duty in the police department and that he is otherwise qualified for such pension under the provisions of section 58-153.

(Code 1982, § 2-380)

Sec. 58-156. Granting of pensions.

The pension board shall investigate and pass upon all matters pertaining to the pensions of policemen, in accordance with the provisions of this division, and shall have authority to grant such pensions as provided in this division. (Code 1982, § 2-381)

Sec. 58-157. Payment of pensions.

The pensions specified in this division shall be paid monthly by the city treasurer and no pension

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shall be allowed unless application therefor shall have been approved by the pension board.
(Code 1982, § 2-382)

Sec. 58-158. Petition for retirement.

Any member of the police department who has served not less than 25 years shall be retired on his petition, and thereupon become entitled to a pension equal to one-half of the pay which such member received at the time of his retirement. Any special patrolman of the department who has served continuously with pay until his regular appointment shall be given credit for such time served towards his retirement. (Code 1982, § 2-383)

Sec. 58-159. Pension benefits; computation of service credit.

For the purpose of pension benefits, service credit shall be computed from the time that an applicant was accepted as a member of the police department and whose name has been listed as eligible for appointment as a permanent member of the department, and who has been on call on a 24-hour duty basis, and has responded to calls for employment during the time that he is eligible and before he was made a permanent member of the department. (Code 1982, § 2-384)

Sec. 58-160. Pension provisions for chief of police.

The chief of police, after having served 25 years in any capacity in the police department, or if permanently disabled while in the performance of some duty devolving upon him as a member of the department, shall be retired upon his petition; whereupon he shall be entitled to a pension equal to one-half of the pay which he received at the time the disability occurred or at the time his application was filed with the pension board petitioning for retirement benefits. Nothing in this section shall be construed to deprive the incumbent chief of the years of service presently accrued as chief of such department. (Code 1982, § 2-385)

Sec. 58-161. Pensions previously granted to remain valid.

Nothing contained in this division shall be held to deprive any member of the police department who may be receiving a pension when the 1939 Charter took effect of the benefits of such pension. (Code 1982, § 2-386)

Sec. 58-162. Limitations.

- (a) The provisions of this article with reference to the retirement benefits in favor of the members of the police department, including the chief of police and police matron, shall not apply to those who elect to participate in any contributory employees' retirement system which may be established, authorized or approved by the city council upon the recommendation of the finance committee, nor to any person who shall become employed in the police department after the date of the establishment of any contributory employees' retirement system which may be established, authorized or approved by the city council upon the recommendation of the finance committee.
- (b) Any person who shall become a permanent member of the police department after the effective date of the establishment of any contributory employees' retirement system which may be established, authorized or approved by the city council upon

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recommendation of the finance committee shall, as a condition of employment, become a participating member in such contributory employees' retirement system.

(Code 1982, § 2-387)

Sec. 58-163. Sick leave.

- (a) Members of the police department shall be allowed to accumulate one day of sick leave per month, a total of 12 days per year, accumulating to a maximum of 120 days.
- (b) Upon retirement pursuant to the state employees retirement system or city pension plan, an employee shall receive compensation at his rate of pay at the time of retirement for one-half that number of days of his unused sick leave. This clause will be retroactive to January 1, 1969.

(Code 1982, § 2-388)

Secs. 58-164--58-175. Reserved.

DIVISION 4. PUBLIC WORKS DEPARTMENT RETIREMENT AND DISABILITY

Sec. 58-176. Pensions for widows and children of deceased employees.

If an employee of the city department of public works should die, whether he is retired or on active duty, as a result of injury received in the line of duty, his widow, or, if none, his minor child or children, shall continue to receive the pension he was receiving at the time of his death. If on active duty, the compensation or pension shall be one-half of the pay the member was receiving at the time of his death. Such pension or compensation will be paid subject to the following conditions:

- (1) The widow shall receive such compensation or pension until she dies or as long as she remains a widow.
- (2) If no widow survives, a pension or compensation of the same amount shall be paid to the guardian of his child until that child reaches the age of 18 years. When two or more children under the age of 18 years are the survivors, such pension or compensation shall be divided pro rata, and the pro rata share due each child shall be paid to the guardian of that child until the child shall reach the age of 18 years.

(Code 1982, § 2-401)

Sec. 58-177. Sick leave; compensation for unused sick leave upon retirement.

- (a) Employees of the department of public works shall be allowed to accumulate one day of sick leave per month, a total of 12 days per year, accumulating to a maximum of 120 days.
- (b) Upon retirement pursuant to the state employees retirement system or city pension plan, an employee shall receive compensation at his rate of pay at the time of retirement for one-half of the number of days of his unused sick leave. This clause will be retroactive to January 1, 1969.

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(Code 1982, § 2-402)

Secs. 58-178--58-190. Reserved.

DIVISION 5. STATE RETIREMENT SYSTEM

Sec. 58-191. Membership.

- (a) Any person who shall become an employee of any department of the city after the effective date of the participation of the city in the state retirement system may become a contributing member of the state retirement system, if also participating in the social security system. Employees not participating in the social security system shall, as a condition of employment, become a contributing member of the state retirement system. Participation in the state retirement system shall be under the provisions of title 5, Maine State Retirement System, rules and regulations promulgated by the state retirement system, and acts amendatory thereof, to the extent of the benefits made applicable to the members of such departments by terms of the city's participation in such retirement system.
- (b) Any appointed or elected official may become a contributing member of the state retirement system at the beginning of his term. Should the appointed or elected official choose not to become a contributing member at that time, then such person shall be barred from becoming a contributing member during his term of office.

(Code 1982, § 2-426)

Sec. 58-192. Teachers excluded.

The provisions of this division shall not apply to those employees who are eligible for membership in the teachers' retirement system of the state. (Code 1982, § 2-428)

Sec. 58-193. Certification of creditable prior service.

It shall be the duty of the pension board of the city to establish and institute the procedure and machinery necessary to investigate and properly certify the creditable prior service of all the employees in the various departments of the city now subject to any existing noncontributory retirement or pension plan, and of those employees who shall participate in the state retirement system, and to maintain a complete file of the data pertaining to the employment and service of all employees in the employment of the city. It shall be the duty of the pension board to certify to the proper authorities the creditable prior service of all employees in the employ of the city, under any retirement or pension system. (Code 1982, § 2-430)

State law references: Prior service certificate and credit, 5 M.R.S.A. § 1094(6), (7).

Sec. 58-194. Determining retirement allowance.

- (a) *Full-time employees.* The retirement allowance for full-time employees is to be determined by the application of the current retirement formula in effect or the application of the current minimum retirement allowance in effect, whichever is greater.

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- (b) *Other than full-time employees.* The retirement allowance for other than full-time employees is to be solely determined by the application of the current retirement formula in effect excluding the current monthly minimum retirement allowance in effect.

(Code 1982, § 2-432)

Sec. 58-195. Purchasing creditable prior membership service.

Any employee may purchase creditable prior membership service at any time, subject to the limitations imposed by the state retirement system.

(Code 1982, § 2-433)

Sec. 58-196. State laws adopted.

The following provisions of the state retirement system laws are adopted:

<i>Standard provisions</i>	<i>Section of the law (title 5)</i>
Prior service	18352
Computation of benefits	18452
Retirement allowances	18451
Cost-of-living adjustment	18407
Disability	18504/18505/18506
Survivor benefits	18553
Accidental death benefits	18601/18602/18603
Automatic option 2	18554
Military leave	18258
Termination pay	17001, 13
Vacation/sick leave credits	18356
Transferability	18253
Option withdrawal	18252/18359
Optional membership	18251
Special plans	18453
Out-of-state service credit	18354

(Code 1982, § 2-435)

Sec. 58-197. Human resources director's duty to assist.

The human resources director, under the direction of the pension board and city council, shall submit to the board of trustees of the state retirement system such information and shall cause to be performed such duties in respect to the employees of the city aforesaid as shall be

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prescribed by the board of trustees in order to carry out the provisions of the state retirement system. In addition, he shall perform all acts, file all certifications, furnish all statements of data and agreements as are necessary or required by the administrators or trustees of the state retirement system, or both, to implement the effect of this division.

(Code 1982, § 2-436; Ord. No. 99-7, 4-15-99)

Chapter 6

ADVERTISING*

- Sec. 6-1. Permit to distribute.
- Sec. 6-2. Littering prohibited.
- Sec. 6-3. Hours of distribution limited.
- Sec. 6-4. Posting on public property restricted.
- Sec. 6-5. Posting on another's land.
- Sec. 6-6. Attaching to vehicles prohibited.
- Sec. 6-7. Campaign material excluded.

***Cross references:** Amusements and entertainments, ch. 10; businesses, ch. 22; parking to advertise, § 70-146; vehicles for hire, ch. 82; signs, app. A, art. XII, § 16.

ADVERTISING

Sec. 6-1. Permit to distribute.

No person shall go about the streets or other public places for the purpose of distributing any poster, handbills, cards, samples of any kind, or other matter used for the purpose of advertising without first obtaining a permit from the police chief for this purpose. Upon the refusal of the chief to issue such permit, an appeal may be made to the council, which may grant such permit if it deems it advisable. The permit authorized by this section does not release the person to whom the permit is granted from the other provisions of this chapter.

(Code 1982, § 3-1)

Sec. 6-2. Littering prohibited.

Any person who shall distribute, throw, drop or scatter in any street or public place any posters, handbills, cards, samples of medicines, drugs or pills or other samples, or other matter used for the purpose of advertising in such a manner as to result in the littering of any street or public place shall be subject to the following penalties:

- (1) A person who disposes of less than 15 pounds or 27 cubic feet of litter as defined above is subject to a forfeiture of not more than \$500.00 nor less than \$100.00 for the first violation and a forfeiture of not more than \$500.00 nor less than \$200.00 for a subsequent violation.
- (2) A person who disposes of more than 15 pounds or 27 cubic feet of litter but less than 500 pounds or 100 cubic feet of litter, is subject to a forfeiture of not more than \$500.00 nor less than \$200.00 for the first violation and a forfeiture of not more than \$1,000.00 nor less than \$500.00 for a subsequent violation.

(Code 1982, § 3-2)

Cross references: Solid waste, ch. 62.

State law references: Maine Litter Control Act, 17 M.R.S.A. § 2261 et seq.

Sec. 6-3. Hours of distribution limited.

No person shall go about the streets or other public places of the city for the purpose of distributing posters, handbills, cards, samples of any kind, or other matter used for the purpose of advertising after sunset and before the following sunrise.

(Code 1982, § 3-3)

Sec. 6-4. Posting on public property restricted.

No person shall attach, place, paint, write, stamp, paste or otherwise affix any sign, advertisement, notice or other matter upon any kind of pole, post or tree in the streets of the city; or on any fire hydrant or on any bridge, pavement, sidewalk or crosswalk, or on any building or any property or thing belonging to the city or located in the public streets or public places, except that suitable painted signs may be hung on poles, posts and trees, and advertisements and notices may be posted on public buildings with the consent of the council.

(Code 1982, § 3-4)

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Sec. 6-5. Posting on another's land.

No person shall attach, place, paint, write, stamp, paste or otherwise affix any sign, advertisement or other matter upon any house, wall, fence, gate, post, tree or other private property without first having obtained the permission of the owner or occupant of the premises.

(Code 1982, § 3-5)

Sec. 6-6. Attaching to vehicles prohibited.

No person shall attach any advertising material of any kind, such as handbills, cards or papers, to the door handle, windshield wiper, or any portion of any motor vehicle parked or standing in any street or public place, nor shall any person deposit any such material or samples of any kind, within or upon any such vehicle so parked or standing.

(Code 1982, § 3-6)

Cross references: Traffic and vehicles, ch. 70.

Sec. 6-7. Campaign material excluded.

The distribution of campaign material shall be excluded from the prohibitions in this section. Campaign material shall be defined as literature and other materials expressing the support or defeat of a candidate, referendum question, bond issue or other ballot question as appearing on all ballots for an immediate upcoming election.

(Ord. No. 05-23, 2-16-06)

Chapter 60

**PROPERTY ASSESSED CLEAN ENERGY
(PACE)**

Article I. Purpose and Enabling Legislation

- Sec. 60-1. Purpose
- Sec. 60-2. Enabling Legislation

Article II. Title and Definition

- Sec. 60-3. Title.
- Sec. 60-4. Definitions.

Article III. Pace Program

- Sec. 60-5. Establishing; funding.
- Sec. 60-6. Amendments to PACE program.

Article IV. Conformity with the Requirements of the Trust

- Sec. 60-7. Standards adopted; Rules promulgated; model documents.

Article V. Program Administration; Municipal Liability

- Sec. 60-8. Program Administration.
- Sec. 60-9. Liability of Municipal Officials; Liability of Municipality.

PROPERTY ASSESSED CLEAN ENERGY (PACE)

ARTICLE I - PURPOSE AND ENABLING LEGISLATION

Sec. 60-1. Purpose.

By and through this Chapter, the City of Lewiston declares as its public purpose the establishment of a municipal program to enable its citizens to participate in a Property Assessed Clean Energy (“PACE”) program so that owners of qualifying property can access financing for energy saving improvements to their properties located in the City of Lewiston. The City of Lewiston declares its purpose and the provisions of this Chapter to be in conformity with federal and State laws. (Ord. No. 10-10, 11-4-2010)

Sec. 60-2. Enabling Legislation.

The City enacts this Chapter pursuant to Public Law 2009, Chapter 591 of the 124th Maine State Legislature -- “An Act To Increase the Affordability of Clean Energy for Homeowners and Businesses,” also known as “the Property Assessed Clean Energy Act” or “the PACE Act” (codified at 35-A M.R.S.A. § 10151, *et seq.*). (Ord. No. 10-10, 11-4-2010)

ARTICLE II - TITLE AND DEFINITIONS

Sec. 60-3. Title.

This Chapter shall be known and may be cited as “the City of Lewiston Property Assessed Clean Energy (PACE) Ordinance” (the “Ordinance”).” (Ord. No. 10-10, 11-4-2010)

Sec. 60-4. Definitions.

Except as specifically defined below, words and phrases used in this Chapter shall have their customary meanings; as used in this Chapter, the following words and phrases shall have the meanings indicated:

1. Energy saving improvement. “Energy saving improvement” means an improvement to qualifying property that is new and permanently affixed to qualifying property and that:
 - A. Will result in increased energy efficiency and substantially reduced energy use and:
 - (1) Meets or exceeds applicable United States Environmental Protection Agency and United States Department of Energy Energy Star program or similar energy efficiency standards established or approved by the Trust; or
 - (2) Involves air sealing, insulating, and other energy efficiency improvements of residential, commercial or industrial property in a manner approved by the Trust; or
 - B. Involves a renewable energy installation or an electric thermal storage system that meets or exceeds standards established or approved by the trust.
2. Municipality. “Municipality” shall mean the City of Lewiston.
3. PACE agreement. “Pace agreement” means an agreement between the owner of

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qualifying property and the Trust that authorizes the creation of a PACE mortgage on qualifying property and that is approved in writing by all owners of the qualifying property at the time of the agreement, other than mortgage holders.

4. PACE assessment. "PACE assessment" means an assessment made against qualifying property to repay a PACE loan.
5. PACE district. "Pace district" means the area within which the Municipality establishes a PACE program hereunder, which is all that area within the Municipality's boundaries.
6. PACE loan. "PACE loan" means a loan, secured by a PACE mortgage, made to the owner(s) of a qualifying property pursuant to a PACE program to fund energy saving improvements.
7. PACE mortgage. "PACE mortgage" means a mortgage securing a loan made pursuant to a PACE program to fund energy saving improvements on qualifying property.
8. PACE program. "PACE program" means a program established under State statute by the Trust or a municipality under which property owners can finance energy savings improvements on qualifying property.
9. Qualifying property. "Qualifying property" means real property located in the PACE district of the Municipality.
10. Renewable energy installation. "Renewable energy installation" means a fixture, product, system, device or interacting group of devices installed behind the meter at a qualifying property, or on contiguous property under common ownership, that produces energy or heat from renewable sources, including, but not limited to, photovoltaic systems, solar thermal systems, biomass systems, landfill gas to energy systems, geothermal systems, wind systems, wood pellet systems and any other systems eligible for funding under federal Qualified Energy Conservation Bonds or federal Clean Renewable Energy Bonds.
11. Trust. "Trust" means the Efficiency Maine Trust established in 35-A M.R.S.A. § 10103 and/or its agent(s), if any.

(Ord. No. 10-10, 11-4-2010)

ARTICLE III - PACE PROGRAM

Sec. 60-5. Establishment; funding.

The Municipality hereby establishes a PACE program allowing owners of qualifying property located in the PACE district who so choose to access financing for energy saving improvements to their property through PACE loans administered by the Trust or its agent. PACE loan funds are available from the Trust in municipalities that 1) adopt a PACE Ordinance, 2) adopt and implement a local public outreach and education plan, 3) enter into a PACE administration contract with the Trust to establish the terms and conditions of the Trust's administration of the municipality's PACE program, and 4) agree to assist and cooperate with the Trust in its administration of the municipality's PACE program. (Ord. No. 10-10, 11-4-2010)

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Sec. 60-6. Amendment to PACE program.

In addition, the Municipality may from time to time amend this Ordinance to use any other funding sources made available to it or appropriated by it for the express purpose of its PACE program, and the Municipality shall be responsible for administration of loans made from those other funding sources. (Ord. No. 10-10, 11-4-2010)

ARTICLE IV – CONFORMITY WITH THE REQUIREMENTS OF THE TRUST

Sec. 60-7. Standards adopted; Rules promulgated; model documents.

If the Trust adopts standards, promulgates rules, or establishes model documents subsequent to the Municipality's adoption of this Ordinance and those standards, rules or model documents substantially conflict with this Ordinance, the Municipality shall take necessary steps to conform this Ordinance and its PACE program to those standards, rules, or model documents. (Ord. No. 10-10, 11-4-2010)

ARTICLE V – PROGRAM ADMINISTRATION; MUNICIPAL LIABILITY

Sec. 60-8. Program Administration

- A. PACE Administration Contract. Pursuant to 35-A M.R.S.A. §10154(2)(A)(2) and (B), the Municipality will enter into a PACE administration contract with the Trust to administer the functions of the PACE program for the Municipality. The PACE administration contract with the Trust will establish the administration of the PACE program including, without limitation, that:
- i. the Trust will enter into PACE agreements with owners of qualifying property in the Municipality's PACE district;
 - ii. the Trust, or its agent, will create and record a Notice of the PACE agreement in the appropriate County Registry of Deeds to create a PACE mortgage;
 - iii. the Trust, or its agent, will disburse the PACE loan to the property owner;
 - iv. the Trust, or its agent, will send PACE assessment statements with payment deadlines to the property owner;
 - v. the Trust, or its agent, will be responsible for collection of the PACE assessments;
 - vi. the Trust, or its agent, will record any lien, if needed, due to nonpayment of the assessment;
 - vii. the Municipality, or the Trust or its agent on behalf of the Municipality, promptly shall record the discharges of PACE mortgages upon full payment of the PACE loan.
- B. Adoption of Education and Outreach Program. In conjunction with adopting this Ordinance, the Municipality shall adopt and implement an education and outreach program so that citizens of the Municipality are made aware of home energy saving opportunities, including the opportunity to finance energy saving improvements with a PACE loan.

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- C. Assistance and Cooperation. The Municipality will assist and cooperate with the Trust in its administration of the Municipality's PACE program.
- D. Assessments Not a Tax. PACE assessments do not constitute a tax but may be assessed and collected by the Trust in any manner determined by the Trust and consistent with applicable law.

(Ord. No. 10-10, 11-4-2010)

Sec. 60-9. Liability of Municipal Officials; Liability of Municipality

- A. Notwithstanding any other provision of law to the contrary, municipal officers and municipal officials, including, without limitation, tax assessors and tax collectors, are not personally liable to the Trust or to any other person for claims, of whatever kind or nature, under or related to a PACE program, including, without limitation, claims for or related to uncollected PACE assessments.
- B. Other than the fulfillment of its obligations specified in a PACE administration contract with the Trust entered into under Article VI, §1(A) above, a municipality has no liability to a property owner for or related to energy savings improvements financed under a PACE program.

(Ord. No. 10-10, 11-4-2010)

Chapter 62

SOLID WASTE*

Article I. In General

- Sec. 62-1. Depositing solid waste in public places or in sources of water.
- Sec. 62-2. Reserved.
- Sec. 62-3. Containers required; permitting unauthorized collections.
- Sec. 62-4. Duty of citizens to deliver to collectors.
- Sec. 62-5. Conveyance regulated.
- Sec. 62-6. Municipal collection from certain establishments.
- Sec. 62-7. Reserved.
- Sec. 62-8. Reserved.
- Sec. 62-9. Reserved.
- Sec. 62-10. Dumping of certain waste prohibited.
- Sec. 62-11. Definitions.
- Sec. 62-12. Waste disposal permits.
- Sec. 62-13. Municipal collection of solid waste and recyclable materials.
- Sec. 62-14. Fee schedule.
- Sec. 62-15. Payments.
- Sec. 62-16. Penalties and enforcement.
- Sec. 62-17. Special waste.
- Sec. 62-18. Solid wastes not accepted for disposal at the facility.
- Sec. 62-19. Demolition debris.
- Sec. 62-20. Covering of loads.
- Sec. 62-21. Dump picking prohibited.
- Sec. 62-22. Recycling agreement.
- Sec. 62-23. Spring cleanup event.
- Sec. 62-24. Punch pass program.
- Secs. 62-25--62-30. Reserved.

Article II. Private Collectors

- Sec. 62-31. License or authorization required.
- Sec. 62-32. Duration of license; revocation.
- Sec. 62-33. Voluntary relinquishment of license.
- Secs. 62-34--62-55. Reserved.

Article III. Hazardous Materials

- Sec. 62-56. Definitions.
- Sec. 62-57. Disposal and storage of hazardous waste.
- Sec. 62-58. Waste oil.
- Sec. 62-59. Penalty for violation of article.
- Secs. 62-60--62-69. Reserved.

***Cross references:** Littering prohibited, § 6-2; buildings and building regulations, ch. 18.

State law references: Maine Litter Control Act, 17 M.R.S.A. § 2261 et seq.

SOLID WASTE

ARTICLE I. IN GENERAL

Sec. 62-1. Depositing solid waste in public places or in sources of water.

No person shall throw or deposit or cause to be deposited in any street, or in any well, solid waste, including household waste, commercial waste, industrial waste, construction or demolition waste, or hazardous waste.

(Code 1982, § 29-1)

Sec. 62-2. Reserved.

Editor's note: Ord. No. 03-10, effective Aug. 1, 2003, repealed § 62-2 in its entirety. Formerly, said section pertained to placement of trash for collection as enacted by Code 1982, § 29-2.

Sec. 62-3. Containers required; permitting unauthorized collections.

All house offal, swill or garbage, whether consisting of animal or vegetable substances, shall be deposited in suitable containers and shall be placed in some conveniently accessible place to be taken away by such person as may be designated or licensed by the department of public works of the city to receive and carry away such garbage and it shall be unlawful to knowingly cause, allow or permit the receiving and carrying away of such garbage by anyone other than the abovementioned designees or licensees.

(Code 1982, § 29-3; Ord. No. 06-11, 7-27-06)

Sec. 62-4. Duty of citizens to deliver to collectors.

All persons shall promptly deliver all offal, swill or garbage accumulated on their premises to the person who shall be authorized or licensed by the department of public works to receive and carry away the same.

(Code 1982, § 29-4)

Sec. 62-5. Conveyance regulated.

No house offal, swill or garbage shall be carried or conveyed through any public street or sidewalk in the city except in suitable containers, or in vehicles so constructed as to be watertight and tightly covered at all times, except when such offal, swill or garbage is being deposited or removed therefrom.

(Code 1982, § 29-5; Ord. No. 06-11, 7-27-06)

Sec. 62-6. Municipal collection from certain establishments.

The department of public works shall not collect, or cause to be collected, from hotels, motels, stores, manufacturing plants, restaurants, produce houses, food processing plants, nursing homes, hospitals, social clubs, colleges or any other commercial, industrial or institutional establishment engaged in a commercial activity, as defined in section 62-11 of this chapter, at municipal expense, any offal, swill, garbage, refuse or trash of any kind.

(Code 1982, § 29-6; Ord. No. 06-11, 7-27-06)

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Sec. 62-7. Reserved.

Editor's note: Ord. No. 03-10, effective Aug. 1, 2003, repealed § 62-7 in its entirety. Formerly, said section pertained to authority to designate public solid waste facility; duty to use as enacted by Code 1982, § 29-7.

Sec. 62-8. Reserved.

Editor's note: Ord. No. 03-10, effective Aug. 1, 2003, repealed § 62-8 in its entirety. Formerly, said section pertained to removal of materials from solid waste facilities as enacted by Code 1982, § 29-8.

Sec. 62-9. Reserved.

Editor's note: Ord. No. 03-10, effective Aug. 1, 2003, repealed § 62-9 in its entirety. Formerly, said section pertained to duties of police chief pertaining to solid waste facilities; abatement of violations as enacted by Code 1982, § 29-9.

Sec. 62-10. Dumping of certain waste prohibited.

No person shall dump solid waste on any public or private land in the city.

(Code 1982, § 29-10)

Sec. 62-11. Definitions.

The following words and terms as used in sections 62-12 through 62-23 of this article will have the meanings ascribed thereto, unless the context otherwise indicates:

Authorized collector: Employees or contractors of the city or a private collector employed by the owner, occupant, agent or other person having custody of a building, for the purpose of hauling solid waste to the facility or other location for waste disposal as designated by the city.

Asphalt shingles: Asphalt roofing shingles and tar paper and shall be devoid of any other solid waste.

Batteries: Wet cell (lead-acid) batteries collected for recycling and alkaline batteries. This definition will not include rechargeable batteries defined as universal waste.

Building: Any structure or vessel, whether public or private, that is adapted to or used for: dwelling occupancy; the transaction of business; the rendering of professional services; amusement; the display, or sale, or storage of goods, waste, merchandise, articles or equipment; the performance of work or labor; office buildings, stores, theaters, markets, restaurants, warehouses, day care facilities, hotels, motels, bed and breakfast facilities, worship, garages, bakeries; structures where domestic or other animals or fowl are kept; or sheds, barns, outbuildings, or other structures or premises used as accessory to any such use.

Bulky waste: Any items whose large size or weight precludes or complicates their handling by normal collection, processing or disposal methods (includes old furniture; carpeting; appliances such as stoves, dryers, washing machines, etc., but does not include universal waste or refrigerant containing appliances) or as further defined by the rules and regulations of public works.

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City: The City of Lewiston, Maine, a municipality organized and regulated by the laws of the state.

Commercial waste: Solid waste generated by a commercial property or as a result of commercial activity.

Commercial activity: Any property or service provider, which has received a license from the City of Lewiston to conduct business and/or a structure used for commercial or business purposes including, but not limited to, the following:

- (1) Hotels, motels, bed and breakfast facilities, restaurants, warehouses;
- (2) Markets, bakeries, grocery stores, food vendors;
- (3) Manufacturing or industrial facilities;
- (4) Business offices;
- (5) Day care facilities or any business establishment adjoining a residential structure;
- (6) Trailer parks and manufactured home parks, and;
- (7) Condominiums.

Construction and demolition debris: Solid waste generated through construction, remodeling, repair or demolition of structures. This includes but is not limited to: building materials such as plaster and lath, plumbing fixtures, insulation, asphalt, wall board, pipes, treated wood (wood products, which have been treated with copper, chromium, arsenic and/or creosote) and metal conduits. It excludes: partially filled containers of any kind, friable asbestos and other special waste.

ePass: A voucher, distributed by the city annually, for the purpose of disposing of specific types of solid waste at the facility. The punch pass is nontransferable and is invalid if used by anyone other than the recipient.

Facility: The city's solid waste and recycling facility, located on 424 River Road, which is a division within the city's department of public works.

Inert fill: Clean soil material including soil from road ditching and sand from winter sand cleanup. Inert fill can also include crushed clean glass and porcelain (not included in recycled glass) as well as bricks, rocks and cured concrete (that does not contain rebar or wire mesh) and asphalt waste from road and driveway construction.

MEDEP: The Maine Department of Environmental Protection.

Multiple unit apartment building: An apartment building or complex of buildings, which contain a total of four or more dwelling units per parcel of property or three or more dwelling units per parcel of property, which are not owner occupied.

Occupant: The person that has the use of or occupancy of any building or a portion thereof, whether the actual owner or tenant. In the case of vacant buildings or any vacant portion of a building, the owner, agent or other person having custody of the building will have the responsibility of an occupant of the building or portion thereof.

Owner: The actual owner of the building, whether individual, partnership or corporation, or the agent of the building, or other person having custody of the building or to whom the rent is

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paid.

Public works: The City of Lewiston's Department of Public Works.

Recyclable material includes the following:

- (1) Newspaper (including inserts), magazines (glued or stapled), catalogs, telephone books, soft cover books and junk mail.
- (2) Corrugated cardboard, cut into two-foot × three-foot pieces. No waxed containers, "gray" paperboard or "yellow" cardboard.
- (3) Clear glass containers, rinsed with caps and rings removed and discarded; paper labels are acceptable. No window glass, colored glass, mirrors, light bulbs, dishes or ceramics.
- (4) Tin cans, cleaned of foodstuff. No cans with residual materials remaining.
- (5) Mixed paper, includes manila folders, brochures, envelopes (manila, white, colored-windows are acceptable), junk mail without plastic wrapping, cards, post cards, calendars, multiple copy forms, aseptic containers, wrapping paper including tube, all types of paper board boxes (including shoe boxes, cereal boxes and dry food boxes), Asian corrugated (yellow or gray in color), milk cartons, paper towel tubes, photography paper, frozen food boxes and egg and berry cartons. Does not include: garbage or plastic.
- (6) HDPE plastic bottles (#2 plastic only, both colored and clear) completely emptied of contents, rinsed and flattened. Caps and rings are to be discarded.
- (7) High grade paper--Ledger paper, computer paper, letterhead, lined paper and envelopes.
- (8) Any other material so designated by public works. Recyclable material will be considered solid waste material for the purposes of this chapter.

Refrigerant containing appliance: Appliances (refrigerators, air conditioners, freezers, etc.) which contain freon or other regulated refrigerant (as determined by state and federal environmental regulations).

Residential properties: Any parcel of property, located in the city, upon which is situated a single residential structure or a complex of structures containing not more than two dwelling units, or an apartment building or complex of structures, which contain three dwelling units, per parcel of property, one of which is occupied by the owner.

Scrap metal: All scrap metal including white goods such as appliances. Does not include: engines, gear boxes or tanks (whether full or empty which contained chemicals or fuels) of any kind, or refrigerant containing appliances.

Sheetrock: Clean and dry sheetrock, which is devoid of paint, wall paper and other solid waste.

Solid waste: Municipal solid waste as defined by Maine's Solid Waste Regulations (MEDEP Reg. Ch. 400), which states "solid waste emanating from household and normal commercial sources". This waste will include, but is not limited to garbage, trash, rubbish, paper, Lewiston Code

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plastics, metal cans, glass, crockery, cold ashes and refuse.

Special waste: Any solid waste generated by sources other than residential and commercial establishments that exists in such an unusual quantity or in such a chemical or physical state, or any combination thereof, that it may disrupt or impair effective waste management or threaten public health, human safety or the environment and requires special handling, transportation and disposal procedures. Special waste includes, but is not limited to; ash, industrial and industrial process waste, sludge and dewatered septage, nonfriable asbestos and asbestos containing materials and all other solid wastes designated special waste as defined in Maine's Solid Waste Regulations.

Suitable container: For solid waste generated at a residential property, other than recyclable material, means a suitable plastic container, which is covered and watertight and prevents the attraction of vectors (such as birds, rodents, insects, etc.). The container shall be no larger than 36 gallons and shall be covered. The weight of the solid waste placed in the container shall not exceed 30 pounds. Plastic bags, in and of themselves, shall not be considered a suitable container, for the purposes of this definition. For solid waste generated through commercial activities or at multiple unit apartment buildings, suitable containers may include metal dumpsters or plastic totes, specifically designed and manufactured for the storage of solid waste and which prevent the attraction of vectors (such as birds, rodents, insects, etc.).

Suitable recycling container: The rectangular bin distributed by the city for the sole purpose of containing and transferring recyclable materials to the authorized collector.

Superintendent: That person appointed by the director of public works as the city's superintendent of the division of solid waste management.

Tires: Tires (with and without rims) from all commercial and residential vehicles (refer to fee schedule provided for under section 62-14 to determine charges).

Universal waste includes the following:

- (1) Rechargeable batteries, which contain lead, cadmium and/or mercury. Rechargeable batteries, do not include wet-cell (lead acid) batteries.
- (2) Lamps, which contain mercury (include fluorescent lamps, mercury vapor lamps, high pressure sodium lamps, and all other mercury containing lamps as defined by MEDEP Hazardous Waste Regulations, Chapter 850).
- (3) Mercury containing switches, thermostats, manometers and thermometers.
- (4) Polychlorinated biphenyl (PCB) ballasts, which are totally enclosed and nonleaking.
- (5) Cathode ray tubes, including video display components of televisions, computer monitors (includes flat screen monitors) and other video display devices.

Waste material: Any waste materials, including, but not limited to, solid waste, recyclable material, bulky waste, commercial waste, construction and demolition debris, inert fill, scrap metal, special waste and universal waste.

Waste oil: Used motor oil delivered to the facility in clear plastic containers in order to facilitate inspection. Waste oil does not include; synthetic motor oil, hydraulic fluid or any other lubricants or liquids of any kind.

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Wood includes all wood including demolition wood (free of metal, sheetrock, insulation, and other solid waste), brush and tree waste (does not include stumps). Does not include treated wood (refer to construction and demolition debris).

(Ord. No. 03-10, 8-1-03; Ord. No. 04-13, 7-1-04; Ord. No. 06-11, 7-27-06; Ord. No. 12-11, 10-18-12)

Sec. 62-12. Waste disposal permits.

Any vehicle engaged in a commercial activity, which requests the services of the facility shall have a permit issued by the city. There will be a charge for each permit issued in accordance with the city's policy manual as approved by the city council.

- (1) *Commercial permit.* Issued to any Lewiston business that generates commercial waste (excluding recyclable material and scrap metal) and does not have waste collected by a waste hauler and brings their waste to the facility for disposal. Any and all solid waste brought to the facility in a vehicle which has been issued a commercial permit will be charged for the disposal of that waste in accordance with the current fee schedule. Commercial permits are renewable each October.
- (2) *Contractor permit.* Issued to any contractor hauling construction or demolition debris from a job site located within Lewiston. Evidence of job location shall be presented prior to entry into the facility. A contractor can be issued either an annual permit or a permit for an individual project. Any and all solid waste brought to the facility by a vehicle which has been issued a contractor permit will be charged for the disposal of that waste in accordance with the current fee schedule. Contractor permits (annual) are renewable each October.
- (3) *Waste hauler permit.* Issued to all authorized collectors engaged in solid waste collection. All applicants for a waste hauler permit shall provide the superintendent with an updated list of customers they are servicing with an estimated annual tonnage for each customer. In addition, haulers will provide an annual estimated tonnage of recyclable material diverted for each customer. Waste hauler permits are renewable each October.

(Ord. No. 03-10, 8-1-03; Ord. No. 06-11, 7-27-06; Ord. No. 08-06h, 8-14-08)

Sec. 62-13. Municipal collection of solid waste and recyclable materials.

- (a) *Collection of solid waste and recyclable materials from residential properties.* Public works will provide for the collection of solid waste and recyclable material from all residential properties receiving waste collection provided by the city, in accordance with this chapter.

Occupants of residential properties that receive city waste collection in accordance with section 62-4 of this chapter shall utilize suitable containers for the storage, transportation and disposal of solid waste. This includes all solid waste placed curbside for disposal. The weight of solid waste placed in each suitable container shall not exceed 30 pounds.

All residents who live in residential structures receiving city waste collection shall separate recyclable material from their rubbish. Recyclable material must either be

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transported to the facility or be placed in suitable recycling containers for curbside collection.

Recyclable material and solid waste are to be set curbside no earlier than 6:00 p.m. of the day preceding regularly scheduled waste collection and no later than 7:00 a.m. of the day of waste collection as established by public works.

- (b) *Collection of solid waste and recycling materials from commercial properties and multiple unit apartment buildings.* Solid waste and recyclable material will not be collected by the city from any commercial activity or property engaged in a commercial activity, as defined in section 62-11 of this chapter.

Private vendors providing curbside solid waste and recyclable material collection service to commercial properties and multiple unit apartment buildings not receiving this service from the city shall schedule their collection to occur on the same day as the city-provided service for the geographic area of the city where the property is located.

Recyclable material and solid waste are to be set curbside no earlier than 6:00 p.m. of the day preceding regularly scheduled trash collection and no later than 7:00 a.m. of the day of waste collection. All solid waste and recyclable material must be removed by the end of the scheduled day of collection. This applies to all curbside collection, whether it is provided by the city or through a private vendor.

The city will collect solid waste and recyclable material from multiple unit apartment buildings for only those buildings who:

- (1) Received solid waste and recyclable material collection from the city on May 6, 2003; and
- (2) Complete and submit an application fee to continue this service and receive approval from the city to continue this service.

The city will provide service to these limited multiple unit apartment buildings on a fee-for-service basis. The amount of the fee will be reviewed and adjusted annually as needed based on the cost to provide service. Fees and fee adjustments will be published in the fee schedule filed with the city clerk pursuant to section 62-14 of this chapter. Fees will be billed semi-annually in advance. Failure to pay the fee and any outstanding violations/penalties, imposed by the city, on time will result in the permanent termination of the service to that property. Multiple unit apartment buildings, which are sold to new owners shall only be eligible to go on the program if:

- (1) The property is new to the program, yet is an existing building with a new owner, or
- (2) The property is already on the program and there is no break in service, or
- (3) The new owner already has other properties in the program and has met all obligations of the program for all these other properties including but not limited to paying on time and addressing solid waste issues with those properties in a timely manner, or
- (4) The new owner has previously owned, operated, or managed, or

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been the primary ownership interest in any company, corporation or other legal entity that has previously been part of the program, then such information may be used as a basis for determination for entering the program.

The new owner shall submit a one-time application fee and complete an application to go on the program within 90 days of purchasing the property.

Service will not be reinstated once it is terminated, except as noted above.

- (c) *Collection of solid waste from Lewiston public schools.* Public works may provide collection of solid waste and recyclable material to the Lewiston School Department from schools that received collection service as of January 1, 1990. Public works will invoice the Lewiston School Department for services related to solid waste collection and disposal. The Lewiston School Department includes all Lewiston public schools and associated administration buildings.
- (d) *Collection of bulky waste.* Bulky waste will be collected by the city during the annual "Spring Clean Up Event" as prescribed in section 62-22 of this chapter.

No person shall place bulky waste out for collection by the city except in compliance with section 62-22 of this chapter.

The city will not be responsible for the collection of bulky waste, construction and demolition debris, scrap metal, and wood, as defined, at any time other than the time known as "Spring Cleanup Event"

Any person disposing of waste in violation of section 62-13 of this chapter shall be guilty of an offense. Penalties for said offense are described in section 62-16 of this chapter.

- (e) *Collection of recyclable material by unauthorized agents.* In accordance with section 62-3 of this chapter, no person, other than authorized collectors, shall pick up recyclable materials that have been set out at the curb for collection by the city or its contracted agent. For purposes of this chapter, authorized collectors shall be limited to employees of the City of Lewiston acting in the course of their employment or employees of private firms that have been contracted by the City of Lewiston to collect recyclable material. Individuals found in violation of this article are subject to the penalties listed in section 62-16 of this chapter.
- (f) *Solid waste containers.* Occupants of a residential property must maintain adequate suitable containers for the accumulation and disposal of solid waste located and/or generated at their residence. An occupant of a residential property shall be responsible for the disposal of solid waste located and/or generated at their residence as provided in this chapter.

The owner or owner's agent of a multiple unit apartment building, shall be responsible for waste collected from that building and must ensure that all solid waste is placed in suitable containers, as defined. The owner or owner's agent of a multiple unit apartment building shall be responsible for the disposal of solid waste located at the multiple unit apartment building in accordance with section 62-4 of this chapter.

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Public works reserves the right, but has no obligation, to confiscate city- provided recycling containers which are being used for purposes other than the curbside recycling program.

- (g) *Waste not to accumulate except in suitable storage containers.* The occupants of buildings, owners of residential properties and/or owners of multiple unit apartment buildings or commercial buildings shall place or cause to be placed all solid waste in suitable containers, and all recyclable material in suitable recycling containers and shall not permit any accumulation or deposit of such substances in or about the premises except in such suitable containers, per section 62-3 of this chapter.
- (h) *Unlawful to deposit.* It is unlawful for any person or entity to throw or deposit or cause to be deposited on property not owned or controlled by the person or entity any solid waste, including household waste, commercial waste, industrial waste, construction or demolition waste or hazardous waste.
- (i) *Owners duty to inspect and remove wastes.* The owner of land and the person(s) in possession of such land abutting a city street or public easement have an affirmative obligation to inspect those portions of their property which have such frontage and to promptly remove or dispose of, in a matter consistent with this chapter, any waste material found in or along such property.

The owner of, and any person having responsibility for, property abutting the area of the street, sidewalk, or property where waste material has been deposited shall be presumed to have deposited same and shall be liable for violations of this article in the absence of evidence to the contrary. Notwithstanding the aforesaid, any owner of and/or any person having responsibility for property abutting the area of the street where any waste materials has been deposited in violation of this chapter shall remove the waste materials and dispose the waste material as required.

- (j) *Penalty.* Violation of any part of this section, including failure to utilize suitable containers as described, shall be considered a violation of this chapter, and shall be subject to penalties as described in section 62-16 of this chapter.

(Ord. No. 03-10, 8-1-03; Ord. No. 04-13, 7-1-04; Ord. No. 04-23, 1-6-05; Ord. No. 06-11, 7-27-06; Ord. No. 08-07, 9-11-08)

Sec. 62-14. Fee schedule.

A schedule of fees for the use of the facility shall be set by the solid waste disposal policy (the "fee schedule"). The schedule and any modifications of the schedule shall be filed with the city clerk.

(Ord. No. 03-10, 8-1-03)

Sec. 62-15. Payments.

- (a) All parties who deposit one or more loads per week at the facility for a period of greater than 30 days shall be required to pay applicable disposal fees on a monthly basis. Failure to make required payments within 30 days of the date of billing will result in the suspension of all privileges to utilize the facility.

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- (b) Upon use of the facility for the first time, all new accounts will be required to make payment at that time. If the customer continues to use the facility at least once per week for a period of greater than 30 days, the customer will be billed on a monthly basis.
- (c) Owners of multiple unit apartment buildings receiving city-provided curbside waste collection service, as described under subsection 62-13(b) of this chapter, shall pay a \$100.00 application fee at the time of application for city service. Fees for these services will be billed semi-annually in advance. The owner is responsible for ensuring bills are paid in full and on time. Failure to pay the fees within 30 days of billing will result in termination of the service.
- (d) Sporadic users of the facility, or users that do not remit fees on a monthly basis, must make payment at the time of service.

(Ord. No. 03-10, 8-1-03; Ord. No. 04-13, 7-1-04; Ord. No. 06-11, 7-27-06)

Sec. 62-16. Penalties and enforcement.

- (a) *Waste generated outside city limits.* No vehicle, whether commercial or private, shall dispose of any solid waste material at the facility unless it is generated from within the geographical limits of the city (as determined by reviewing the generator's driver's license, property tax receipt, and/or building permit) or is authorized under the terms of a contract with the city. The city reserves the right to make spot inspection of solid waste entering the facility. Vehicles bringing in waste that is from outside the city shall be subject to the penalties described later in this section.
- (b) *Enforcement.* It shall be the duty of the chief of police, the director of code enforcement or their duly authorized representatives to enforce the provisions of chapter 62 of this Code and to prosecute any and all persons violating any such provisions.

Enforcement procedures as set out in chapter 50, article II of the Lewiston Code of Ordinances shall apply to enforcement of this chapter, except that the specific penalties listed in subsection (c) herein will apply instead of those listed in section 50-45.

Notwithstanding any provisions in this chapter 62 to the contrary, due to the public nuisance and threat to public health created by the presence of waste on or near city streets in violation of subsections 62-13(a), (b), (h) and (i), the chief of police, the director of code enforcement or their designees are authorized to fine violators, without any prior notification, in accordance with subsection 62-16(c).

- (c) *Penalties.* Violators of any provisions of this chapter shall for the first offense receive a fine equal to twice the current disposal charge for the disposal of the waste material (including all costs of collection and transportation). The minimum fine is in accordance with the city's policy manual as approved by the city council, plus accrued interest, attorney's fees and court costs. A second violation or any subsequent violations occurring within two years of a previous violation shall result in a fine equal to three times the disposal fee for disposal of the waste material (including all costs of collection and transportation). The minimum fine is in accordance with the city's policy manual as approved by the city council, plus accrued interest, attorney's fees and court costs. Such fees shall be charged each time the city removes waste material deposited in violation of this chapter, whether or not additional notice has been given.

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- (d) *Responsibilities not transferable.* No contract or agreement between the owner or operator and the occupant relating to the compliance with the terms of this article shall be effective in relieving any person of the responsibility for compliance with the provisions of this chapter as described.

(Ord. No. 03-10, 8-1-03; Ord. No. 04-23, 1-6-05; Ord. No. 06-11, 7-27-06; Ord. No. 08-06h, 8-14-08)

Sec. 62-17. Special waste.

Special waste is defined in section 62-11. Solid waste brought to the facility that contains special waste mixed with residential and commercial waste will be charged at the additional rate of \$2.50/ton for the entire load unless the special waste is separated from the other waste.

All special waste shall be subject to the hazardous and special waste handling and exclusion plan (appendix C) and special waste characterization, testing and permitting (appendix D) of the facility's operations and maintenance (OM) manual as approved by the MEDEP, as well as the specific waste characterization sampling and analytical work plans developed by public works.

No special waste shall be accepted at the facility without a proper manifest that tracks the movement of the special waste from the point of generation to any intermediate points and finally to its deposition in the landfill. Each manifest shall have a section for the generator, the transporter, and the facility. The generator shall:

- Prepare a manifest before any special waste is transported.
- Design the destination of the waste.
- Identify and list each waste separately on the manifest.
- Provide a hand-written signature and date.
- Obtain the hand-written signature and date of the transporter and keep one copy.

The transporter (or generator if the generator is also the transporter) shall:

- Ensure that the manifest accompanies any special waste.
- Sign and date the manifest in the presence of the generator.
- Upon delivery to the site, indicate the destination of the special waste.
- Obtain the signature and date from the weigh station attendant.
- Keep one copy of the manifest and give the remaining copies and original to the weigh station attendant.

The facility shall:

- Not accept special waste from a generator or transporter unless the waste is accompanied by a manifest, properly completed by the generator and transporter.
- Upon acceptance of the load, the weigh station attendant shall sign and date the manifest, and note any discrepancies in the manifest.
- Record the weight of the load.

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- Send signed copies of the manifest to the generator and transporter.
- Retain two copies on file at the facility.

The superintendent shall have the authority to require a waste audit of any company that brings or pays a commercial hauler to bring special waste to the facility.

(Ord. No. 03-10, 8-1-03)

Sec. 62-18. Solid wastes not accepted for disposal at the facility.

The following waste materials are not accepted for disposal at the facility:

- (1) Liquids and other free-flowing material.*
- (2) Junk automobiles, trucks, lawn mowers, snow mobiles or any other motor driven vehicle.**
- (3) Closed containers used for shipping or storing chemicals.
- (4) Fuel tanks or devices used for containing petroleum based compounds, such as gasoline, fuel oil, hydraulic fluid or lubricants or other chemicals.
- (5) Debris or residuals from nonhazardous chemical spills or spill cleanup.*
- (6) Contaminated soils or dredged soils.*
- (7) Friable asbestos.*
- (8) Sand blast grit and nonliquid paint wastes.*
- (9) Medical wastes. Includes fecal waste and all bodily fluids (and waste materials which have come in contact with said fluids) of any kind.***
- (10) Infectious and/or hospital waste. All such waste (includes any and all body parts and waste materials which have come in contact with said body parts) are considered hazardous as defined by state and federal regulations, this includes, but is not limited to all "red bag" waste.***
- (11) Animal carcasses or animal parts.****
- (12) High and low pH materials.*
- (13) Spent filter media residue.*
- (14) Hazardous waste excluding normal waste from household activities defined by Chapter 850 of MEDEP Regulations.*

* Residential property owners are encouraged to bring these materials to the household hazardous waste depot, located at the facility, for disposal. Others are encouraged to contact the Maine DEP (287-2651) regarding the proper disposal of these materials.

** Generators of these wastes are encouraged to contact scrap metal salvage facilities regarding proper disposal.

*** Generators are encouraged to contact the Maine DEP (287-2651) regarding the proper disposal of these materials.

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**** Generators are encouraged to bury small quantities at the site of origin or contact either local veterinarian offices or the Maine DEP (287-2651) regarding the proper disposal of these materials.

(Ord. No. 03-10, 8-1-03; Ord. No. 06-11, 7-27-06)

Sec. 62-19. Demolition debris.

All haulers bringing construction and demolition debris to the facility for disposal must show a copy of the contractor permit for the project from which the waste is generated to the weigh station attendant each time construction and demolition debris is disposed of at the facility.

(Ord. No. 03-10, 8-1-03)

Sec. 62-20. Covering of loads.

All vehicles entering the facility shall cover, tie down, or otherwise secure any waste transported to the facility in a manner reasonably calculated to keep the load secured within the vehicle. Failure to properly secure incoming loads, as determined by facility personnel, is a violation of this chapter and shall result in a penalty equal to twice the disposal fee for the material.

(Ord. No. 03-10, 8-1-03)

Sec. 62-21. Dump picking prohibited.

No person, resident, business or city employee shall enter the facility without authorization or remove waste material or recyclable materials from the facility without specific authorization from the superintendent. Violation of this may result in the immediate revocation of the disposal privileges by the superintendent.

(Ord. No. 03-10, 8-1-03)

Sec. 62-22. Recycling agreement.

Any municipality or quasi-municipal organization requesting processing and marketing services by the facility shall be required to enter into a formal agreement for use of the facility which is approved by the Lewiston City Council. (Ord. No. 03-10, 8-1-03)

Sec. 62-23. Spring cleanup event.

The City of Lewiston will sponsor, on an annual basis, a spring cleanup event for residential properties, as defined. This service will collect bulky waste, construction and demolition debris, wood, and scrap metal, which are not normally collected during regular weekly waste collection. The dates of the spring cleanup event and rules for participation will be advertised prior to the event. Solid wastes not accepted for disposal at the facility, as described in section 62-18 of this chapter, will not be collected during the spring cleanup event. Disposal of solid wastes not accepted for disposal at the facility as described in section 62-18, or waste not collected by the city during the spring cleanup event, shall be the responsibility of the owner as described in section 62-16.

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- (1) Volume shall be limited to six items of bulky waste (which may include one television set or computer monitor and one freon-containing appliance) and three cubic yards solid waste per dwelling unit.
- (2) All waste items placed curbside must be separated according to waste type:
 - a. *Bulky waste.* Includes, old furniture; carpeting; mattresses, televisions, etc.
 - b. *Construction and demolition debris (single-family residents only).* Includes, but is not limited to, building materials such as; plaster and lath, plumbing fixtures, insulation, asphalt, wall board, pipes and metal conduits, etc.
 - c. *Wood.* Includes all wood including demolition wood (free of metal, sheetrock, insulation, and other solid waste), brush and tree waste (butt ends to face the street, does not include stumps), wood furniture, etc.
 - d. *Scrap metal.* Appliances, such as stoves, dryers, washing machines, refrigerators, etc. Does not include; engines, gear boxes, lawnmowers, tanks (whether full or empty which contained chemicals or fuels) of any kind.
- (3) All material to be collected during the spring cleanup event must be placed at curbside no later than 7:00 a.m. on Monday of the week scheduled to be picked up. Materials placed curbside after this time as determined by the city, shall be the responsibility of the property owner and are subject to the penalties described in section 62-16.

Waste items which are not separated or exceed the volume of waste specified in this section (as determined by the city) will not be picked up and shall be the responsibility of the owner. Failure to dispose of waste as required is a violation of this chapter, subject to penalties described in section 62-16.

(Ord. No. 03-10, 8-1-03)

Sec. 62-24. ePass program.

The city issues an ePass through the treasurer's office and the Scale House at the Solid Waste Facility for a fee, as described in the solid waste fee schedule (section 62-14). ePasses are sold at these locations, only, and cannot be obtained at any other location. ePasses will be sold to:

- (1) Owners of residential properties, as defined in section 62-11 of this chapter. Limit, two ePasses, per property owner, per year.
- (2) Owners of multi-unit apartment buildings, as defined, who are eligible and have paid for trash collection services provided by the city will be eligible to receive ePasses based on the following--One ePass per three dwelling units (i.e. a five unit building would be eligible for two ePasses), per year. The ePass will only be valid for the fiscal year in which it was issued. The City's fiscal year is from July 1 through June 30.
- (3) Tenants of multiple unit apartment buildings are not eligible to purchase ePasses

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or utilize this service.

The ePass is good for one year from the day of issue. If a second ePass is purchased by the owner of a residential property, as defined, it will expire on the expiration date listed on the first pass.

The ePass will allow the holder to dispose of waste material at the facility at no charge. Types and quantities of materials, which can be disposed at no charge for each ePass shall be:

- (1) Six items of bulky waste (includes one universal waste item and one freon-containing appliance);
- (2) Three tons (6,000 pounds) of solid waste (may include construction and demolition debris); and
- (3) Two tires (16 inches or less) without rims.

The ePass will allow Lewiston residents free disposal of items listed above at the facility. The city will not be responsible for hauling these waste items. Waste hauling is the responsibility of the ePass holder. Only items listed in sec. 62-24 will be accepted at no charge. The ePass holder will present the pass(their driver's license) at the time he/she enters the facility in order to receive this service and the items to be disposed of will be recorded on the city's computer system at that time. Once the item is recorded, that item will be excluded from further disposal at no charge. Expired ePasses will not be accepted at the solid waste facility.

The ePass service is not transferrable. Individuals eligible to receive this service included:

The purchaser of the ePass.

A member of the purchaser's household (as determined by reviewing the address on the driver's license of the individual wishing to use this service) is eligible to use the service described in Sec. 62-24 – ePass Program.

Individuals wishing to use this service will be asked to present their driver's license to the Scale House attendant when entering the solid waste facility, to determine their eligibility to receive this service. Failure to present a driver's license or meet the eligibility requirements listed in this ordinance may disqualify the individual from receiving the services listed in this ordinance.

(Ord. No. 03-10, 8-1-03; Ord. No. 06-11, 7-27-06; Ord. No. 12-11, 10-18-12)

Secs. 62-25--62-30. Reserved.

ARTICLE II. PRIVATE COLLECTORS

Sec. 62-31. License or authorization required.

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No person shall collect any house offal, swill or garbage, or carry the same through any of the streets or sidewalks of the city, except such person as may be authorized or licensed by the department of public works.

(Code 1982, § 29-20)

Sec. 62-32. Duration of license; revocation.

- (a) The department of public works shall determine the length of time for which any license under this article shall issue, and all such licenses for the collection of garbage shall be granted subject to revocation by the department.
- (b) The department of public works may at any time revoke any or all licenses granted, in whole or in part, upon failure of any licensee to comply with the provisions of this article. Upon revocation of any license, the department shall send a notice thereof by registered mail to the licensee at least 15 days before the date such revocation shall become effective.

(Code 1982, § 29-21)

Sec. 62-33. Voluntary relinquishment of license.

Any licensee wishing to discontinue the collection of garbage, in whole or in part, shall notify the department of public works in writing of his intention to do so, at least 15 days prior to the date of such discontinuance, and shall return his license to the department.

(Code 1982, § 29-22)

Secs. 62-34--62-55. Reserved.

ARTICLE III. HAZARDOUS MATERIALS*

***Cross references:** Fire prevention and protection, ch. 38.

Sec. 62-56. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Disposal means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous or solid waste, sludge or septage into or on any land, water, sanitary or storm drainage system so that the hazardous or solid waste, sludge or sewage or any constituent thereof may enter the environment or be emitted into the air, or discharged into any waters, including groundwater.

Generator means a person whose activity results in the generation of waste which is or may be hazardous.

Hazardous waste means any chemical substances or materials, gas, solid or liquid, designated as hazardous by the United States Environmental Protection Agency pursuant to the United States Resource Recovery and Conservation Act, Public Law 94-580, and amendments to

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the act or designated hazardous by the act or its amendments.

Oil means any of a class of substances typically unctuous, viscous, combustible, liquid at 60 degrees Fahrenheit and soluble in ether or alcohol but not in water.

Storage means the placement of materials in drums, tanks or other structures intended to retain the materials for subsequent use or disposal.

Waste oil means discarded oil generated by residential, institutional, commercial, industrial or agricultural sources or oil recovered from spills.

(Code 1982, § 29-31)

Cross references: Definitions generally, § 1-2.

Sec. 62-57. Disposal and storage of hazardous waste.

- (a) No person shall dump, dispose of, or store hazardous waste except by those methods approved by state or federal regulations. Hazardous waste, properly packaged and labeled identifying the waste, may be stored in quantities of 100 kilograms (220.46 pounds) or less only upon written approval of the code enforcement officer and fire chief. Notwithstanding the foregoing, it shall be unlawful for any person to dispose of hazardous waste by the landfill method.
- (b) A generator may accumulate hazardous waste in excess of 100 kilograms (220.46 pounds) on the site of its generation for a period not to exceed 90 days upon written approval of the code enforcement officer and fire chief subject to the following conditions:
 - (1) All such waste is shipped off-site in 90 days or less.
 - (2) The waste is placed in containers in accordance with local, state and federal regulations.
 - (3) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container.
 - (4) Each container is properly labeled and marked as specified by local, state and federal regulations.
 - (5) The generator complies with all the requirements for owners or operators as outlined in local, state and federal regulations.

(Code 1982, § 29-32)

Sec. 62-58. Waste oil.

No person shall dump or dispose of any waste oil except that waste oil may be stored in quantities up to 1,000 gallons. Notwithstanding the foregoing, waste oil may be stored in quantities greater than 1,000 gallons upon written approval of the code enforcement officer and fire chief.

(Code 1982, § 29-33)

Sec. 62-59. Penalty for violation of article.

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Any person found to be in violation of this article shall be subject to a fine in accordance with the city's policy manual as approved by the city council. Each day during which a violation of this article occurs shall constitute a separate offense.

(Code 1982, § 29-34; Ord. No. 08-06h, 8-14-08)

Secs. 62-60--62-69. Reserved.

Editor's note - Ord. No. 09-02, effective 4-16-09, repealed Article IV in its entirety, repealing § § 62-70 – 62-74. Formerly, said sections pertained to the Solid Waste Committee.

Chapter 66

STREETS AND SIDEWALKS*

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- Sec. 66-171. Severability.

***Cross references:** Buildings and building regulations, ch. 18; traffic and vehicles, ch. 70; utilities, ch. 74.

State law references: Municipal authority to regulate streets and sidewalks, 30-A M.R.S.A. § 3009.

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ARTICLE I. IN GENERAL

Sec. 66-1. Definitions.

The following words and phrases when used in this chapter shall have the meanings ascribed to them in this section. Whenever any words and phrases used in this chapter are not defined in this chapter but are defined in the laws of the state, then such definition shall be deemed to apply to such words or phrases.

Accepted public easement means an easement for public use by motor vehicles and otherwise over privately owned land as defined in 23 M.R.S.A. § 3021(2). It becomes accepted by being laid out by the city, by receipt of a deed, pursuant to a discontinuance as provided in 23 M.R.S.A. § 3026(1), or by recognition of a prescriptive use or other dedication. It shall be considered a public way or highway for purposes of the city's police power. However, there shall be no city obligation to maintain and repair such easement.

Accepted street means a street or way that has been laid out or accepted by the state, the county commissioners or the city council. The land where the accepted street is located may either be owned in fee by a governmental unit or an easement may have been acquired. An accepted street shall be equivalent to a town way as defined in 23 M.R.S.A. § 3021(3). It shall also include any public way and highway.

Private way, for the limited purpose of naming streets pursuant to section 66-2, means any private road, drive or easement used for the access of motor vehicles and pedestrians either by virtue of prior use or by being shown on a subdivision plan when such private way has two or more residential structures with frontage on said private way. A private way may either be proposed or in existence. Nothing herein shall be construed as imposing upon the city any duties or obligations, not otherwise imposed by law or assumed by official action of the city, with respect to private ways.

Street or highway means an accepted street and/or an accepted public easement.

Unaccepted street means a street or way which has not been legally accepted or recognized by a governmental unit.

Way means an existing means of access for motor vehicles and pedestrians by virtue of prior use or by being shown on a recorded subdivision plan. A way may either be proposed or in existence.

(Code 1982, § 24-14; Ord. No. 99-20, 1-13-00)

Cross references: Definitions generally, § 1-2.

Sec. 66-2. Authority to name streets.

The several streets and private ways in the city shall continue to be called and known by such names until they shall be altered by the city council. The council may change or alter the name of any street, or public place or private way; and the council shall establish the names of all streets and public places hereafter laid out and accepted by the city or by any other authority within the city, or private ways which may come into existence by dedication or other process.

(Code 1982, § 24-1; Ord. No. 99-20, 1-13-00)

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Sec. 66-3. Procedure for numbering houses.

The following procedures shall be followed in the assignment of door numbers to buildings constructed under the provisions of the building code to the end that street numbers of buildings hereafter constructed or altered may follow a logical and consistent pattern and thus lessen confusion and misunderstanding regarding such numbers:

- (1) On approval of an application for a permit required by the building code, the building official shall give written notice to the city engineer of the type of construction or alteration planned on the premises described in the application. Such notice shall contain an adequate description of the premises, the location of the proposed construction or alteration within such premises, and the number of units of occupancy for residential, commercial or industrial purposes which will exist on such premises after completion of all work described in the application.
- (2) The assessor shall forthwith determine the number which shall designate and identify and be affixed to the entrance of the unit of occupancy. He shall, so far as practicable, issue odd numbers for one side of a street and even numbers for the other side.
- (3) After the assessor assigns the door numbers and notifies the city engineer of such assignments, the engineer shall notify the property owner as described in the application, by mail, of the door number so assigned. Such notice shall direct the property owner to display the assigned number within a period of seven days following receipt of notice, and henceforth, in a prominent place on or near the front of the building so that such can be readily seen from the street. Such notice shall further state that violation of such order shall constitute an offense for each day of violation. Such notice shall advise the property owner to communicate information as to the new number or numbers to the several utilities, the post office and others similarly interested.

(Code 1982, § 24-2)

Sec. 66-4. Placing substances on highway; duty to remove.

No person shall throw or place or cause to be thrown or placed upon any highway any glass, glass bottle, nails, tacks, wire, scrap metal, crockery, cans or other substances harmful to the feet of persons or animals or to tires or wheels of vehicles. Whoever accidentally, or by reason of an accident, drops from his hand or vehicle any such substance upon any highway shall forthwith make all reasonable efforts to clear such highway of the substance.

(Code 1982, § 24-3)

State law references: Maine Litter Control Act, 17 M.R.S.A. § 2261 et seq.

Sec. 66-5. Allowing substances to accumulate on passageways.

No person shall allow any dirt, sand or gravel emanating from any unsurfaced private driveway or private walk to be washed onto the surface of any street or sidewalk. Whenever, in the opinion of the director of public works, any such street or sidewalk shall have become dangerous to foot or vehicular passage due to the accumulation of dirt, sand or gravel from any source aforesaid, the director shall order the titleholder to the land upon which such walk or

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driveway is situated to correct such condition and to clean the street or sidewalk of such dirt, sand or gravel. If the titleholder refuses to comply with the directive within a reasonable time, then the street or sidewalk shall be cleaned of the dirt, sand or gravel by the department and the cost thereof shall be charged to the titleholder.

(Code 1982, § 24-4)

Sec. 66-6. Driving over sidewalks.

No person shall drive any horse, cart, carriage, truck, automobile, motor vehicle or other vehicle, except children's carriages drawn by hand, upon or over the sidewalks of any street in the city; except for the purpose of crossing such sidewalks over and upon an established driveway; provided, however, that operators of pushcarts licensed as roving diners shall not be prohibited from stopping, standing or parking such pushcarts on sidewalks in the course of business and in accordance with the provisions of section 22-169.

(Code 1982, § 24-5)

Sec. 66-7. Construction of sidewalks by landowners.

Should an abutting landowner desire to construct a sidewalk, he shall lay such sidewalk of suitable material of a permanent nature, with or without curbstones as the director of public works may from time to time determine, the work to be done under the direction and approval of the director of public works.

(Code 1982, § 24-6)

Sec. 66-8. Alterations in sidewalks; installing posts, trees.

No person shall tear or make any alteration in any sidewalk, or set up any posts or trees on any of the sidewalks, or any part of the street, without the consent of the director of public works.

(Code 1982, § 24-7)

Sec. 66-9. Altering, widening, establishing and discontinuing streets.

- (a) Whenever application in writing is made to the city council to widen or alter any street, the council may refer such application to the director of public works, and it shall be the duty of the director to consider such application, and after giving notice as the law requires, the director shall proceed to examine the premises.
- (b) If, in the judgment of the director [of] public works, common convenience and public necessity require the widening or otherwise altering of such street outside the existing right-of-way, in whole or in part, the director will consult with the department of assessing to estimate the damage that any person may thereby sustain, and it shall be lawful for the city to apportion the damages so estimated on such parts thereof as to what may seem just, upon the lots or parcels of land adjacent to and bounded on such street in such proportions as in its opinion such lots or parcels of land are benefitted or made more valuable by such widening or otherwise altering or discontinuing of such street; and if any damages shall be sustained by, or betterments accrue to, any person by the

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discontinuing of any public or private way, the director of public works, when so required, shall report to the council what compensations they shall receive or betterments they shall pay, and also whether the damage is occasioned by the discontinuance of a public or private way.

- (c) Any person aggrieved by the decision or judgment of the council under this section may, as far as relates to damages, have them assessed by a committee or jury, as is by law provided.
- (d) The director of public works shall make a report of their actions in writing to the city council as soon as practicable after such services, as set out in this section, shall be performed, and such report shall be accompanied by an accurate survey and plan, giving the boundaries and measurements of such proposed widening or altering of such street; and such report as aforesaid having been accepted and after being adopted by an order of the council, such street shall be established and known as a public street, and the boundaries and measurements thereof, together with the plan and survey aforesaid, so laid out, accepted and established by the council, shall be duly recorded by the city clerk in a book kept for that purpose.

(Code 1982, § 24-8; Ord. No. 01-9, 7-5-01)

Sec. 66-10. Petitions to improve accepted streets and accepted public easements.

With respect to accepted streets and accepted public easements on which lots have been sold or which have been actually used for travel prior to December 31, 1985, the abutters may, in writing, petition the city council to improve such streets or public easements by installing sewers, sidewalks, grading, curbing, graveling, paving and in any other way making a permanent roadway over the same, or a portion thereof. If the council is of the opinion that the petitioned-for improvement should be undertaken, it shall cause each feeholder of land adjacent to and bounded by such accepted street or accepted public easement to be advised of the estimated amount of the assessment to be made against him for such improvements, which must be deposited within six months with the city treasurer. Whenever 75 percent of the abutters in number or 75 percent of the abutters in terms of the relationship between their estimated assessments and the estimated total assessment for the entire project shall have made such deposits, then the council may authorize the director of public works to proceed with the project. When the improvements have been completed, the city shall then proceed to assess one-half of the cost thereof on the property adjacent to and bounded by such street or public easement in the manner and in accordance with the provisions of 23 M.R.S.A. § 3601 et seq., with the same right of appeal as provided therein. The amount so deposited with the city treasurer shall be applied towards the satisfaction of the assessment in each case, with any overpayment being returned to the depositor or any balance being collected according to the terms of 23 M.R.S.A. § 3601 et seq.

(Code 1982, § 24-9)

State law references: Highway assessments generally, 23 M.R.S.A. § 3601 et seq.

Sec. 66-11. Draining water onto streets.

No person shall let out, empty, or direct on or towards the surface of any street, any cellar drain, sink drain or other drain, so that the water shall flow therefrom onto the street.

(Code 1982, § 24-10)

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Sec. 66-12. Removal of unlawful deposits of snow and/or ice from public sidewalks, public walkways, public streets and public easements.

- (a) *Definition.* A winter-maintained public sidewalk or public walkway is one in which it has been identified by public policy and one in which the snow and/or ice has been removed within 72 hours of a snow and/or ice event.
- (b) *Unlawful to deposit.* It is unlawful for any person or entity to shovel, throw, plow or deposit or cause to be deposited snow and/or ice on any winter-maintained public sidewalk, public walkway or within or along the edge of the travel way of any public street or public easement. This provision shall be construed to include snow falling from the roof of any building upon such public sidewalk, public walkway, or within or along the edge of the travel way of any public street or public easement.

Exception: In the event that there is insufficient space to place the snow and/or ice on the property, it may be carefully windrowed along the travel way in such a way as to not impede any motor vehicles. The volume of snow placed in this fashion may not exceed 0.25 cubic yards per linear foot.

- (c) *Owners duty to inspect and remove unlawfully deposited snow and/or ice within 72 hours.* The owner of land and the person(s) in possession of such land abutting a public street or public easement have an affirmative obligation to inspect those portions of their property which have such frontage and to promptly remove within 72 hours any snow and/or ice that has been shoveled, thrown, plowed or deposited on any winter-maintained public sidewalk or public walkway and within or along the edge of the travel way of any public street and/or public easement found along such property.

The owner of, and any person having responsibility for, property abutting the area of the public street and/or winter-maintained public easement, public sidewalk, public walkway or property where snow has been deposited shall be presumed to have deposited same and shall be liable for violations of this article in the absence of evidence to the contrary. Notwithstanding the aforesaid, any owner of and/or any person having responsibility for property abutting the area of the public street and/or public easement, public sidewalk and public walkway where any snow and/or ice has been deposited in violation of this chapter shall remove the snow and/or ice.

- (d) *Enforcement.* It shall be the duty of the director of planning and code enforcement, the police chief, the director of public works, or their duly authorized representatives to enforce the provisions of section 66-12 of this Code and to prosecute any and all persons violating any such provisions. Enforcement procedures as set out in chapter 50, article II of the Lewiston Code of Ordinances shall apply to enforcement of this chapter, except that the specific penalties listed in subsection (c) herein will apply instead of those listed in section 50-45.

Notwithstanding any provisions in this chapter 66 to the contrary, due to the public nuisance and threat to public health created by the presence of snow and/or ice on public sidewalks, public walkways, or in and/or at the edge of the travel way of public streets and public easements in violation of subsections 66-12(a) and (b), the director of planning and code enforcement, the police chief, the director of public works, or their designees are authorized to fine violators, without any prior notification, in accordance with subsection 66-12(d).

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- (e) *Penalties.* Violators of any provisions of this chapter shall for the first offense receive a fine equal to twice the removal costs for the snow and/or ice. The minimum fine is \$200.00, plus accrued interest, attorney's fees and court costs. A second violation or any subsequent violations occurring within two years of a previous violation shall result in a fine equal to three times the removal costs for the removal of snow and/or ice. The minimum fine is \$400.00, plus accrued interest, attorney's fees and court costs. Such fees shall be charged each time the city removes snow and/or ice deposited in violation of this section, whether or not additional notice has been given.
- (f) *Responsibilities not transferable.* No contract or agreement between the owner or operator and the occupant relating to the compliance with the terms of section 66-12 shall be effective in relieving any person of the responsibility for compliance with the provisions of this section as described.

(Code 1982, § 24-11; Ord. No. 08-12, 1-15-09)

Sec. 66-13. Sledding and skating regulated.

- (a) No person shall coast, skate or slide in the streets or on the sidewalks with handsleds, ice/roller skates, skateboards or otherwise in any part of the city where such activity shall endanger or incommode travelers.
- (b) Anyone who violates any of the provisions of this section may have his sled, skates or skateboard impounded by the authority of the chief of police for a period not to exceed five days for the first offense, for a period not to exceed ten days for the second offense, and for a period not to exceed 30 days for any subsequent offense.

(Code 1982, § 24-12)

State law references: Municipal authority to designate public streets and sidewalks whereon persons may slide with any vehicle, 23 M.R.S.A. § 2851.

Sec. 66-14. Special street sales; parking; musicians.

All other ordinances to the contrary notwithstanding, the council may, by majority vote, at any regular or special meeting, authorize merchants having business establishments in the city to conduct special street sales, so-called, during limited periods of time, and to display and sell their merchandise on the sidewalk area fronting their respective business establishments or in other designated areas. The council may order that parking of motor vehicles in the areas of such street sales be prohibited, and that musical groups be permitted to perform during, and in the areas of, such street sales. The council shall designate the areas in which such street sales may be permitted and the dates and hours during which they may be conducted.

(Code 1982, § 24-13)

Sec. 66-15. Temporary festival or special event zones.

The city council shall be authorized to create temporary festival or special event zones within the city. These zones shall authorize individuals and organizations the ability to manage and assign fees to street vendors, street performers, roving carts, carnivals, public parking activity in authorized city-owned parking areas, general outdoor entertainment, and use of other city-owned public areas with conditions specifically stated in the city council action. As the

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conditions for the creation of these temporary zones may change from year to year, all actions must be renewed annually by the city council.

(Ord. No. 03-11, 8-14-03)

Secs. 66-16--66-35. Reserved.

ARTICLE II. PERMITTED USES

Sec. 66-36. Tables, chairs and benches on sidewalks or public ways.

- (a) Any business holding a valid city food service establishment business license issued by the City of Lewiston is permitted to place tables, chairs, and benches on or above any city sidewalk or public way (not used for vehicular traffic) and must comply with the following conditions:
- (1) Be situated in front of the physical boundaries of the authorized business so as not to exceed the physical dimensions of the facility exterior as it is situated within the structure or building unless specifically authorized to do so by the city;
 - (2) Be consistent and compatible in style and color, be easily cleanable, made of metal or wood which may be painted, stained or covered with a plastic coating, and be of sufficient weight so as not to be moved by wind gusts of 40 miles per hour;
 - (3) Only be placed during operational hours and removed at the end of operational hours each day;
 - (4) Be temporarily removed in any instance where the objects or devices: restrict or prevent the city from conducting normal or emergency sidewalk maintenance operations or under any condition in which there is a request for temporary removal from the police department, fire department, public works department relating to maintenance or public safety activity; or removed in conjunction with special events;
 - (5) Provide adequate trash receptacles;
 - (6) Ensure that there is no less than six feet of passable area, clear of any obstructions, for pedestrians;
 - (7) Comply with all applicable provisions of the City Code;
 - (8) Any damage to public property, including but not limited to grease stain, shall be repaired by the public works department at the expense of the business at issue.
 - (9) The police department, fire department, or public works department may on an annual basis prohibit any business from placing tables, chairs, and benches on sidewalks or public ways in situations whereby such activity results in adverse impacts to adjoining businesses, pedestrians or motorists.
- (b) Any business located in the Centreville District holding a valid city food service establishment business license issued by the City of Lewiston is permitted to place tables,

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chairs, benches, and barriers not to exceed 42" in height on or above any city sidewalk or public way (not used for vehicular traffic) and must comply with above items (1), (2), (4), (5), (6), (7), (8), (9) and the following conditions:

(1) Notwithstanding item (3) above, tables chairs, benches, and barriers may be located on sidewalks continuously from May 15 to October 15;

(2) Notwithstanding Appendix A, Article XII, Section 16 of the Code of Ordinances of the City of Lewiston, the business name may be placed one or more times on barriers without a sign permit; however, no other advertising is permitted.

(3) Payment and receipt of an annual permit issued by the public works department.

(Ord. No. 03-11, 8-14-03; Ord. No. 11-08, 9-15-11)

Sec. 66-37. City exemption.

The City of Lewiston is exempt from all provisions restricting or prohibiting the placement of any object or device, temporary or permanent, on or above any city sidewalk, street, easement or public way unless explicitly stated within the City Code.

(Ord. No. 03-11, 8-14-03)

Sec. 66-38. Temporary signage.

Any commercial establishment is permitted to place one temporary sign per business location on or above the sidewalk or public way (not used for vehicular traffic) that must:

- (1) Not exceed, relative to the entire sign structure, eight square feet per side consistent with the city sign ordinance, Appendix A, Article 12, section 16(C)(2) a.2;
- (2) Not display any other commercial logo or business other than the name and logo of the authorized retail establishment and those items being sold by the establishment;
- (3) Be placed in a manner which provides for no less than five feet of passable area for pedestrians nor in a manner which creates an obstruction interfering with vehicular traffic site lines;
- (4) Must be of sufficient weight so as not to be moved by under normal meteorological conditions;
- (5) Be temporarily removed in any instance where the objects or devices: Restrict or prevent the city from conducting normal or emergency sidewalk maintenance operations or under any condition in which there is a request for temporary removal from the police department or fire department relating to public safety activity; or removed per request or special order from the city administrator or city council to temporarily remove items in conjunction with special events;
- (6) Comply with all applicable provisions of the City Code;
- (7) Shall only be placed during operational hours and must be removed at the end of

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operational hours each day.

(Ord. No. 03-11, 8-14-03)

Sec. 66-39. Vending, dispensing machines, drop boxes, and other merchandise devices.

No person, organization or other entity may place any vending, dispensing, drop boxes (such as those used by parcel and mail delivery services) and any other merchandise or product device or unit on any sidewalk or public way (not used for vehicular traffic) without the specific authorization of the city clerk's office who shall, with the prior approval of the code enforcement office, approve the specific location for each unit; approve the units placement insuring that it is adequately secured so as not to pose a safety risk to pedestrians or vehicles; insure that the unit presents a reasonable physical appearance; will require annual permitting and fee for each unit in accordance with the city fee schedule; and possess the authority to waive any fee for any unit which does not require the public to pay for merchandise or products dropped into or contained within the unit. All vending, dispensing and other merchandise or product units authorized under this section must comply with all applicable provisions of the city code. The city will reserve the right to request that the owner of any unit authorized in this section be temporarily removed.

The city code enforcement office shall have the authority to order any units removal, after reasonable notice has been given to the owner, if the unit is not compliant with the conditions of this section.

(Ord. No. 03-11, 8-14-03)

Secs. 66-40--66-70. Reserved.

ARTICLE III. OBSTRUCTIONS

Sec. 66-71. Obstructing sidewalk.

- (a) Unless otherwise permitted or authorized in this chapter, no person, organization or other entity shall pile, deposit or place or cause or permit to be piled, deposited or placed any rubbish, wood, coal, merchandise, dirt, impediment or obstruction of any kind, upon or over any sidewalk; nor to occupy or obstruct any sidewalk so as to interfere with the convenient use of the sidewalk by all pedestrians.
- (b) The prohibition set out in subsection (a) of this section shall not extend to any goods and articles or merchandise that may be exposed or exhibited for sale in front of any shop; provided, that the articles do not extend more than one foot from the building into or upon the sidewalk.

(Code 1982, § 24-44; Ord. No. 03-11, 8-14-03)

Sec. 66-72. Cellar doors, openings regulated.

No person shall erect, construct, maintain or keep any cellar door, or passageway into any cellar, basement or opening of any kind, extending into, or occupying any part of any street or sidewalk, unless such doorway, passageway, or opening be kept covered with a suitable and substantial plank covering or grate, level with the sidewalk or street.

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(Code 1982, § 24-45)

Sec. 66-73. Permission, bond required to move building.

- (a) The provisions of this section shall supplement the requirements of the building code relative to the moving of buildings.
- (b) No person shall haul, move or transport any building through any street in the city without first obtaining permission to do so from both the chief of police and the director of public works. The latter is empowered to require the posting of a bond with good and sufficient sureties in a sum adequate to indemnify the city for any loss or damage sustained by such moving. Any person aggrieved by a decision of either of the foregoing officials may appeal to the city council at their next posted meeting.

(Code 1982, § 24-46)

State law references: Municipal permits required when moving heavy objects, state permits required when state ways are used, 29 M.R.S.A. § 1703.

Sec. 66-74. Auction sales regulated.

No goods or other property shall be sold at an auction in any street or upon any sidewalk or other public place within the city, or from a building to any person on any street, without a permit from the council or some other person legally authorized to grant permits.

(Code 1982, § 24-47)

State law references: Local license for auctions required, 32 M.R.S.A. § 255.

Sec. 66-75. Awnings and shades.

No person shall place, establish or maintain any awning or shade before his place of business or dwelling house over any part of any street or sidewalk unless the awning or shade is safely made, fixed, supported and maintained so as in no way to incommode pedestrians, and so that the lowest part of such awning or shade shall be at least eight feet in height above the sidewalk or street. (Code 1982, § 24-48)

Sec. 66-76. Permit required; exceptions; inspection, removal.

- (a) No person shall obstruct with construction work or barriers or obstructions of any kind any street or sidewalk in the city without first obtaining a permit in writing from the director of public works and without faithfully complying with the conditions of such permit, except that, in cases of emergency, such necessary obstruction may be made without first obtaining such permit, provided that the director is notified thereof within a reasonable time thereafter.
- (b) Any person causing an obstruction pursuant to this section shall promptly notify the director of public works that such obstruction has been completed, and it shall be the duty of the director to inspect such obstruction. Whenever, in the opinion of the director, the obstruction does not conform to the conditions of the permit issued, he shall order such person to conform to such conditions or to remove such obstruction and charge the cost thereof to the person responsible for the obstruction.

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(Code 1982, § 24-49)

Secs. 66-77--66-95. Reserved.

ARTICLE IV. DESIGN AND IMPROVEMENTS

Sec. 66-96. Administration and enforcement.

The city shall adopt standards for the design and construction of streets and sidewalks in the City of Lewiston through the issuance of a policy (hereinafter, the "Policy for the Design and Construction of Streets and Sidewalks" or the "street and sidewalk policy"). Such street and sidewalk policy shall apply to public and private streets and sidewalks, and mobile home park roads. The administration and enforcement of the design and construction standards required by this article and the policy for the laying out and acceptance of streets and sidewalks shall rest with the director of public services.

The city's policy for design and construction of streets and sidewalks shall be contained in the city's regulatory standards manual.

(Code 1982, § 24-60; Ord. No. 07-02, 3-22-07)

Sec. 66-97. Waiver of design or construction standards for acceptance of streets.

No way shall be laid out or accepted as a street unless constructed in accordance with the conditions and specifications contained in the policy for the design and construction of streets and sidewalks, with the following exceptions:

- (1) If a way substantially meets the requirements of the policy for the design and construction of streets and sidewalks, a waiver of some of the specifications contained in the policy for design and construction of streets and sidewalks may be granted by joint agreement of the director of public services and the city engineer after determining that such a waiver is appropriate because of prior city actions, previous development, unique physical site constraints imposed by public policy imperatives, including the preservation of natural resources, habitat, and wetlands, or the promotion of urban small-lot redevelopment, or undue hardship; and
- (2) The way was existing and in use prior to December 31, 1985.

Such acceptance shall be at the discretion of the city council and under whatever conditions it may impose, including sharing in construction and upgrading costs and obtaining deeds and/or indemnity agreements from all abutters. Such ways shall conform to the design or construction standards to the fullest extent practicable.

(Code 1982, § 24-61; Ord. No. 07-02, 3-22-07)

Sec. 66-98. Compliance to be at owner's expense; bond.

Compliance with the conditions and specifications of this article, when applicable to private property, shall be at the sole expense of the property owner, his agent, and/or the

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developer of the improvements, and will render a street constructed on private land eligible for consideration by the city council for the laying out and acceptance as a street for the use of the city. Provided, however, that a street may be eligible for acceptance as aforesaid if the property owner shall post a bond with the city clerk in an amount to be determined by the city council on recommendation of the director of public services, guaranteeing compliance with the requirements and specifications of this article and indemnifying the city against claims for property damage and personal injury suffered upon such street prior to the performance of the conditions of such bond. Failure to comply with the conditions of such bond within one year from the date of the acceptance of such street constitutes a breach thereof, in which event the city council shall fulfill the requirements of this article and recover the cost thereof in an action upon such bond to be brought in the name of the city. The city council shall require the joint written certification of the director of public services and the city engineer that all the specifications have been complied with, or that a bond has been posted as provided in this section.

(Code 1982, § 24-62; Ord. No. 07-02, 3-22-07)

Sec. 66-99. Acceptance of public easements.

- (a) Any way which does not meet the requirements for a waiver under the provisions of section 66-97 may be considered for acceptance by the city as a public easement. An accepted public easement is not an accepted street and the city has no obligation to construct, maintain or repair such an accepted public easement or provide municipal services. In order to be accepted as a public easement, the following is necessary:
- (1) The way does not or cannot meet the requirements for a waiver under section 66-97;
 - (2) A waiver of the specifications contained in the policy for design and construction of streets and sidewalks must be granted by the joint agreement of the director of public services and the city engineer after determining that such a waiver is appropriate because of prior city actions, previous development, or undue hardship;
 - (3) The way where the accepted public easement is to be located was existing and in use prior to December 31, 1985;
 - (4) The way connects two existing accepted streets or is the sole means of access for two or more lots, at least two of which contain residential, commercial or industrial buildings; and
 - (5) A quitclaim deed is obtained from all of the abutters to the city creating a public easement and the abutters agree to indemnify and save the city harmless from all liability.

(Code 1982, § 24-63; Ord. No. 07-02, 3-22-07)

Sec. 66-100. Acceptance of prescriptive or dedicated ways as accepted streets.

Any way in the city for which there is no record of a laying out or acceptance by the state, county or the city, which has been used as a public street for at least 20 years or has otherwise been dedicated to public use, for which municipal services have been provided during this entire period of time, and which meet all of the design, width and construction standards

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contained in the policy for design and construction of streets and sidewalks, may be declared to be an accepted street by the city council. Quitclaim deeds from abutters are not required. Such action shall constitute evidence of an acceptance of such public streets that have previously been dedicated to public use by prescription or otherwise.

(Code 1982, § 24-64; Ord. No. 07-02, 3-22-07)

Sec. 66-101. Standards for construction of streets.

Except as provided in section 66-97 of this article, the construction or substantial repair of any public or private street or sidewalk, existing as of the effective date of this article shall comply with the City of Lewiston Policy for the Design and Construction of Streets and Sidewalks. In addition, streets and sidewalks constructed to serve a subdivision must meet any additional requirements contained in the subdivision regulations of the city.

(Code 1982, § 24-65; Ord. No. 07-02, 3-22-07)

Sec. 66-102. Requirements for street acceptance.

Except as provided in section 66-97 of this article, no private way shall be accepted as a public street unless it meets all applicable requirements of the City of Lewiston Policy for Design and Construction of Streets and Sidewalks.

(Code 1982, § 24-66; Ord. No. 07-02, 3-22-07)

Sec. 66-103. Acceptance of prescriptive or dedicated ways as accepted public easements.

Any way in the city for which there is no record of a laying out or acceptance by the state, county or the city, which has been used by the public for at least 20 years, or has otherwise been dedicated to public use, but which cannot meet all of the design, width and construction standards contained in the city's policy for design and construction of streets and sidewalks, may be declared to be an accepted public easement by the city council provided a waiver of the specifications contained in the city's policy for design and construction of streets and sidewalks is granted by the joint agreement of the director of public services and the city engineer after determining that such a waiver is appropriate because of prior city action, previous development, or undue hardship. Quitclaim deeds from abutters are not required. Such action shall constitute evidence of an acceptance of such public easements that have previously been dedicated to public use by prescription or otherwise.

(Code 1982, § 24-67; Ord. No. 07-02, 3-22-07)

Secs. 66-104--66-125. Reserved.

ARTICLE V. PARADES

DIVISION 1. GENERALLY

Secs. 66-126--66-135. Reserved.

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DIVISION 2. PERMIT

Sec. 66-136. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Parade means any march, ceremony, show, exhibition, pageant or procession of any kind, or any similar display, in or upon any street, park or other public place in this city.

Parade permit means a permit as required by this division.

(Code 1982, § 26-246)

Cross references: Definitions generally, § 1-2.

Sec. 66-137. Required.

No person shall engage in, participate in, aid, form or start any parade, unless a parade permit shall have been obtained from the chief of police.

(Code 1982, § 26-247)

Sec. 66-138. Exceptions.

This division shall not apply to:

- (1) Funeral processions;
- (2) Students going to and from school classes or participating in educational activities, provided such conduct is under the immediate direction and supervision of the proper school authorities;
- (3) A governmental agency acting within the scope of its functions.

(Code 1982, § 26-256)

Sec. 66-139. Application.

- (a) A person seeking issuance of a parade permit shall file an application with the chief of police on forms provided by such officer not less than ten days before the date on which it is proposed to conduct the parade. The chief of police, where good cause is shown therefor, shall have the authority to consider any application under this division which is filed less than ten days before the date the parade is proposed to be conducted.
- (b) The application for a parade permit shall set forth the following information:
 - (1) The name, address and telephone number of the person seeking to conduct such parade.
 - (2) If the parade is proposed to be conducted for, on behalf of, or by an organization, the name, address and telephone number of the headquarters of the organization, and of the authorized and responsible heads of such organization.

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- (3) The name, address and telephone number of the person who will be the parade chairman and who will be responsible for its conduct.
- (4) The date when the parade is to be conducted.
- (5) The route to be traveled, the starting point and the termination point.
- (6) The approximate number of persons who, and animals and vehicles which, will constitute such parade; the type of animals and description of the vehicles.
- (7) The hours when such parade will start and terminate.
- (8) The location by streets of any assembly areas for such parade.
- (9) The time at which units of the parade will begin to assemble at any such assembly area or areas.
- (10) If the parade is designed to be held by, and on behalf of or for, any person other than the applicant, the applicant for such permit shall file with the chief of police a communication in writing from the person proposing to hold the parade, authorizing the applicant to apply for the permit on his behalf.
- (11) Any additional information which the chief of police shall find reasonably necessary to a fair determination as to whether a permit should issue.

(Code 1982, § 26-248)

Sec. 66-140. Standards for issuance.

The chief of police shall issue a permit as provided for under this division when, from a consideration of the application and from such other information as may otherwise be obtained, he finds that:

- (1) The conduct of the parade will not substantially interrupt the safe and orderly movement of other traffic contiguous to its route;
- (2) The conduct of the parade will not require the diversion of so great a number of police officers of this city to properly police the line of movement and the areas contiguous thereto as to prevent normal police protection to this city;
- (3) The conduct of such parade will not require the diversion of so great a number of ambulances as to prevent normal ambulance service to portions of this city other than that to be occupied by the proposed line of march and areas contiguous thereto;
- (4) The concentration of persons, animals and vehicles at assembly points of the parade will not unduly interfere with proper fire and police protection of, or ambulance service to, areas contiguous to such assembly areas;
- (5) The conduct of such parade will not interfere with the movement of firefighting equipment en route to a fire;
- (6) The conduct of the parade is not reasonably likely to cause injury to persons or property, to provide disorderly conduct or create a disturbance;
- (7) The parade is scheduled to move from its point of origin to its point of

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termination expeditiously and without unreasonable delays en route; and

- (8) The parade is not to be held for the sole purpose of advertising any product, cause, goods or event and is not designed to be held purely for private profit.

(Code 1982, § 26-250)

Sec. 66-141. Notice of permit rejection.

If the chief of police disapproves the application for a parade permit, he shall mail to the applicant, within five days after the date upon which the application was filed, a notice of his action.

(Code 1982, § 26-251)

Sec. 66-142. Alternative permit.

The chief of police, in denying an application for a parade permit, shall be empowered to authorize the conduct of the parade on a date, at a time, or over a route different from that named by the applicant. An applicant desiring to accept an alternate permit shall, within two days after notice of the action of the chief of police, file a written notice of acceptance with the chief of police. An alternate permit shall conform to the requirements of, and shall have the effect of a parade permit under, this division.

(Code 1982, § 26-252)

Sec. 66-143. Contents.

Each parade permit shall state the following information:

- (1) Starting time;
- (2) The streets to be traversed by the parade;
- (3) The maximum length of the parade;
- (4) Such other information as the chief of police shall find necessary to the enforcement of this division.

(Code 1982, § 26-253)

Sec. 66-144. Fee.

There shall be no fee for a parade permit.

(Code 1982, § 26-249)

Sec. 66-145. Revocation.

The chief of police shall have the authority to revoke a parade permit upon application of the standards for issuance as set forth in this division.

(Code 1982, § 26-254)

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Sec. 66-146. Compliance with permit and laws.

A permittee under this division shall comply with all permit directions and conditions and with all applicable laws and ordinances.

(Code 1982, § 26-255)

Secs. 66-147--66-159. Reserved.

ARTICLE VI. OUTER LISBON STREET TRAFFIC IMPACT FEE

Sec. 66-160. Purpose.

This article imposes an impact fee on land development requiring development review under Appendix A, Article XIII of the City of Lewiston's Zoning and Land Use Code. These fees will be used to upgrade roads and related facilities necessitated by new development that impacts traffic along Outer Lisbon Street, as defined herein. It also provides for the placement of impact fee revenues into a traffic impact fee trust fund established for that purpose and for the administration of the Outer Lisbon Street Traffic Impact Fee Ordinance, including the expenditure of funds derived from traffic impact fees and the refunds of unexpended funds.

(Ord. No. 05-17, 11-17-05)

Sec. 66-161. Legislative findings.

The Lewiston City Council finds, determines and declares as follows:

- (1) The city will need to upgrade and expand road infrastructure along Outer Lisbon Street as a result of expected development in the area. To maintain adequate levels of service along Outer Lisbon Street, the existing road system must be expanded to accommodate future traffic increases safely and without decreasing current levels of service. This must be done to promote and protect the public health, safety and welfare;
- (2) The State of Maine has authorized municipalities to adopt impact fees for various purposes, including the construction of off-site capital improvements such as roads and traffic control devices, pursuant to 30-A M.R.S.A. § 4354;
- (3) The imposition of impact fees is a preferred method of insuring that new development bears a proportionate share of the cost of capital investments necessary to accommodate such development. Appropriate locations for new development in Lewiston and the capital improvements necessary to accommodate such development are consistent with the city's comprehensive plan and capital improvements program;
- (4) New development generates additional traffic, necessitating the acquisition of rights-of-way, road construction and road improvements;
- (5) The impact fee has been derived from the city's determination that development along Outer Lisbon Street will require that road capacity is expanded by widening it to five lanes or through similar infrastructure upgrades. The city anticipates funding ten percent of the necessary road improvements, with remaining funding

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provided by state and federal sources. The city's effort to seek alternative sources of funding will reduce the amount of the impact fee sought under this article to five percent of the cost of impacts created by new development.

(Ord. No. 05-17, 11-17-05)

Sec. 66-162. Title, authority, and applicability.

- (a) *Title.* This article shall be known and may be cited as the "Outer Lisbon Street Traffic Impact Fee Ordinance."
- (b) *Authority.* The Lewiston City Council has the authority to enact this ordinance pursuant to 30-A M.R.S.A. § 4354 and its statutory and constitutional home rule powers.
- (c) *Applicability.* This article shall apply to all development requiring a traffic movement permit issued on or after August 9, 2005 that would require an expansion of road capacity along Outer Lisbon Street based on the four-lane alignment that existed on August 9, 2005.

(Ord. No. 05-17, 11-17-05)

Sec. 66-163. Definitions.

As used in this article, the following terms shall have the meanings indicated:

"Capital improvement" includes transportation planning, preliminary engineering, engineering design studies, land surveys, right-of-way acquisition, engineering, permitting and construction of all the necessary features for any public infrastructure, including but not limited to:

- (1) Construction of new through lanes;
- (2) Construction of new turn lanes;
- (3) Construction of new bridges;
- (4) Construction of new drainage facilities in conjunction with new roadway construction;
- (5) Purchase and installation of traffic signalization (including new and upgraded signalization);
- (6) Construction of curbs, medians, and shoulders;
- (7) Relocating utilities to accommodate new roadway construction;
- (8) Construction of public utilities to accommodate new development;
- (9) Construction or implementation of interim measures to address increased transportation capacity needs or demands created by new development during the period prior to construction of permanent improvements.

Capital improvements do not include site-related improvements defined herein.

"Developer" is a person or entity commencing a land development activity which generates or attracts traffic on Outer Lisbon Street and which requires a traffic movement

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permit.

"Development" is any change in land use or any construction of buildings or structures or any change in the use of any structure along Outer Lisbon Street which requires a traffic movement permit.

"Expansion of road capacity" means all road and intersection capacity enhancements, including but not limited to: extensions, widening, intersection improvements, upgrading signalization, and expansion of bridges.

"Mandatory or required rights-of-way dedications and/or roadway improvements" means such non-compensated dedications and/or roadway improvements as required by a traffic movement permit.

"Outer Lisbon Street" includes all land serviced by Lisbon Street, from its intersection with Pleasant Street to the Lewiston/Lisbon town line;

"Roads" means and includes arterial streets and transportation facilities associated with the arterial and state-aid highway network along Outer Lisbon Street and under the jurisdiction of the city or the State of Maine.

"Site related improvements" are capital improvements and right-of-way dedications for direct access improvements to and/or within the development in question. Direct access improvements include but are not limited to the following:

- (1) Access roads leading to the development;
- (2) Driveways and roads within the development;
- (3) Acceleration and deceleration lanes, and right and left turn lanes leading to those roads and driveways; and
- (4) Traffic control measures for those roads and driveways.

"Traffic movement permit" is a permit obtained from the City of Lewiston or Maine Department of Transportation for any development that generates 100 or more passenger car equivalents at peak hour.

(Ord. No. 05-17, 11-17-05)

Sec. 66-164. Imposition of traffic impact fee.

- (a) Any developer who, on or after August 9, 2005, requires a traffic movement permit along Outer Lisbon Street is hereby required to pay a traffic impact fee in the manner and amount set forth in this article. Preliminary determinations regarding whether a proposed development will generate traffic along Outer Lisbon Street shall be made by the developer and provided to the city's department of planning and code enforcement and, if necessary, the city's traffic engineer at the developer's expense. Actual impacts shall be determined by a traffic study prepared by a traffic engineer at the developer's expense and approved by the city's consulting engineer, unless the developer agrees with the city's determination.
- (b) No traffic movement permit or building permit for any activity requiring payment of an impact fee pursuant to this article shall be issued unless and until the traffic impact fee

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hereby required has been paid.

(Ord. No. 05-17, 11-17-05)

Sec. 66-165. Computation of traffic impact fee.

- (a) Any development requiring a traffic movement permit, which, in the city's judgment, requires the creation of a fifth travel lane shall pay a traffic impact fee equal to five percent of the cost of upgrading Outer Lisbon Street's four-lane configuration existing as of August 9, 2005 to five lanes (four travel lanes and an center turning lane) sufficient to address impacts created by the development, based on a traffic engineering study and the size and nature of the development.
- (b) Planning and code enforcement staff shall apply the impact fee to the development and shall make a final determination as to the amount of the fee to be imposed, net of any applicable credits. Staff may request additional information from the developer if necessary to apply the fee. The developer may submit its own calculation of costs and any other information related to the impact of the development on Outer Lisbon Street. Staff shall consider information submitted by the developer, but is not required to accept information it deems to be inaccurate or unreliable.

(Ord. No. 05-17, 11-17-05)

Sec. 66-166. Payment of fee.

- (a) The developer shall pay the traffic impact fee required by this article to the department of planning and code enforcement prior to the issuance of a traffic movement permit or building permit.
- (b) All funds collected shall be properly identified as traffic impact fees and promptly transferred for deposit in the traffic impact fee trust fund to be used solely for the purposes specified in this article.

(Ord. No. 05-17, 11-17-05)

Sec. 66-167. Traffic impact fee trust fund established.

- (a) There is hereby established a traffic impact fee trust fund, to be used to accomplish the goals of this article, in accordance with section 66-168 of this article.

(Ord. No. 05-17, 11-17-05)

Sec. 66-168. Use of funds.

- (a) Funds collected from traffic impact fees shall be used for the purpose of capital improvements to, and the expansion of, transportation facilities associated with Outer Lisbon Street.
- (b) No funds shall be used for periodic or routine maintenance.
- (c) Funds shall be used exclusively for capital improvements within the traffic impact fee area.

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- (d) In the event that bonds or similar debt instruments are issued for advanced provision of capital facilities for which traffic impact fees may be expended, impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the facilities provided are of the type described in subsection (a) of this section.

(Ord. No. 05-17, 11-17-05)

Sec. 66-169. Refund of fees.

- (a) If a building permit is surrendered or expires without commencement of construction, the developer shall be entitled to a refund, without interest, of the impact fee paid as a condition for its issuance, except that the city shall retain three percent of the impact fee paid to offset a portion of the costs of collection. A request for a refund shall be made in writing to the department of planning and code enforcement not later than 15 days after the expiration of the permit.
- (b) Any funds not expended or obligated by contract by the end of the calendar quarter immediately following 15 years from the date the fee was paid shall, upon application of the developer, be returned to the developer, provided the developer submits an application for refund of the fee to the city planning and code enforcement department within 180 days of the end of the 15-year period.

(Ord. No. 05-17, 11-17-05)

Sec. 66-170. Credits

- (a) A credit against the impact fee otherwise due may be given when a developer is required to make road improvements other than an expansion from a four-lane to five-lane configuration pursuant to a traffic movement permit. Credit shall be limited to road improvements associated with Outer Lisbon Street intersections, pursuant to the traffic movement permit. In no event shall credit be given for site related improvements, as defined in this article.
- (b) Credit shall be calculated in the following manner for the above referenced road improvements as required by the aforementioned traffic movement permit: 50 percent of the value of required road improvements as determined pursuant to section 66-165 may be applied as credit against the impact fee. In no event shall the credit exceed the amount of the otherwise applicable impact fee, or be applied against unrelated impact fee items.
- (c) The developer shall provide documentation indicating the cost of the improvements required for the project versus the impact fee. The city shall consider the documentation submitted by the developer but is not required to accept any documentation which it deems to be inaccurate or unreliable.
- (d) A credit under this section will be made up to the amount of the impact fee otherwise due, and will not result in any payment of funds to the developer in the event the credit due under this section exceeds the impact fee assessed.

(Ord. No. 05-17, 11-17-05; Ord. No. 06-03, 3-23-06)

Sec. 66-171. Severability.

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

(Ord. No. 05-17, 11-17-05)

Chapter 70

TRAFFIC AND VEHICLES*

Article I. In General

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- Sec. 70-2. Definitions.
- Sec. 70-3. Emergency or temporary regulations.
- Sec. 70-4. Authority of police and fire department officials.
- Sec. 70-5. Obedience to police and fire department members.
- Sec. 70-6. Public employees to obey regulations.
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- Sec. 70-8. Regulations apply to emergency vehicles; duty of drivers; exceptions to regulations.
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- Sec. 70-10. Removal of traffic ticket.
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- Sec. 70-19. Habitual parking violators--Statement of policy.
- Sec. 70-20. Same--Definitions.
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Article II. Traffic Control Devices

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- Sec. 70-37. Devices to be uniform; official devices.
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- Sec. 70-41. Existing signs, signals, devices confirmed.
- Sec. 70-42. Location of light signals.
- Sec. 70-43. Location of stop signs.
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- Sec. 70-47. Establishment of taxicab zones.
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- Sec. 70-49. Authority to designate temporary one-way streets.
- Sec. 70-50. Authority to place signs at places of assemblage.
- Secs. 70-51--70-70. Reserved.

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Article III. Operation

- Sec. 70-71. Processions; funeral identification.
- Sec. 70-72. Driving in processions.
- Sec. 70-73. Driving through processions prohibited; exception.
- Sec. 70-74. Limitation on transporting mobile, modular or prefabricated homes.
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- Sec. 70-76. Entering through street.
- Sec. 70-77. Obedience to stop signs.
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- Sec. 70-82. Excess speed; prima facie evidence.
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- Sec. 70-84. Right-of-way.
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- Sec. 70-87. Yielding right-of-way to pedestrians.
- Sec. 70-88. Obstructing traffic at intersection, crosswalk.
- Sec. 70-89. Procedure for right turn.
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***Cross references:** Attaching advertising materials to vehicles prohibited, § 6-6; racetracks, § 10-31 et seq.; riding horses and driving vehicles on public grounds regulated, § 54-3; streets and sidewalks, ch. 66; vehicles for hire, ch. 82.

State law references: Motor vehicles generally, 29 M.R.S.A. § 1 et seq.; municipal authority to enact traffic
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ordinances, 30-A M.R.S.A. § 3009.

ARTICLE I. IN GENERAL

Sec. 70-1. State laws incorporated.

All state motor vehicle laws are hereby incorporated in this chapter by reference. No person shall violate any motor vehicle law of the state within the city.

(Code 1982, § 26-1)

Sec. 70-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Whenever any words, terms and phrases used in this chapter are not defined in this section but are defined in the laws of the state regulating the operation of vehicles, then such definition shall be deemed to apply to such words and phrases used in this chapter.

Abandoned vehicle means a vehicle that has been left parked on any street in the city for a period of over 24 hours.

Alley means a narrow way between buildings or giving access to the rear of buildings.

Authorized emergency vehicle means vehicles of the fire department, police vehicles, public traffic emergency repair vehicles, ambulances and such emergency vehicles of municipal departments or public service corporations as are designated or authorized by the state commissioner of transportation.

Business or residence district means the territory of the city contiguous to any way which is built up with structures which are situated less than 150 feet apart for a distance of one-fourth of a mile.

Commercial vehicle means any motor vehicle whose gross weight or registered weight exceeds 6,000 pounds.

Crosswalk means that part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs, or in the absence of curbs from the edges of the traversable roadway; any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

Curb means the outer edge of a defined sidewalk, or either edge of the wrought or usually traveled part of a way.

Curb loading zone means a space adjacent to a curb reserved for the exclusive use of vehicles during the loading or unloading of passengers or materials.

Handicapped means a vehicle which is registered and is being used by a person who is permanently confined to a wheelchair or restricted to the permanent use of crutches or braces or otherwise handicapped in such a way that his mobility is seriously restricted.

Individual parking space means a portion of the paved surface of the street, of sufficient

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length and depth from the sidewalk curb to accommodate a vehicle to be parked as shall be specified and marked off by the chief of police.

Intersection means:

- (1) The area embraced within the prolongation or connection of the lateral curblines, or if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict; or
- (2) Where a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. If such intersecting highway also includes two roadways 30 feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.

Motor vehicle means any self-propelled vehicle not operated exclusively on tracks, but not including motorized wheelchairs, snowmobiles as defined in 12 M.R.S.A. § 7821, and all-terrain vehicle as defined in 12 M.R.S.A. § 7851, unless the all-terrain vehicle is registered for highway use by the secretary of state, provided that whenever an all-terrain vehicle is operated on a public way, it shall be considered to be a "motor vehicle" within the meaning of this provision.

Operator or *driver* means every person who drives or is in actual physical control of a vehicle upon a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle.

Park, when prohibited, means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.

Parking meter means a device which indicates thereon the length of time during which a vehicle may be parked in a particular place, which shall have as a part thereof a receptacle or a chamber for receiving and storing coins of United States money and a slot or place in which such coin may be deposited; a timing mechanism to indicate the passage of the interval of time during which parking is permissible and which shall have elapsed; also brief instructions as to its operation.

Pedestrian means any person afoot.

Police officer means every officer of the city police department or any officer authorized to direct or regulate traffic or to make arrests for violation of traffic regulations.

Private road or driveway means every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

Right-of-way means the privilege of the immediate use of the roadway.

Roadway means that portion of a street or highway improved, designed or ordinarily used for vehicular travel.

Sidewalk means that portion of a street between the curblines, or the lateral lines of a

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roadway, and the adjacent property lines intended for the use of pedestrians.

Stop, when required, means complete cessation of movement.

Stop, stopping or standing, when prohibited, means any stopping or standing, even momentarily, of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the direction of a police officer or traffic control sign or signal.

Street or highway means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

Through street means every street or portion thereof at the entrance to which vehicular traffic from intersecting streets or highways is required by law to stop before entering or crossing such street and when stop signs are erected as provided in this chapter.

Time. Whenever certain hours are named in this chapter they shall mean standard time or daylight saving time, as may be in current use in this city.

Traffic means pedestrians, ridden or herded animals, vehicles and other conveyances, either singly or together, while using any street for purposes of travel.

Traffic control devices means all signs, signals, markings and devices, whether immovable or whether manually, electrically or mechanically operated, placed or erected by authority of the council or the police chief for the purpose of regulating, warning or guiding traffic.

Vehicle means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks or snowmobiles as defined in 12 M.R.S.A. § 1971.

(Code 1982, § 26-2; Ord. No. 02-04, 4-18-02)

Cross references: Definitions generally, § 1-2.

Sec. 70-3. Emergency or temporary regulations.

Whenever the chief of police and public works director, or their designees, shall deem it advisable during an emergency, and only for such a period of time as is necessitated for public safety or convenience, they shall have the power and authority to temporarily impose a parking ban on any and all streets within the city. The chief of police shall notify the public through any means reasonably available, at least four hours prior to when the ban is to take effect, in addition to the imposition of a fine, the chief of police may cause any vehicle parked in violation of this section to be removed and stored at the owner's expense. The chief of police, the director of the department of public works, or their designees are empowered and authorized to temporarily close Lisbon Street between Chestnut and Main Streets to vehicular traffic for the purpose of removing snow.

Any vehicle of any kind or description parked upon a public street of the city at any place or in any manner during any emergency parking ban declared under this chapter may be removed by, or under the direction of or at the request of, any police officer of the city to an authorized wrecker impound lot until all the requirements of this chapter are met. Such police officer may use such force as may be necessary to enter the vehicle and cause the same to be placed in a

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condition to be moved and may summon a licensed tow operator pursuant to the provisions of article IV of this chapter for such purpose. (Code 1982, § 26-3; Ord. No. 99-2, 3-4-99; Ord. No. 12-10, 10-4-12)

Sec. 70-4. Authority of police and fire department officials.

Officers of the police department are hereby authorized to direct all traffic by voice, hand or signal in conformance with traffic laws, provided that in the event of a fire or other emergency or to expedite traffic or to safeguard pedestrians, officers of the police department may direct traffic as conditions may require notwithstanding the provisions of this chapter. Members of the fire department, when at the scene of a fire, may direct or assist the police in directing traffic thereat or in the immediate vicinity.

(Code 1982, § 26-4)

Sec. 70-5. Obedience to police and fire department members.

No person shall willfully fail or refuse to comply with any lawful order or direction of a police officer or fire department member.

(Code 1982, § 26-5)

Sec. 70-6. Public employees to obey regulations.

The provisions of this chapter shall apply to the driver of any vehicle owned by or used in the service of the United States government, this state, county or city, and it shall be unlawful for any such driver to violate any of the provisions of this chapter, except as otherwise permitted in this chapter or by state statute.

(Code 1982, § 26-6)

Sec. 70-7. Duty to report accident.

The driver of any vehicle involved in an accident reportable under state law shall give immediate notice and make a written report within the period provided by 29 M.R.S.A. § 891.

(Code 1982, § 26-14)

Sec. 70-8. Regulations apply to emergency vehicles; duty of drivers; exceptions to regulations.

- (a) The provisions of this chapter regulating the operation, parking and standing of vehicles shall apply to authorized emergency vehicles.
- (b) An operator of an emergency vehicle, except when otherwise directed by a police officer, may do the following:
 - (1) Park or stand notwithstanding the provisions of this chapter.
 - (2) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation.
 - (3) Exceed the prima facie speed limits so long as he does not endanger life or

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property.

- (4) Disregard regulations governing direction of movement or turning in specified directions so long as he does not endanger life or property.
- (c) The exceptions enumerated in this section shall apply to authorized emergency vehicles only when the driver of such vehicle sounds a siren, bell or exhaust whistle as may be reasonably necessary, and such vehicle displays proper emergency lights visible from the front as a warning to others.
- (d) The foregoing exemptions in this section shall not, however, protect the driver of any emergency vehicle from the consequences of his reckless disregard of the safety of others.

(Code 1982, § 26-7)

State law references: State authorization of emergency lights on emergency vehicles, 29 M.R.S.A. § 1368.

Sec. 70-9. Pushing carts, riding animals, driving animal-drawn vehicles regulated.

Every person propelling any pushcart or riding any animal upon a roadway, and every person driving any animal-drawn vehicle, shall be subject to the provisions of this chapter, excepting those provisions which by their very nature can have no application.

(Code 1982, § 26-8)

Cross references: Animals, ch. 14.

Sec. 70-10. Removal of traffic ticket.

No person shall remove from any vehicle a traffic law violation ticket, notice or citation placed on or in such vehicle by a police officer, except for the purpose of answering such notice or citation as required therein.

(Code 1982, § 26-15)

Sec. 70-11. Noisy loading and unloading prohibited.

No person shall so load or unload a vehicle with iron or other material that may strike together without properly deadening it so that it will cause no unnecessary noise.

(Code 1982, § 26-63)

Secs. 70-12--70-18. Reserved.

Sec. 70-19. Habitual parking violators--Statement of policy.

The owner of a motor vehicle is responsible for the operation of the vehicle both by the owner and by others to whom the owner has entrusted the vehicle; this includes the responsibility for properly and legally parking the vehicle.

(Ord. No. 96-9, 9-12-96)

Sec. 70-20. Same--Definitions.

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Habitual violator shall mean the owner of a vehicle which has accumulated:

- (1) More than \$100.00 in unpaid penalties arising out of outstanding parking tickets arising in the city.

Outstanding parking ticket means any notice of violation of any parking ordinance of the city where:

- (1) The owner of the offending vehicle has been finally determined to be in violation by reason of the owner's failure to timely request a hearing or otherwise to timely contest the violation in accordance with the laws of the state or the ordinances of the city; and
- (2) The resultant fine or waiver charge established pursuant to 30-A M.R.S.A §§ 3001 and 3009 has not been paid.

Towing list means a list maintained by the police department containing the names of those wreckers approved by the city to respond to requests for the towing of vehicles made by the police department.

Wrecker means a person engaged in the business of, or offering the services of, a vehicle wrecker or towing service, whereby motor vehicles are or may be towed or otherwise removed from one place to another by the use of a motor vehicle adapted to and designed for that purpose.

(Ord. No. 96-9, 9-12-96; Ord. No. 99-4, 3-18-99)

Cross references: Definitions and rules of construction, § 1-2.

Sec. 70-21. Same--Removal and impoundment of vehicles.

The police department is authorized, subject to the requirements of this article, by use of a wrecker, to remove and impound the vehicle of an habitual violator wherever found on any public way or public property, and is authorized to take whatever action is reasonably necessary to carry out the provisions of this article.

(Ord. No. 96-9, 9-12-96; Ord. No. 99-4, 3-18-99)

Sec. 70-22. Same--Identification of habitual violators.

The police department is hereby authorized to rely upon records of the police department and of the secretary of state, motor vehicle division, regularly kept and maintained, in determining whether a vehicle is a vehicle of an habitual violator. Where the records of the police department and/or secretary of state, motor vehicle division indicate that such a vehicle is the vehicle of an habitual violator, there shall be a rebuttable presumption that such records are correct.

(Ord. No. 96-9, 9-12-96)

Sec. 70-23. Same--Procedure for removal; notice to owner.

Any police officer requesting removal of a vehicle under this article shall, at the time of such removal, or within a reasonable time thereafter, if the police officer determines that a delay is justifiable, notify the dispatcher of the intended storage location of the subject motor vehicle. Such information shall be recorded by the dispatcher for use by the chief of police or his/her

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designated representative. The chief of police, or his/her authorized representative, shall, within five business days of the impoundment, notify the owner of such vehicle of such impoundment, the storage location of such vehicle, and the prerequisites for release of the vehicle as set forth in section 70-24. Such notification shall be given by mail requiring a return receipt. This section shall not apply where an impounded vehicle has been released prior to the mailing of such notice.

(Ord. No. 96-9, 9-12-96)

Sec. 70-24. Same--Conditions for release of vehicle.

The vehicle shall not be released until:

- (1) The individual requesting the release presents satisfactory evidence of his or her right to possession of the vehicle and signs a receipt therefor; and
- (2) The chief of police, or his or her authorized representative, certifies that all fees and charges described in this article, including the fees for towing and storage, have been paid; or
- (3) Upon the certification by the chief of police, or his or her authorized representative; (a) that such person is, by reason of poverty, upon satisfactory proof thereof, unable to pay accumulated waiver fees or fines; and (b) that such person has accepted service of summons initiating a court proceeding to determine his or her liability for the alleged violations.

(Ord. No. 96-9, 9-12-96)

Sec. 70-25. Same--Procedures applicable to towing and impoundment.

Once the process of towing the vehicle has been initiated by a call to the towing contractor:

- (1) If a wrecker is assigned to pick up a vehicle, and has performed a substantial step towards recovery of the vehicle, the wrecker service will have been considered to have performed a service and will be allowed to charge a fee not to exceed 50 percent of the normal towing fee. To effect an immediate release of the vehicle at that point the towing fee must be paid and also to the chief of police, in accordance with the provisions of subsection (3) below, an amount equal to all outstanding parking ticket waiver fees or fines. Should the owner/representative fail to compensate the towing service at that time, the towing service shall continue to remove the vehicle from that location and transport it to the wrecker's holding facility unless otherwise directed by the police department.
- (2) Once the vehicle has actually been towed away for impoundment, then the vehicle owner or his or her designee must, to recover the vehicle, pay; (a) to the wrecker an amount equal to the towing charge and storage charges; and (b) to the chief of police, in accordance with the provisions of subsection (3) below, an amount equal to all outstanding parking ticket waiver fees or fines.
- (3) Payment to the chief of police shall be made to the front desk or the records division of the police department at offices of the police department, and such

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payment shall be evidenced by a receipt issued by the department to the person paying. No payment shall be made to or accepted by the patrol or other officer supervising the towing process.

In all cases, the individual requesting the release must present satisfactory evidence of his or her right to possession of the vehicle and must sign a receipt therefor.

(Ord. No. 96-9, 9-12-96; Ord. No. 05-09, 4-8-05)

Sec. 70-26. Same--Interference with enforcement.

It shall be a violation of this article for any person to obstruct or attempt to prevent the removal of a vehicle as provided in this article. The penalty for such violation will be in accordance with the city's policy manual as approved by the city council as outlined in section 1-8 of this Code.

(Ord. No. 96-9, 9-12-96; Ord. No. 08-06i, 8-14-08)

Sec. 70-27. Same--Collection of out-of-town violations.

The office of the city finance director may designate an appropriate commercial collection agency and forward to that agency for proper collection on behalf of the city any violation of section 70-21 not otherwise collected under this article. (Ord. No. 96-9, 9-12-96)

Sec. 70-28. Same--Procedures and prohibitions on renewal of registration.

- (a) The police department shall periodically, but not less often than quarterly, provide to the office of the tax collector (the "collector") a list of habitual violators, organized by registration plate in numeric and alphabetic order, and a list of habitual violators, organized alphabetically by last name.
- (b) In the course of reregistering vehicles, the collector shall compare registration plate numbers and letters and the name of the applicant against the habitual violator lists, and if the registration plate sought to be reregistered or the name of the applicant appears on the list, the collector shall telephone the police department to confirm that the status of the registration plate or name continues to be that of a habitual violator.
- (c) If the status of the registration plate or name continues to be that of a habitual violator, the collector shall inform the registrant that unless they immediately pay the outstanding parking violations or waiver fees, the city will not reregister the vehicle sought to be registered.
- (d) The collector is authorized to accept payment of the outstanding parking violations or waiver fees, after having confirmed the amount with the police department, and having done so, the collector is authorized to reregister the vehicle in question.

(Ord. No. 96-9, 9-12-96)

Secs. 70-29--70-35. Reserved.

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ARTICLE II. TRAFFIC CONTROL DEVICES*

*State law references: Municipal authority to regulate traffic by means of signal devices, 29 M.R.S.A. § 1256.

Sec. 70-36. Authority to install.

- (a) The police chief with the approval of the council shall place and maintain or cause to be placed and maintained traffic control signs, signals and devices when and as required or authorized under this chapter, and may place and maintain such additional traffic control devices as he may deem necessary to regulate traffic under this chapter or under state law, or to guide or warn traffic, including angle parking signs, and markings, turning markers, and signs prohibiting left, right or u-turns, the location of which he is authorized to determine.
- (b) The police chief shall report action he proposes to take pursuant to the provisions of subsection (a). If the council fails to approve or disapprove of such action within 30 days of such report, the council shall be deemed to have approved of the proposed action of the chief.

(Code 1982, § 26-9)

Sec. 70-37. Devices to be uniform; official devices.

All signs or signals required or authorized by this chapter shall, so far as practical, be uniform as to type and location throughout the city. All traffic control devices so erected and not inconsistent with state law or this chapter shall be official traffic control devices.

(Code 1982, § 26-10)

State law references: Traffic-control signal legend, 29 M.R.S.A. § 947.

Sec. 70-38. Obedience to devices; missing and illegible signs.

The driver of any vehicle shall obey the instructions of any official traffic control device applicable thereto placed in accordance with this chapter, unless otherwise directed by a police officer, subject to the exceptions granted to the driver of an authorized emergency vehicle in this chapter. No provision of this chapter for which signs are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section does not state that signs are required, such section shall be effective even though no signs are erected or in place.

(Code 1982, § 26-11)

Sec. 70-39. Display of unauthorized signs, signals or markings; nuisance, removal.

- (a) No person shall place, maintain or display upon or in view of any highway any unauthorized sign, signal, marking or device which purports to be or is an imitation of or resembles an official traffic control device, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of any official traffic control device. No person shall place or maintain nor shall any public authority permit

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upon any highway any traffic sign or signal bearing thereon any commercial advertising. This shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for official signs.

- (b) Every sign, signal or marking prohibited by this section is hereby declared to be a public nuisance, and the authority having jurisdiction over the highway is hereby empowered to remove such prohibited sign, signal or marking or cause it to be removed without notice.

(Code 1982, § 26-12)

Sec. 70-40. Interference with devices.

No person shall without lawful authority attempt to or in fact alter, deface, injure, knock down or remove any official traffic control device, or any inscription, shield, or insignia thereon, or any part thereof. (Code 1982, § 26-13)

State law references: Similar provisions, 29 M.R.S.A. § 2186.

Sec. 70-41. Existing signs, signals, devices confirmed.

All signs, signals, devices and markings in place on the adoption date of this Code are hereby ratified and confirmed.

(Code 1982, § 26-18)

Sec. 70-42. Location of light signals.

Traffic control light signals shall be established at such street intersections as are specified by the council.

(Code 1982, § 26-29)

Sec. 70-43. Location of stop signs.

Stop signs shall be established on the streets specified by the council.

(Code 1982, § 26-32)

Sec. 70-44. Location of slow signs.

Slow signs shall be established on such streets as are specified by the council.

(Code 1982, § 26-34)

Sec. 70-45. Location of yield signs.

Yield signs shall be established on such streets as are specified by the council.

(Code 1982, § 26-35)

Sec. 70-46. Location of one-way streets.

One-way streets shall be established as specified by the council.

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(Code 1982, § 26-38)

Sec. 70-47. Establishment of taxicab zones.

A taxicab zone created by the city council shall be considered established when signs indicating such establishment are erected and maintained at each end of such space, which signs the chief of police is hereby authorized to erect and maintain. Such zones shall be as specified by the city council.

(Code 1982, § 26-127)

Sec. 70-48. Establishment of bus stops.

A bus stop created by the city council shall be considered established when signs indicating such establishment are erected and maintained at each end of such space, which signs the chief of police is hereby authorized to erect and maintain. Such zones shall be as specified by the city council.

(Code 1982, § 26-129)

Sec. 70-49. Authority to designate temporary one-way streets.

The police chief shall have the power to designate streets or parts thereof as subject only to one-way traffic, such designation to be effective only if suitable signs are conspicuously placed on or about the entrances to and exits from the affected areas, in the event of an emergency requiring such one-way traffic for the avoidance of traffic congestion which would be prejudicial to the health, safety and welfare of the inhabitants of the city or property located therein, such designation and signs to be removed at the termination of such emergency. In addition to emergency conditions, the following occasions shall be proper ones for the application of the above power to designate temporary one-way traffic in areas affected by such occasions, such designation and signs to be removed after such conditions cease to exist:

- (1) Church services.
- (2) Parades.
- (3) Athletic events.
- (4) Any event, meeting or occasion attracting or likely to attract a large number of persons.
- (5) Excavations or other repairs to streets.

(Code 1982, § 26-39)

Sec. 70-50. Authority to place signs at places of assemblage.

The police chief is authorized to place temporary or permanent traffic control signs in front of the entrances to places of assemblage or any building in which entertainments, plays, shows, exhibitions and the like are given and for such period as the police chief in his discretion may deem wise under the circumstances.

(Code 1982, § 26-100)

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Secs. 70-51--70-70. Reserved.

ARTICLE III. OPERATION*

*State law references: Operation of vehicles, 29 M.R.S.A. § 891 et seq.

Sec. 70-71. Processions; funeral identification.

A funeral composed of a procession of vehicles shall be identified as such by the display upon the outside of each vehicle of a pennant or other identifying insignia or by such other method as may be determined and designated by the police chief.

(Code 1982, § 26-16)

Sec. 70-72. Driving in processions.

Each driver in a funeral or other procession shall drive as near to the righthand edge of the roadway as practical and follow the vehicle ahead as closely as is practical and safe.

(Code 1982, § 26-58)

Sec. 70-73. Driving through processions prohibited; exception.

No driver of a vehicle shall drive between the vehicles comprising a funeral or other authorized procession while they are in motion and when such vehicles are conspicuously designated as required in this article. This section shall not apply at intersections where traffic is controlled by traffic control signals or police officers.

(Code 1982, § 26-59)

Sec. 70-74. Limitation on transporting mobile, modular or prefabricated homes.

No mobile home, modular or prefabricated home, except those homes licensed or registered as campers, shall be transported within the city limits between the hours of 3:00 p.m. and 5:30 p.m.

(Code 1982, § 26-17)

Sec. 70-75. Warning devices.

No person shall sound an automobile horn, bell or other sound device on a vehicle anywhere in the city at any time, except when necessary for safe driving.

(Code 1982, § 26-28)

Sec. 70-76. Entering through street.

After the driver of a vehicle has stopped in obedience to a stop sign at the entrance to a through street, such driver shall then proceed cautiously, yielding the right-of-way to vehicles which have entered the intersection from such through street or which are approaching so closely on such through street as to constitute an immediate hazard, but may then proceed.

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(Code 1982, § 26-30)

State law references: Similar provisions, 29 M.R.S.A. § 949.

Sec. 70-77. Obedience to stop signs.

The operator of a vehicle shall bring such vehicle to a full stop, yielding the right-of-way to all vehicles or pedestrians approaching from either direction on the intersecting street immediately before entering or crossing an intersection at which a stop sign has been erected; provided however, that whenever a traffic officer is stationed at such intersection, such officer shall have the right to regulate traffic thereat.

(Code 1982, § 26-31)

State law references: Similar provisions, 29 M.R.S.A. § 949.

Sec. 70-78. Obedience to slow signs.

The operator of a vehicle shall proceed slowly immediately before entering and while crossing an intersection at which a slow sign has been erected; provided, however, that whenever a traffic officer is stationed at any intersection, such officer shall have the right to regulate traffic thereat.

(Code 1982, § 26-33)

Sec. 70-79. Obedience to yield signs.

The operator of a vehicle shall yield the right-of-way before entering or crossing an intersection at which a yield sign has been erected; provided, however, that whenever a traffic officer is stationed at such intersection, such officer shall have the right to regulate traffic thereat.

(Code 1982, § 26-36)

State law references: Failure to yield the right-of-way, consequences, 29 M.R.S.A. § 948.

Sec. 70-80. Obedience to one-way streets.

Upon those streets which are designated by the council as one-way streets, vehicular traffic shall move only in the indicated direction when signs indicating the direction of traffic are erected and maintained at every intersection where movement in the opposite direction is prohibited, which signs the police chief is hereby authorized and directed to erect and maintain.

(Code 1982, § 26-37)

State law references: Similar provisions, 29 M.R.S.A. § 993.

Sec. 70-81. Speed regulations generally.

Any person driving a vehicle on a street shall drive such vehicle at a careful and prudent speed not greater than is reasonable and proper, having due regard to the traffic, surface and width of the highway, and of any other conditions then existing, and no person shall drive any vehicle upon a street at such a speed as to endanger any person or property.

(Code 1982, § 26-41)

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State law references: Similar provisions, 29 M.R.S.A. § 1252(1); municipal authority to regulate the speed, 29 M.R.S.A. § 1256.

Sec. 70-82. Excess speed; prima facie evidence.

Any speed in excess of the limits established by law shall be prima facie evidence that the driver's speed is not reasonable and proper as defined in this article.

(Code 1982, § 26-40)

Sec. 70-83. Speed limits at specific locations.

Subject thereto and except in those instances where a lower speed is specified by law, it shall be prima facie lawful for the driver of a vehicle to drive at a speed not exceeding the following, but in any case when such speed would be unsafe it shall not be lawful:

- (1) Fifteen miles an hour when passing a school during school recess or while children are going or leaving school during opening or closing hours.
- (2) Speed in excess of 15 miles an hour when approaching within 50 feet and in traversing an intersection of ways when the driver's view is obstructed shall be unlawful, except where preference is given to through movement of traffic in one direction at the expense of cross traffic by utilization of stop signs or other control devices or by direction of a traffic officer. A driver's view shall be deemed to be obstructed when at any time during the last 50 feet of his approach to such intersection he does not have a clear and uninterrupted view of such intersection and of the traffic upon all of the ways entering such intersection for a distance of 200 feet from such intersection.
- (3) Twenty-five miles an hour in a business or residential district, or built-up portion, defined as the territory of the city contiguous to any way which is built up with structures devoted to business or where the dwelling houses are situated less than 150 feet apart for a distance of at least one-quarter of a mile.
- (4) Forty-five miles an hour outside of the built-up section.
- (5) Ten miles per hour on such streets as are specified by the council.

(Code 1982, § 26-42)

State law references: Similar provisions, 29 M.R.S.A. § 1252.

Sec. 70-84. Right-of-way.

All vehicles shall have the right-of-way over other vehicles, except authorized emergency vehicles when operated on official business and the drivers thereof sound audible signals by bell, siren or exhaust whistle, approaching at intersecting public ways, except traffic circles or rotary intersections, from the left and shall give the right-of-way to those approaching from the right; except that traffic officers stationed at such intersection may otherwise regulate traffic thereat, and except at intersections where traffic is controlled by traffic control signals in operation or by stop signs. (Code 1982, § 26-43)

State law references: Similar provisions, 29 M.R.S.A. § 944.

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Sec. 70-85. Entering traffic from curb.

The driver of a vehicle starting from a curb or roadway edge shall yield the right-of-way to all moving traffic on the roadway; he shall not enter or attempt to enter such moving traffic until he can do so safely. (Code 1982, § 26-44)

Sec. 70-86. Entering from alley or private driveway.

The driver of a vehicle entering a public way from a private road, alley, driveway or building shall yield the right-of-way to all vehicles approaching on such public way and shall yield the right-of-way to any pedestrian approaching on such public way or sidewalk; and before crossing any sidewalk, or before entering such public way where no sidewalk shall exist, shall proceed cautiously across such sidewalk or into such public way.

(Code 1982, § 26-45)

State law references: Similar provisions, 29 M.R.S.A. § 944.

Sec. 70-87. Yielding right-of-way to pedestrians.

When traffic control signals are not in place or not in operation, the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within any crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger, but no pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield.

(Code 1982, § 26-46)

State law references: Similar provisions, 29 M.R.S.A. § 954.

Sec. 70-88. Obstructing traffic at intersection, crosswalk.

No driver shall enter an intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle he is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic control signal indication to proceed.

(Code 1982, § 26-47)

State law references: Approaching stop intersection regulated, 29 M.R.S.A. § 949.

Sec. 70-89. Procedure for right turn.

The driver of a vehicle intending to turn to the right at an intersection or into an alley or private road or driveway shall approach such intersection or point of turning as closely as practicable to the righthand curb or boundary of the street, in the lane for traffic nearest to the righthand side of the street, and in turning shall keep as closely as practicable to the righthand curb.

(Code 1982, § 26-48)

State law references: Similar provisions, 29 M.R.S.A. § 994.

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Sec. 70-90. Procedure for left turns.

The driver of a vehicle intending to turn left at an intersection or into an alley or a private road or driveway shall approach such intersection or point of turning in the lane for traffic to the right of and nearest to the centerline of the street, with the left side of the vehicle as near as possible to, and to the right of, the centerline of the street on which he is proceeding, and in turning shall pass beyond the center of the intersection, passing as closely as practicable to the right thereof before turning such vehicle to the left. For the purpose of this section, the "center of the intersection" shall mean the meeting point of the medial line of the streets intersecting one another. On one-way streets, such turn shall be made from the left lane of traffic.

(Code 1982, § 26-49)

State law references: Similar provisions, 29 M.R.S.A. § 994.

Sec. 70-91. Left turn prohibited at certain intersections.

It shall be unlawful for traffic to make a lefthand turn at such intersections as are specified by the council.

(Code 1982, § 26-50)

Sec. 70-92. Turning around restricted.

The driver of any vehicle shall not turn such vehicle so as to proceed in the opposite direction in the central business district and shall not upon any other street so turn a vehicle unless such movement can be made in safety and without interfering with other traffic. This section shall be effective where proper signs so indicate.

(Code 1982, § 26-51)

Sec. 70-93. Passing.

No driver of a vehicle shall leave the line on the right for the purpose of overtaking another vehicle unless there is a clear way in advance on the left. When overtaking another vehicle proceeding in the same direction, the driver of any vehicle shall pass at a safe distance to the left thereof, and shall not again drive to the right side of the roadway until safely clear of such overtaken vehicle. The driver of a vehicle on a street about to be overtaken and passed by another vehicle approaching from the rear shall give way to the right in favor of the overtaking vehicle on suitable and audible signal being given by the driver of the overtaking vehicle, and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle. The driver of a vehicle shall not overtake and pass any other vehicle proceeding in the same direction at any intersection of highways or streets.

(Code 1982, § 26-52)

State law references: Similar provisions, 29 M.R.S.A. §§ 1151, 1152.

Sec. 70-94. Backing limitation.

The driver of a vehicle shall not back such vehicle unless such movement can be made with reasonable safety and without interfering with other traffic.

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(Code 1982, § 26-53)

Sec. 70-95. Passing vehicle stopped for pedestrians.

Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

(Code 1982, § 26-54)

State law references: Similar provisions, 29 M.R.S.A. § 954.

Sec. 70-96. Duty on approach of emergency vehicles.

Upon the immediate approach of an authorized emergency vehicle, when the driver thereof is giving an audible signal by siren, exhaust whistle or bell and emitting a flashing light, the driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the righthand edge or curb of the roadway, clear of any intersection, and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer. This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway. (Code 1982, § 26-55)

State law references: Similar provisions, 29 M.R.S.A. § 946.

Sec. 70-97. Following and meeting snowplows.

The driver of any vehicle other than one on official business shall not follow closer than 200 feet to any snowplow engaged in plowing. The driver of any vehicle meeting a snowplow engaged in plowing on a street shall turn off on another street, if practicable; otherwise, he shall come to a complete stop at least 50 feet away from such plow and not start again until the plow has passed. (Code 1982, § 26-56)

Sec. 70-98. Following, parking near fire apparatus.

The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than 500 feet or drive into or park such vehicle within the block where such fire apparatus has stopped in answer to the fire alarm.

(Code 1982, § 26-57)

State law references: Similar provisions, 29 M.R.S.A. § 1033.

Sec. 70-99. Authority to establish truck routes; use required.

Truck traffic routes to be identified by signs and markings erected and maintained by the police department, as directed by the city council, may be established within the city limits; when established and posted, all persons driving motor vehicles into the city limits for the transportation of property through the city shall drive such vehicles over and along such established truck traffic routes.

(Code 1982, § 26-60)

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Sec. 70-100. Heavy loads.

During any part of the period between November 15 and April 15 of each year, except when the surface of the road is solidly frozen, no driver of a vehicle, the gross weight of which (vehicle and load combined) exceeds 3 1/2 tons, shall drive such vehicle on those streets duly posted to that effect at each end thereof.

(Code 1982, § 26-61)

Sec. 70-101. Crossing fire hose.

No person shall drive a vehicle over any unprotected hose of the fire department when laid down on any street or private driveway, to be used at any fire or alarm of fire, without the consent of the fire department official in command.

(Code 1982, § 26-62)

State law references: Similar provisions, 29 M.R.S.A. § 996.

Sec. 70-102. Littering the streets prohibited.

- (a) No person shall operate a vehicle upon any public street in such a manner that material, refuse, feathers, junk or litter of any kind drips, sifts, leaks, drops or otherwise escapes therefrom and lands upon the surface of any street.
- (b) No person shall operate any truck or other vehicle carrying waste, feathers, trash, refuse or loose materials of any nature whatsoever, excepting trucks hauling sand, gravel or dirt, unless such truck or vehicle is equipped with a device suitable to prevent any of the aforementioned materials from escaping the truck or vehicle in any way. For a violation of this section to occur, there need not be proof that such material did escape and land on the roadway.
- (c) Any person found in violation of this provision shall be subject to the following penalties:
 - (1) A person who disposes of less than 15 pounds or 27 cubic feet of litter as defined above is subject to a forfeiture of not more than \$500.00 nor less than \$100.00 for the first violation and a forfeiture of not more than \$500.00 nor less than \$200.00 for a subsequent violation.
 - (2) A person who disposes of more than 15 pounds or 27 cubic feet of litter but less than 500 pounds or 100 cubic feet of litter, is subject to a forfeiture of not more than \$500.00 nor less than \$200.00 for the first violation and a forfeiture of not more than \$1,000.00 nor less than \$500.00 for a subsequent violation.

(Code 1982, § 26-64)

State law references: Maine Litter Control Act, 17 M.R.S.A. § 2261 et seq.

Sec. 70-103. Mufflers regulated.

No person shall drive a motor vehicle, except a fire department vehicle, on a street unless such motor vehicle is equipped with a muffler in good working order and in constant operation to prevent excessive noise and annoying smoke, nor use a muffler cutout on any vehicle, except a fire department vehicle upon any street.

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(Code 1982, § 26-65)

Sec. 70-104. Riding on motorcycles.

No person operating a motorcycle shall ride other than upon the permanent and regular seat attached thereto, or carry any other person, nor shall any other person ride upon such motorcycle, other than upon a firmly attached seat to the rear or side of the operator.

(Code 1982, § 26-66)

Sec. 70-105. No through traffic.

Whenever authorized signs are erected indicating any street or part thereof to be for no through traffic, as authorized by the city council, no person shall drive a vehicle upon any such street or portion thereof except drivers of vehicles having business or whose residences are within such restricted area.

(Code 1982, § 26-67)

Sec. 70-106. Trucks and buses prohibited on certain streets.

No truck which exceeds a gross weight as determined by the city council and no bus other than a local passenger bus picking up and discharging passengers along designated routes at specified stops shall travel over the streets or parts of streets designated as restricted to such vehicles being so, as authorized by the city council, except when necessary to render service to or to deliver supplies to persons residing or businesses and industries located adjacent thereto.

(Code 1982, § 26-68; Ord. No. 98-9, 10-15-98)

Secs. 70-107--70-130. Reserved.

ARTICLE IV. STOPPING, STANDING AND PARKING*

***State law references:** Municipal authority to lay out and regulate parking places, 23 M.R.S.A. § 2802; municipal authority to regulate traffic by means of signal devices or other methods, 29 M.R.S.A. § 1256.

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Sec. 70-131. Regulations not exclusive.

The provisions of this article imposing a time limit on parking or governing loading and unloading shall not relieve any person from the duty to observe other and more restrictive provisions prohibiting or limiting the stopping, standing or parking of vehicles or governing loading and unloading in specified places or at specified times. (Code 1982, § 26-81)

Sec. 70-132. Liability of vehicle registrant.

The fact that a vehicle is unlawfully parked shall be prima facie evidence of the unlawful parking of such vehicle by the person in whose name such vehicle is registered.

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(Code 1982, § 26-82)

Sec. 70-133. Exception for nonresidents.

Anything in this article to the contrary notwithstanding, the police chief is authorized to waive payment on any parking violation ticket issued to a nonresident when in the opinion of the police chief such violation is due to lack of knowledge of the violated provision of this chapter; provided, however, that this benefit shall not be extended to any violation deemed by the police chief to be deliberate, continued or flagrant, and provided that in no event shall this benefit extend to violation of the provision prohibiting parking in front of a hydrant area.

(Code 1982, § 26-83)

Sec. 70-134. Alternate penalty provision, payment schedule.

- (a) Persons violating any provision of this chapter relating to parking are subject to the general penalty provisions of section 1-8 of this Code. They may, however, if a summons to court has not been issued, elect, in lieu of such penalty, to pay for each violation in accordance with the city's policy manual as approved by the city council.
- (b) Payments for parking violations shall be made to such bureau as the city administrator shall designate. Such payments shall in no event be construed as an enforced imposition of a fine or penalty, but on the other hand shall be construed to be an amount which an offender may voluntarily contribute toward the cost and expense of furnishing to the public a less expensive alternative method of regulating and administering traffic law violations.
- (c) The fee[s] set forth in accordance with the city's policy manual as approved by the city council will double if not paid within 15 days.

(Code 1982, § 26-84; Ord. No. 99-5, 3-18-99; Ord. No. 02-22, 11-12-02; Ord. No. 04-14, 7-1-04; Ord. No. 08-06i, 8-14-08 Ord. No. 10-04, 3-18-10)

Sec. 70-135. Parking not to obstruct traffic.

No person shall stop, stand, park or leave his vehicle on any street in such a manner or under such conditions so as to obstruct the free passage of other vehicles in either direction, unless specifically permitted by a police officer, or so as to leave available less than ten feet of the width of the roadway for free movement of vehicular traffic.

(Code 1982, § 26-85)

Sec. 70-136. Obstructing sidewalk.

No person shall stop with any horse, team, cart, carriage, truck, automobile, motor vehicle or other vehicle on or across any sidewalk in the city in such manner as to hinder or obstruct travel over such sidewalk.

(Code 1982, § 26-86)

Sec. 70-137. Fire zones.

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No vehicle shall remain backed up to a curb in the fire zone, except when actually loading or unloading, provided the same can be done without obstructing travel, and only between the hours of 7:00 p.m. and 10:00 a.m.

(Code 1982, § 26-87)

Cross references: Fire prevention and protection, ch. 38.

Sec. 70-138. Parallel parking required, exception.

- (a) No person shall allow, permit or suffer any vehicle registered in his name to stand or be parked on any street other than parallel with the edge of the roadway, headed in the direction of lawful traffic movement and within 12 inches of the curb or edge of the roadway.
- (b) When specifically authorized by a police officer, any person may back a vehicle to the curb for the purpose of loading or unloading merchandise or materials for a period not in excess of 30 minutes. No person shall so back a vehicle to a curb unless specifically authorized by a police officer, and no person shall in any event back a vehicle onto any curb or sidewalk in this city.

(Code 1982, § 26-88)

Sec. 70-139. Diagonal parking.

Diagonal parking is hereby prohibited, except as otherwise provided by the city council.

(Code 1982, § 26-89)

Sec. 70-140. Parking prohibited in specified places.

No person shall stop, stand or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with the law or the directions of a police officer or traffic control device, in any of the following places:

- (1) On a sidewalk.
- (2) In front of a public or private driveway or alleyway.
- (3) Within an intersection.
- (4) Within 15 feet of a fire hydrant.
- (5) On a crosswalk.
- (6) Within 25 feet of the near corner of the curbs at an intersection, except where otherwise designated.
- (7) Within 15 feet upon the approach to any stop sign located at the side of a roadway.
- (8) Within 20 feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within 75 feet of such entrance when properly signposted.
- (9) Alongside or opposite any street excavation or obstruction when stopping,

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standing or parking would obstruct traffic.

- (10) On the roadway side of any vehicle stopped or parked at the edge of a curb of a street.
- (11) Upon any bridge.
- (12) At any place where official signs or curb painting so prohibit.
- (13) On or within 25 feet of any railroad tracks.

(Code 1982, § 26-104)

Sec. 70-141. Parking in alleys.

No person shall park a vehicle within an alley in such a manner or under such conditions as to leave available less than ten feet of the width of the roadway for the free movement of vehicular traffic, and no person shall stop, stand or park a vehicle within an alley in such position as to block the driveway entrance to any abutting property.

(Code 1982, § 26-90)

Sec. 70-142. Standing of large vehicles regulated.

No owner, driver or person in charge of any vehicle which has a carrying capacity of more than 6,000 pounds, or which including load is more than 25 feet in length, or which including load is more than eight feet in width, or which including load is more than 12 feet and six inches in height, shall permit such vehicle to stand upon any public street in the city for a longer period than one hour at any one time.

(Code 1982, § 26-91)

Sec. 70-143. Truck loading and unloading in fire zone.

From 9:00 a.m. to 5:00 p.m. on any day except on Sundays and public holidays, trucks and drays are prohibited from loading or unloading freight, goods and merchandise at all places, stores and buildings in the fire zone when it is reasonably feasible to perform such work off the street or in an adjacent alley, unless such loading or unloading can be done within five minutes.

(Code 1982, § 26-92)

Sec. 70-144. Public utility vehicles.

Vehicles operated by the city or by public utility companies, used for installation, repair and maintenance purposes, may be exempted by the police chief upon notice to the city clerk, in each case, temporarily for the period while actually at work at a definite location, from any of the requirements of this article, provided that during such exemption period, work will be conducted with all reasonable dispatch, and that such precautions as the police chief may require in the interest of public safety shall be taken. The police chief is authorized to place temporary signs prohibiting parking in such places at the scene of work as in his discretion he deems necessary to facilitate traffic and the work in progress. Subject to the necessary exceptions provided by this section, this article shall nevertheless be observed insofar as practicable. Upon receipt of such notice, the city clerk shall notify the police chief, the fire chief, and the director of public works

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of such operations.

(Code 1982, § 26-93)

Sec. 70-145. Interference with snow removal and sweeping, street paving, repairs.

No vehicle shall be parked at any time on any public street or way so as to interfere with or hinder the plowing or removal of snow, sweeping, street paving and/or street repairs by the city. Any person parking a vehicle in violation of a no parking sign, provided such signs shall have been posted for a period of four hours except in case of snowplowing when such signs shall have been posted for a period of two hours, shall be in violation of this section. Notwithstanding the imposition of a fine, the chief of police may also cause any vehicle parked in violation of this section to be removed and stored at the owner's expense.

(Code 1982, § 26-94)

State law references: Similar provisions, 29 M.R.S.A. § 1111.

Sec. 70-146. Parking to advertise, perform maintenance.

No person shall park a vehicle upon any roadway for the principal purpose of advertising, displaying such vehicle for sale or washing, greasing or repairing such vehicle except repairs necessitated by an emergency.

(Code 1982, § 26-95)

Cross references: Advertising, ch. 6.

Sec. 70-147. Parking in front of theaters.

No person shall park a vehicle between the hours of 1:00 p.m. and 11:00 p.m. within a space of 30 feet measured by the police chief along the curblin in front of the main entrance of any theater and marked by a sign. (Code 1982, § 26-96)

Sec. 70-148. Duty when leaving vehicle unattended.

No person driving or in charge of a motor vehicle shall permit it to stand on any roadway unattended without first effectively setting the brakes thereon and stopping the motor of such vehicle. No person shall allow an animal-drawn vehicle to be unattended unless it is reasonably fastened. No person shall leave an unattended vehicle with an ignition key in the vehicle.

(Code 1982, § 26-97)

State law references: Similar provisions, 29 M.R.S.A. § 942.

Sec. 70-149. Abandonment of a vehicle; removal, expense.

- (a) No person shall abandon any vehicle of any kind on any street of the city. The chief of police is hereby authorized to remove and arrange for the storage of any such abandoned vehicle from any street. The owner shall be responsible for the expense of towing and storage of a vehicle which has been removed pursuant to this provision.
- (b) Removal of a vehicle described in subsection (a) of this section or any part or accessory

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from the vehicle without the written consent of the owner or person in charge of the premises or property where the vehicle is located is a class E crime. This subsection applies to all persons, including the owner of the vehicle.

(Code 1982, § 26-98)

State law references: Similar provisions, 29 M.R.S.A. §§ 1111, 2610(7).

Sec. 70-150. Authority to designate hazardous or congested places; parking restricted.

- (a) The police chief with the approval of the council is hereby authorized to determine and designate by proper signs places not exceeding 100 feet in length in which the stopping, standing or parking of vehicles would create an especially hazardous condition or would cause unusual delay to traffic.
- (b) When official signs are erected at hazardous or congested places as authorized in this section, no person shall stop, stand or park a vehicle in any such designated place.

(Code 1982, § 26-99)

Sec. 70-151. Authority to regulate parking adjacent to school property.

The police chief is hereby authorized to cause temporary or permanent signs to be erected, indicating no parking adjacent to any school property, when such parking would, in his opinion, interfere with traffic or create a hazardous situation. When official signs are erected indicating no parking adjacent to any school property, no person shall park a vehicle in any such designated place.

(Code 1982, § 26-101)

Sec. 70-152. Lights on parked vehicles.

Whenever a vehicle is lawfully parked in a place and under conditions where there is sufficient artificial light to make such vehicle clearly visible from a distance of not less than 500 feet in each direction, no lights need be displayed upon such parked vehicle; otherwise, lights must be displayed during the period from one-half hour before sunset to one-half hour before sunrise. Any lighted headlamps upon a parked vehicle shall be depressed or dimmed.

(Code 1982, § 26-102)

State law references: Similar provisions, 29 M.R.S.A. § 1071.

Sec. 70-153. Reserved.

Sec. 70-154. Parking prohibited on even-numbered sides of certain streets.

During the period commencing December 1 and terminating March 31 of the following year, it shall be unlawful for any person to stop, park or stand any vehicle or leave such vehicle unattended on the even-numbered side of the public streets specified by the city council; provided, however, that metal signs at least 18 inches by 12 inches, with red printing on white background, be installed 150 feet apart on such streets giving notice of this restriction.

(Code 1982, § 26-105; Ord. No. 02-22, 11-12-02; Ord. No. 08-11, 1-15-09)

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Sec. 70-155. Parking prohibited on odd-numbered sides of certain streets.

During the period commencing December 1 and terminating March 31 of the following year, it shall be unlawful for any person to stop, park or stand any vehicle or leave such vehicle unattended on the odd-numbered side of the public ways or streets specified by the city council; provided, however, that metal signs 18 inches by 12 inches, with red printing on white background, be installed 150 feet apart on such streets giving notice of this restriction.

(Code 1982, § 26-106; Ord. No. 02-22, 11-12-02; Ord. No. 08-11, 1-15-09)

Sec. 70-156. Places where parking prohibited at all times, fire lanes.

When signs are erected giving notice thereof, no person shall park a vehicle at any time upon any of the streets or parts of streets as specified by the city council, nor shall any person stop, stand or park a vehicle at any time in any fire lane enumerated in this section or as specified by ordinance:

- (1) Any corner: No parking within 25 feet of any corner.
- (2) Bridge: No parking on any bridge.
- (3) Driveways: No person shall park a vehicle so as to block any driveway.

(Code 1982, § 26-107)

Sec. 70-157. Limited daytime parking in business area.

No person shall stop, stand or park any vehicle for more than one hour between the hours of 9:00 a.m. and 6:00 p.m. of any day except Sundays and legal holidays in front of any store, shop or place of business offering services to the public; provided, that this restriction shall not apply in those areas where parking is otherwise limited or restricted to less than one hour, or where parking is forbidden, or within any loading zone, taxi stand or bus stop.

(Code 1982, § 26-108)

Sec. 70-158. Parking time limited on streets.

- (a) No person shall park a vehicle on streets or sections of streets for longer than the period of time specified by the city council and identified by signs erected in each block.
- (b) No person shall park a vehicle on streets or sections of streets between dates or during times specified by the city council and identified by signs erected in each block.

(Code 1982, §§ 26-109--26-115; Ord. No. 99-6, 4-1-99; Ord. No. 08-11, 1-15-09; Ord. No. 11-03, 4-14-2011; Ord. No. 12-10, 10-4-12)

Secs. 70-159--70-165. Reserved.

Sec. 70-166. Parking in alleys prohibited.

Parking shall be prohibited in all alleys in the city.

(Code 1982, § 26-121)

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Sec. 70-167. Reserved.

Sec. 70-168. All-night parking.

On such streets as are specified by the city council, vehicles may be parked, stopped or allowed to stand between the hours of 6:00 p.m. and 9:00 a.m. the following day with the exception of areas adjacent to fire hydrants, warehouse doors, and any loading zones which may be appropriately designated.

(Code 1982, § 26-123)

Sec. 70-169. Daytime parking prohibited.

No vehicle shall be parked, stopped or allowed to stand on such streets as are specified by the city council between the hours of 9:00 a.m. and 6:00 p.m., except in cases of emergency.

(Code 1982, § 26-124)

Sec. 70-170. Parking prohibited on Monday through Saturday.

Parking is prohibited from Monday through Saturday upon such streets as are specified by the city council.

(Code 1982, § 26-125)

Sec. 70-171. Parking prohibited between 2:30 p.m. and 5:30 p.m., Monday through Friday.

No vehicle shall be parked, stopped or allowed to stand on such streets as are specified by the city council between the hours of 2:30 p.m. and 5:30 p.m., Monday through Friday, except in cases of emergency.

(Code 1982, § 26-126)

Sec. 70-172. Restricted use of taxi zones, emergencies.

No person shall stop, park or stand any vehicle other than a taxi in a taxi zone, except in an emergency.

(Code 1982, § 26-128)

Cross references: Taxicabs, § 82-26 et seq.

Sec. 70-173. Restricted use of bus stop zones.

No person shall stop, park or stand any vehicle other than a bus in a bus stop zone, except in an emergency.

(Code 1982, § 26-130)

Sec. 70-174. Bus and taxicab drivers regulated; time restriction.

(a) The driver of a bus shall not stand or park such bus upon any street in any business district at any place other than at a space which has been officially designated and

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appropriately marked a bus stop, except that this provision shall not prevent the driver of any such vehicle from temporarily stopping in accordance with other stopping or parking regulations at any place for the purpose of and while actually engaged in loading or unloading passengers.

- (b) The driver of a taxicab shall remain in the driver's seat, except while actually engaged in admitting or discharging passengers or transporting their luggage, while such taxicab is in a space which has been officially designated a taxi zone.
- (c) The driver of a bus or a taxicab is hereby authorized to park such vehicle in his designated space without restriction as to time.

(Code 1982, § 26-131)

Sec. 70-175. Other persons' use of bus stops and taxicab zones.

No person shall stop, stand or park a vehicle other than a bus or a taxicab in any such space which has been officially designated and appropriately marked a taxi zone or a bus stop, except that the driver of any passenger car or light delivery vehicle may stop the same therein for the purpose of and while actually engaged in loading or unloading passengers or parcels and when such stopping does not interfere with any operator who desires to drive a bus into such space.

(Code 1982, § 26-132)

Sec. 70-176. Reserved parking spaces.

The chief of police is hereby authorized to designate reserved parking spaces:

- (1) Where failure to do so would create traffic congestion;
- (2) When the space is to be for work in a building adjacent to such space;
- (3) For the physically handicapped; or
- (4) For city officers and employees.

(Code 1982, § 26-133)

Sec. 70-177. Loading zones.

- (a) *Designation.* Loading zones shall be located at such locations as are specified by the city council, and shall have such time limitations as are specified by the city council.
- (b) *Use limited.* No person shall stop, stand, park or leave any vehicle upon any street where an officially designated loading zone space is appropriately marked, except for the purpose of and while actually engaged in the act of either loading or unloading passengers or personal property of every nature. It shall be unlawful for any person to cause, allow, permit or suffer any such vehicle registered in his name to be stopped, parked or left in a manner contrary to the above provisions. This section shall not be interpreted as a limitation upon section 70-143.

(Code 1982, §§ 26-146, 26-147)

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Sec. 70-178. Interference with snow removal.

No vehicle shall be parked at any time on any public street or way so as to interfere with or hinder the removal of snow from the street or way by the city by plowing, loading, and hauling, and any person parking a vehicle in violation of a parking ban or no parking sign placed on any street or way because of snow plowing, loading, or hauling operations shall be guilty of an offense. Notwithstanding the imposition of a fine, the chief of police or his or her designee may also cause any vehicle so parked to be removed from such street in accordance with the provisions of this chapter. (Ord. No. 12-10, 10-4-12)

Secs. 70-179--70-185. Reserved.

DIVISION 2. PARKING METERS

Sec. 70-186. Meter requirements.

Each parking meter established in accordance with this division shall be so set as to display a signal showing legal parking upon the deposit of the required coin of the United States therein, for the period of time conforming to the parking limit established upon which such parking meter is placed; and each such meter shall by its mechanism indicate the legal time a vehicle may remain parked and shall continue in operation from the time of depositing such coin until the expiration of the time fixed by this division as the parking limit for the part of the street upon which such meter is placed. Each parking meter shall also be so arranged that upon the expiration of the parking limit, it will indicate by a mechanical operation and the indicating of a proper signal that the lawful parking period as fixed or authorized under this division has expired.

(Code 1982, § 26-164)

Sec. 70-187. Authority to install.

The installation of parking meters is hereby authorized on the streets specified by the city council.

(Code 1982, § 26-165)

Sec. 70-188. Reserved.

Sec. 70-189. Correct parking position required.

- (a) Any vehicle parked in any parking space as provided in this division shall be parked with the hood of such vehicle alongside of or next to the parking meter alongside of such parking space in parallel parking spaces, and with the radiator directed at the meter in diagonal parking spaces, and in either event he shall be parked within the lines marked on the street for such parking space, as provided in this division.
- (b) It shall be unlawful to park any vehicle across any line or mark designating the parking space for which any parking meter is to be used, or to park such vehicle in such a way

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that it shall not be within the area so designated by such lines or markings.

(Code 1982, § 26-167)

Sec. 70-190. Coin required; overtime regulated.

When any vehicle shall be parked in any space alongside of or next to a parking meter established in accordance with this division, the owner, operator, manager or driver of such vehicle shall upon entering the parking space immediately deposit in such parking meter such coin of the United States as is designated for deposit therein in accordance with the terms of this division. Upon the deposit of such coin and placing such meter in operation, the parking meter space may be lawfully occupied by such vehicle during the period of parking time prescribed for such parking meter space. If the vehicle shall remain parked in any such parking space beyond the established parking limit as shown by meter indication for such parking space, the parking meter shall display a sign showing illegal parking, and in that event, such vehicle shall be considered as parked overtime and beyond the time fixed by the provisions and authority of this division, and the parking of a vehicle overtime or beyond the period of time fixed by the provisions of this division in any such part of a street where any such parking meter is located shall be a violation of this division and punished as provided in this division. It shall be unlawful for any person to cause, allow, permit or suffer any such vehicle registered in his name to be parked overtime or beyond the lawful period of time as above described.

(Code 1982, § 26-168)

Sec. 70-191. Failure to deposit coin.

All parking is prohibited in any parking space where a parking meter is installed, unless a deposit of the coin indicated by such meter is made as provided in this division. Any vehicle parked in violation of this section shall be deemed to be illegally parked under the provisions of this division.

(Code 1982, § 26-169)

Sec. 70-192. Reserved.

Sec. 70-193. Extension of parking time.

It shall be unlawful and a violation of this division for any person to deposit in a parking meter a coin for the purpose of increasing or extending the parking time of any vehicle beyond the legal parking time established for such parking meter space.

(Code 1982, § 26-171)

Sec. 70-194. Failure to deposit coin evidence of unlawful parking.

The fact that a vehicle is in a metered parking space when the time signal on the parking meter for such space indicates no parking permitted without the deposit of a coin shall be prima facie evidence that such vehicle has been parked in such parking space longer than the lawfully permitted period, and the fact that a vehicle is unlawfully parked shall be prima facie evidence of the unlawful parking of such vehicle by the person in whose name such vehicle is registered.

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(Code 1982, § 26-172)

Sec. 70-195. Use of slugs.

It shall be unlawful for any person to deposit in any parking meter any slug, device or metallic substitute for a coin of the United States.

(Code 1982, § 26-173)

Sec. 70-196. Tampering with meter.

It shall be unlawful for any person to deface, injure, tamper with, open or willfully break, destroy or impair the usefulness of any parking meter installed under the provisions of this division.

(Code 1982, § 26-174)

Sec. 70-197. Fee schedule.

The amount of the fee for the use of each parking meter space shall be based upon the length of the legal parking period for such parking space as may be designated by ordinance and shall be as specified by the city council.

(Code 1982, § 26-175)

Sec. 70-198. Location, time limitations.

Parking meters shall be located at such locations as are specified by the city council, and shall have such time limitations as are specified by the city council.

(Code 1982, § 26-176)

Secs. 70-199--70-240. Reserved.

ARTICLE V. PEDESTRIANS*

***State law references:** Pedestrians on ways, 29 M.R.S.A. § 904-A; pedestrians' right-of-way on sidewalks, 29 M.R.S.A. § 904-B.

Sec. 70-241. Subject to traffic control signals.

Pedestrians shall be subject to traffic control signals, as established by law, but at all other places pedestrians shall be granted those rights and be subject to the restrictions stated in this article.

(Code 1982, § 26-226)

Sec. 70-242. Authority to establish crosswalks.

The chief of the police department is hereby empowered and authorized to designate and maintain by appropriate devices, marks or lines upon the surface of the roadway, crosswalks

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where in his opinion there is particular danger to pedestrians crossing the roadway, and at such other places as he may deem necessary.

(Code 1982, § 26-227)

Sec. 70-243. Use of crosswalks.

Pedestrians shall move, whenever practicable, upon the right half of a crosswalk.

(Code 1982, § 26-228)

Sec. 70-244. Crossing at other than crosswalk.

Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.

(Code 1982, § 26-229)

State law references: Similar provisions, 29 M.R.S.A. § 955.

Sec. 70-245. Crossing in business district.

No pedestrian shall cross a roadway at any place in the business district other than by a route at right angles to the curb or by the shortest route to the opposite curb except in the crosswalk.

(Code 1982, § 26-230)

Sec. 70-246. Drivers to exercise due care.

Notwithstanding the foregoing provisions of this article, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway.

(Code 1982, § 26-231)

Secs. 70-247--70-265. Reserved.

ARTICLE VI. BICYCLES*

***State law references:** Bicycle regulations, 29 M.R.S.A. § 1961 et seq.

Sec. 70-266. Defined.

As used in this article, the term "bicycle" means any device propelled by human power upon which any person may ride, having two tandem wheels either of which is more than 20 inches in diameter.

(Code 1982, § 6-1)

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Cross references: Definitions generally, § 1-2.

State law references: Similar provisions, 29 M.R.S.A. § 1(1-D).

Sec. 70-267. Inspections.

Any police officer may stop any bicycle for the purpose of ascertaining whether its equipment complies with the requirements of this article. If such bicycle is found to be in an unsafe mechanical condition, such police officer may refuse to permit the operation of such bicycle on any public street or any path set aside for the exclusive use of bicycles.

(Code 1982, § 6-2)

Sec. 70-268. Reserved.

Sec. 70-269. Applicability of traffic laws.

Any person propelling or riding a bicycle upon any street or upon any public path set aside for the exclusive use of bicycles shall be subject to all of the duties applicable to the driver of a vehicle by the laws of the state and the city, except as to special regulations in this article and except as to those provisions of laws and ordinances which by their nature can have no application. (Code 1982, § 6-4)

Sec. 70-270. Obedience to traffic control devices.

- (a) Any person operating a bicycle shall obey the instructions of official traffic control signals, signs and other control devices applicable to vehicles, unless otherwise directed by a police officer.
- (b) Whenever authorized signs are erected indicating that no right or left or U turn is permitted, no person operating a bicycle shall disobey the direction of any such sign except when such person dismounts from the bicycle to make such turns, in which case, such person shall then obey the regulations applicable to pedestrians.

(Code 1982, § 6-5)

Sec. 70-271. Parking.

No person shall park a bicycle upon a street other than the roadway against the curb, upon the sidewalk in a rack to support the bicycle, or against a building in such manner as to afford the least obstruction to pedestrian traffic. (Code 1982, § 6-6)

Sec. 70-272. General operational regulations.

- (a) Any person propelling a bicycle shall not ride other than astride a permanent and regular seat attached thereto.
- (b) No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.
- (c) No rider of a bicycle shall remove both hands from the handlebars, or feet from the pedals, or practice acrobatics or fancy riding on any street or public path set aside for the

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exclusive use of bicycles.

- (d) Any person operating a bicycle upon a roadway shall ride as near to the right side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.
- (e) Any person riding a bicycle upon any roadway shall ride single file.
- (f) Wherever a usable path for bicycles has been provided adjacent to a roadway, bicycle riders shall use such paths and shall not use the roadway.
- (g) Any person riding upon any bicycle, coaster, rollerskates, sled or toy vehicle shall not attach the same, or himself, to any moving vehicle upon any roadway.
- (h) No person operating a bicycle shall carry any package, bundle or article which prevents the rider from keeping at least one hand upon the handlebars.
- (i) No person shall operate a bicycle at a speed greater than is reasonable and prudent under the conditions then existing.
- (j) The operator of a bicycle, when crossing a sidewalk, shall yield the right-of-way to all pedestrians, and in entering a public street shall yield the right-of-way to all approaching vehicles.

(Code 1982, § 6-7)

Sec. 70-273. Authority to prohibit operation on streets, sidewalks, paths; riding on sidewalks.

The chief of police is authorized to prohibit the operation of any bicycles on any public street, sidewalk or path where such operation would seriously conflict with current automobile or pedestrian traffic. Persons operating any bicycle on a sidewalk shall keep to the street side and yield the right-of-way to pedestrians. An audible signal shall be given before overtaking and passing such pedestrians. (Code 1982, § 6-8)

Sec. 70-274. Equipment.

Any bicycle, when in use in the nighttime, or at other times when motor vehicles are required to display headlamps by law, shall be equipped with and have lighted a lamp on the front which shall emit a white light visible from a distance of at least 200 feet to the front and a red reflector to the rear which shall be visible at least 200 feet to the rear. Bicycle pedals shall bear reflector strips and bicycle handlebars shall bear reflector tapes when in use in the nighttime or at other times when motor vehicles are required to display headlamps by law. Every bicycle shall be equipped with a brake which shall enable the operator to stop the bicycle within a reasonable distance.

(Code 1982, § 6-9)

State law references: Similar provisions, 29 M.R.S.A. § 1962.

Sec. 70-275. Parent's, guardian's responsibility.

The parent of any child and the guardian of any ward shall not authorize or knowingly permit any such child or ward to violate any of the provisions of this article.

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(Code 1982, § 6-10)

Sec. 70-276. Penalty for violation of article.

Any juvenile who violates any of the provisions of this article, by the authority of the chief of police, shall have his bicycle impounded for a period not to exceed five days for the first offense, for a period not to exceed ten days for a second offense, and for a period not to exceed 30 days for any subsequent offenses.

(Code 1982, § 6-11)

State law references: Bicycle impoundment, 29 M.R.S.A. § 1963.

Chapter 74

UTILITIES*

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***Cross references:** Buildings and building regulations, ch. 18; streets and sidewalks, ch. 66; zoning and land use, app. A.

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ARTICLE I. IN GENERAL

Secs. 74-1--74-25. Reserved.

ARTICLE II. SEWERS AND DRAINS*

***State law references:** Generally, 23 M.R.S.A. § 651 et seq., 30-A M.R.S.A. § 3401 et seq.

DIVISION 1. GENERALLY

Sec. 74-26. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Applicant or *owner* means any person requesting approval to discharge domestic or industrial wastewaters into facilities of the city.

Authority means the Lewiston-Auburn water pollution control authority or its duly authorized representative.

Biochemical oxygen demand (BOD) means the quantity of oxygen utilized in the biochemical oxidation of wastewater under standard laboratory procedure in five days at 20 degrees Celsius, expressed in milligrams per liter.

Combined sewer means a sewer receiving both wastewater and stormwater.

Director means the director of public works of the city or his authorized deputy, agent or representative.

Domestic sewer means a sewer which carries domestic wastewater and to which stormwaters, surface waters and groundwaters are not intentionally admitted.

Domestic wastewater means the wastewater derived principally from dwellings, business buildings, institutions, and the like. It may or may not contain groundwater, surface water or stormwater.

E.P.A. means the Environmental Protection Agency of the United States government.

Excessive means amounts or concentrations of a constituent of a wastewater which in the judgment of the city will cause damage to any sewerage facility, which will be harmful to a wastewater treatment process, which cannot be removed in the wastewater treatment works of the authority to the degree required to meet the limiting stream classification standards of the Androscoggin River, which can otherwise endanger life, limb or public property, and/or which can constitute a nuisance.

Facilities means and includes structures and conduits for the purpose of collecting, treating, neutralizing, stabilizing or disposing of domestic wastewater and/or industrial or other wastewaters as are disposed of by means of such structures and conduits, including treatment and disposal works, necessary intercepting, outfall and outlet sewers, and pumping stations integral to such facilities with sewers, equipment, furnishing thereof and other appurtenances connected

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therewith.

Garbage means the animal and vegetable wastes resulting from the handling, preparation, cooking and serving of food. It is composed largely of putrescible organic matter and its natural moisture content.

Industrial wastewater means the wastewater in which the liquid wastes from industrial manufacturing processes, laboratory, trade or business predominates as distinct from domestic wastewater.

Industry means an establishment with facilities for mechanical, testing, trade or manufacturing purposes.

pH means the reciprocal of the logarithm of the hydrogen ion concentration in grams per liter of solution.

Properly shredded garbage means garbage that has been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers with no particle greater than one-half inch (1.27 cm) in any dimension.

Public sewer means a sewer in which all owners of abutting properties have equal rights, and is owned, maintained and controlled by public authority (the city).

Receiving waters means any watercourse, river, pond, ditch, lake, aquifer or other body of surface water or groundwater receiving discharge of wastewaters.

Sewer means a pipe or conduit for carrying wastewater.

Slug means any discharge of water or wastewater which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than 15 minutes more than five times the average 24-hour concentration or flow during normal operation.

Spill means the release, accidental or otherwise, of any material not normally released to the facilities, which by virtue of its volume, concentration or physical or chemical characteristics creates a hazard to the facilities, their operation or their personnel. Such characteristics shall include, but are not limited to, volatile, explosive, toxic or otherwise unacceptable materials.

Storm drain means a pipe or conduit for conveying rainwater, groundwater, subsurface water, condensate, cooling water or other similar discharge to a storm drain or combined sewer.

Suspended solids means solids that either float on the surface of, or are in suspension in, water, wastewater or other liquids, and which are removable by laboratory filtering, and are referred to as nonfilterable residue in the laboratory test prescribed in Standard Methods for the Examination of Water and Wastewater, as published by the American Public Health Association, American Water Works Association and Water Environment Federation.

Wastes means substances in liquid, solid or gaseous form that can be carried in water.

Wastewater means the spent water of a community and may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions, together with any groundwater, surface water and stormwater that may be present.

Wastewater treatment works means any arrangement of devices and structures used for treating wastewater.

Wastewater works means all structures, equipment and processes for collecting, pumping,

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treating and disposing of wastewater.

(Code 1982, § 23-1)

Cross references: Definitions generally, § 1-2.

Sec. 74-27. Drainage plan approval required prior to issuance of building permit.

Prior to the issuance of any building permits for a lot or lots which are not serviced by a drainage plan approved by the director of public works, such plan shall be submitted by the developer of the lot or lots and shall be considered for approval by the director. The drainage plan shall show both sanitary and storm sewerage and, when requested by the director, water mains.

(Code 1982, § 23-2)

Sec. 74-28. Alteration of drainage areas regulated.

(a) For the purpose of this section, the following definitions shall apply:

Alteration or to alter means to dam, to ditch, to pipe, to dredge, to fill, to deposit material or to change the contours of the earth.

Drainageway means a stream or system of streams as well as the area needed to contain the runoff of and to such streams, as well as outfalls of culverts crossing roadways, driveways, walkways and railways.

Stream means any freely flowing water, whether permanent or intermittent.

- (b) No person shall alter the contours of any stream or drainageway, in any zone, without first obtaining an alteration permit from the building inspector, except when such alteration is conducted in accordance with an approved subdivision plan.
- (c) Alteration permits shall be issued by the building inspector, upon recommendation of the director of public works, when it is found that such alterations will not cause water to intrude upon adjacent parcels, that the flood-carrying capacity within the altered or relocated portion of the watercourse will be maintained, and that the alteration will not otherwise endanger the health, safety and welfare of the public. Permits for temporary alterations may be granted for a period not to exceed six months provided that no permanent alteration of the stream or drainageway shall occur.
- (d) The application to the building inspector for an alteration permit shall be supported by a plan detailing the following information:
- (1) Name and address of applicant.
 - (2) Name and address of the owner of the property on which the alteration is to take place.
 - (3) The exact location on the property of the proposed alteration.
 - (4) Reason for the proposed alteration.
 - (5) Description of work to be undertaken.
- (e) In granting an alteration permit, the building inspector shall impose reasonable conditions

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regarding the length of time required to complete the project, the area to be serviced, and any other conditions he finds to be necessary to protect the interest of the public, abutting owners or the city.

- (f) It will be the responsibility of the building inspector to determine if a violation has occurred, to notify the violator and owner, and to ensure that the violation is corrected.
- (g) The fee for an alteration permit, covering three visits by the building inspector, shall be \$5.00. If additional inspections are necessary, a surcharge of \$2.00 per extra visit will be charged.
- (h) Violation of this section shall be an offense.
- (i) The state bureau of civil emergency preparedness and the Federal Insurance Administration shall be notified in writing of all applications to alter or relocate a stream. In riverine situations, potentially affected adjacent communities shall also be notified.

(Code 1982, § 23-3)

Secs. 74-29--74-40. Reserved.

DIVISION 2. PUBLIC SYSTEMS

Sec. 74-41. Intent and purpose.

This division regulates the use of the public sewerage and drainage systems and the discharge of waters and wastes into the systems and provides for sewerage system use charges and for penalties for violations of this division.

(Code 1982, § 23-16)

Sec. 74-42. Use of public sewer required.

- (a) The owner of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes situated within the city and abutting on any street, alley or right-of-way in which there is now located a public domestic or combined sewer of the city is hereby required at his expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this division, within 90 days after date of official notice to do so, provided that such public sewer is within 100 feet of the property line.
- (b) The provisions of subsection (a) of this section shall not be applicable to an accessory structure located on the same lot as a principal building containing sanitary facilities which are available at all times to users or occupants of the accessory structure. If food is sold, served, prepared, processed, packaged or repackaged in or from the accessory structure, the provisions of this subsection do not apply.

(Code 1982, § 23-17)

Sec. 74-43. Permit required to connect to public sewer.

No private drain or sewer shall be entered into a public sewer or storm drain or any

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appurtenances thereof without a permit from the director of public works.

(Code 1982, § 23-18)

State law references: Authority to require sewer connection, 30-A M.R.S.A. § 3405.

Sec. 74-44. Application for permit; agreement required.

- (a) Applications for permits to connect or disconnect with any public sewer or drain must be made to the director of public works on a form prescribed and furnished by him at his office. It must be accompanied by a certificate from the plumbing inspector after the system of plumbing is approved by him. The application must be signed by the owner of the premises to be connected, or his attorney, and must state the location of premises and the name of the licensed plumber to be employed. All applications must be made prior to the commencement of any work thereon and be accompanied by a fee set by policy to cover the cost of processing the application and issuing the permit and inspecting the connection or disconnection with a public sewer or drain, such funds to be deposited directly into the sewer or drain account and used for sewer or drain purposes only. This fee shall be in addition to the system use charges and impact fee.
- (b) Each application under this division must include an agreement on the part of the owner to abide by all the provisions of this chapter and all the rules and regulations established by the director of public works and to waive any claim for damages in case of revocation as provided in section 74-54.
- (c) All applicants for permits for sewer connections involving industrial wastewater, in addition to compliance to subsections (a) and (b) of this section, shall also file application for a permit to discharge wastes to the facilities of the Lewiston-Auburn water pollution control authority. Such application shall be made directly to such authority, on forms provided by the authority, with a copy to the city.

(Code 1982, § 23-19)

Sec. 74-45. Notification before connection to public sewer.

The applicant for a building sewer permit shall notify the director of public works when the building sewer is ready for inspection and connection to the public sewer. The connection shall be made under the supervision of the director of public works or his representative.

(Code 1982, § 23-20)

Sec. 74-46. Responsibility for connection costs.

All present or future costs and expenses incident to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the city from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

(Code 1982, § 23-21)

Sec. 74-47. Independent building sewers required.

A separate and independent building sewer shall be provided for every building; except

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where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer.

(Code 1982, § 23-22)

Sec. 74-48. Excavations to be guarded; restoration of public property.

All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the city.

(Code 1982, § 23-23)

Sec. 74-49. Regulation of connection to public sewer generally.

The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing code or other rules and regulations of the director of public works. All such connections shall be made gastight and watertight. Any deviation from the prescribed procedures and materials must be approved by the director of public works before installation.

(Code 1982, § 23-24)

Sec. 74-50. Abandonment of service.

No person shall dismantle or move any building in this city having a service entrance into a public sewer without first having sealed the area of the entrance of the service into such building with a masonry plug. If, upon examination by the plumbing inspector, the sewer service is found to be unserviceable, the owner shall remove such service and seal the opening at the main. No such work shall be undertaken until a permit, as described in section 74-44, is obtained.

(Code 1982, § 23-25)

Sec. 74-51. Drain elevation.

Whenever possible, the building sewer shall be brought from the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, wastewater carried by such building drain shall be lifted by an approved means so that it may be discharged to the public sewer.

(Code 1982, § 23-26)

Sec. 74-52. Use of old building sewers.

Old building sewers may be used in connection with new buildings only when they can be shown by the applicant to meet all requirements of this division.

(Code 1982, § 23-27)

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Sec. 74-53. Construction methods and materials.

The size, slope, alignment and materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench, shall all conform to the requirements of the building and plumbing codes or other rules and regulations of the director of public works.

(Code 1982, § 23-28)

Sec. 74-54. Revocation of permits to connect.

Permits to connect with a sewer may at any time be revoked and annulled by the director of public works or by the plumbing inspector for violation of section 74-44, and all parties in interest shall be held to have waived the right to claim damages on account of such revocation, provided that such revocation shall be annulled on compliance with the provisions in this chapter and the rules and regulations of the city council and director of public works.

(Code 1982, § 23-29)

Sec. 74-55. Disposal of unpolluted wastes.

- (a) No person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, subsurface drainage, cooling water or unpolluted industrial process water to any domestic sewer. Existing plumbing systems not meeting this requirement will be allowed until such time as repairs or renovations of the existing plumbing system make separation feasible.
- (b) Stormwater and all other unpolluted drainage shall be discharged to storm drains or to a natural outlet approved by the director of public works and the health officer. Industrial cooling water or unpolluted process water may be discharged upon approval of the director of public works to storm drains or natural outlets.
- (c) In areas where the sewer system consists of combined sewers or where connections of downspouts, surface drains, and other connections of unpolluted water to the wastewater system have been allowed, the city:
 - (1) Shall permit no new construction of combined wastewater and stormwater drainage systems on real properties. New wastewater and stormwater drainage service connections shall be kept separated;
 - (2) Wherever feasible, shall reduce or eliminate storm drain connections that permit the discharge into existing wastewater works of waters not containing domestic or industrial wastewaters;
 - (3) Shall require that joints and openings of all domestic wastewater systems shall be made watertight to prevent excess infiltration or exfiltration;
 - (4) Where circumstances make compliance with subsections (a) and (b) of this section impractical according to the judgment of the director of public works, then the director may approve a plan for discharge of such waters listed in subsections (a) and (b) of this section in an alternate manner, taking into consideration the existing sewer system, the effect of the plan on the environment of the area and on the sewer system for the city.

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(Code 1982, § 23-30)

Sec. 74-56. Harmful wastes prohibited.

- (a) No person shall discharge or cause or allow to be discharged into any sewer under the control of the city the following described substances, materials, waters or wastes if in the opinion of the authority or city council on recommendation of the director of public works such substances, materials, waters or wastes are in excessive amounts or concentrations.
- (b) Unless allowed under section 74-57, wastewaters and wastes considered to contain excessive constituents or characteristics as determined by the authority and the city, and therefore prohibited, include:
 - (1) Any wastewaters containing toxic or poisonous liquids, bases or solids in excessive quantity, either singly or by interaction with other wastes.
 - (2) Any wastewater, liquid or vapor having a temperature higher than 150 degrees Fahrenheit.
 - (3) Any wastewaters containing caustic alkalinity, calculated as CaCO₃ (calcium carbonate) in excess of 100 mg/l, or in volumes which may be excessive.
 - (4) Any wastewaters having a pH lower than 5.5 or higher than 9.5 or having any other corrosive property capable of causing damage or hazard to sewers, structures, equipment, processes or personnel at the wastewater works.
 - (5) Any wastewaters containing fats, wax, grease or oils, whether emulsified or not, in excess of 100 mg/l or containing substances which may solidify or become viscous at temperatures between 32 degrees Fahrenheit and 150 degrees Fahrenheit.
 - (6) Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid or gas.
 - (7) Any solid or viscous substances in such quantities or of such size as to be capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the wastewater works, such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair, fleshings, entrails, paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.
 - (8) Any garbage that has not been properly shredded.
 - (9) Any wastewaters containing excessive amounts of iron, chromium, copper, zinc, mercury, mineral acid and similar objectionable or toxic substances.
 - (10) Any wastewaters containing phenols or other taste- or odor-producing substances in excessive amounts.
 - (11) Any radioactive wastes or isotopes in excessive amounts or of such halflife or concentration as may exceed limits established in applicable state or federal regulations or by the authority or city.

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- (12) Any wastewaters containing:
- a. An average concentration of suspended solids in excess of 400 mg/l or an average concentration of excessive dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate) of 600 mg/l.
 - b. Materials which cause excessive discoloration, such as, but not limited to, dye wastes and vegetable tanning solutions.
 - c. An average concentration of BOD in excess of 500 mg/l, or material which causes unusual chemical oxygen demand, or chlorine requirements.
 - d. Materials in such concentration as to constitute slugs.
 - e. Materials which are not amenable to treatment or reduction by the wastewater treatment process employed, or are amenable to treatment only to such a limited degree that the wastewater treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.
 - f. Septic tank solids except under specific license from the authority and at locations designated by the authority.
- (c) Persons who desire to discharge industrial wastewaters into facilities of the city shall make their formal application to the authority, with a copy to the city. In forming an opinion as to the limitations on acceptability of any wastes, the city and the authority will give consideration to such factors as the quantities of subject wastes in relation to flow and velocities in the sewers, materials of construction of the sewers, nature of the wastewater treatment process, capacity of the wastewater treatment plant, degree of treatability of wastes in the wastewater treatment plant, and other pertinent factors.
- (d) Any person discharging industrial wastewaters directly or indirectly into facilities of the city that do not comply with this division may be subject to action by the city or authority, which action may include, but not be limited to, the withdrawal of permission to discharge wastewaters into facilities of the city.
- (e) Limits of acceptable amounts and concentrations of the constituents of wastewater to be discharged to facilities of the city shall be the same as are established by the authority.
- (f) Any spill as defined in section 74-26 shall be reported immediately to the authority.
- (g) Any damages experienced by the facility as the result of a spill are considered a violation of this division and costs for repair, replacement or other associated costs are recoverable under section 74-63.

(Code 1982, § 23-31)

Sec. 74-57. Control of wastewater, waste strength.

If any wastewaters or wastes are discharged or are proposed to be discharged to the public sewers, containing excessive substances or possessing excessive characteristics, as enumerated in section 74-56, the city may:

- (1) Reject the wastewaters or the wastes;

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- (2) Require that pretreatment of wastewaters or wastes be provided to modify them to an acceptable condition for discharge to the public sewers;
- (3) Require control over the quantities and rates of discharge of the wastewaters or the wastes; and/or
- (4) Require payment to cover the added costs of handling and treating the wastes not covered by sewerage use charges under the provisions of sections 74-67 and 74-68.

(Code 1982, § 23-32)

Sec. 74-58. Grease, oil and sand interceptors; maintenance of preliminary treatment and flow-equalizing facilities.

- (a) Grease, oil and sand interceptors shall be provided when, in the opinion of the director of public works or the authority, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the director of public works and the authority, and shall be located as to be readily and easily accessible for cleaning and inspection.
- (b) When preliminary treatment or flow-equalizing facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense.

(Code 1982, § 23-33)

Sec. 74-59. Control structures and flow-measuring devices.

When required by the director of public works or the authority, the owner of any property served by a public sewer carrying industrial wastes shall install a suitable control structure and wastewater flow-measuring and monitoring device in the building sewer to facilitate observation, sampling and measurement of the wastes. Such structures and measuring devices, when required, shall be accessible and safely located and shall be constructed in accordance with the plans approved by the director of public works and the authority. The structure and flow-measuring device shall be installed by the owner at his own expense and shall be maintained by him so as to meet the standards set by the director of public works and the authority at all times.

(Code 1982, § 23-34)

Sec. 74-60. Preliminary treatment facilities generally.

The applicant shall provide such works for the preliminary treatment of the wastewater, drainage, substances or wastes as may be required to carry out the purpose of this division by the city and the authority, and the applicant will permit duly authorized representatives of the city or the authority to enter the premises of the industry to sample and measure wastewaters, as needed to check characteristics of the wastewaters, when so directed by the authority. Applications for pretreatment facilities are to be accompanied by plans, specifications and other pertinent information relating to these facilities; along with data showing essential characteristics of all wastewater outlets, analyses of existing wastewater (see section 74-66), and statements as to

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existing and expected average and maximum wastewater flows. All of this information must be submitted to and approved by the city and the authority prior to initiating discharge into facilities of the authority or the city. Where preliminary treatment facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and efficient operation by the owner at his expense.

(Code 1982, § 23-35)

Sec. 74-61. Standard tests.

All measurements, tests and analyses of the characteristics of the waters and wastes to which reference is made in section 74-66 shall be determined in accordance with the Standard Methods for the Examination of Water and Sewage and shall be determined at the control structure provided for in section 74-59, or upon suitable samples taken at the control structure. If no special structure has been required, a control structure shall be considered to be the nearest downstream manhole to the public sewer from the point at which the building sewer is connected.

(Code 1982, § 23-36)

Sec. 74-62. Notice and cessation of violations.

Any person found to be violating or in violation of any provision of this division shall be served by the city council, on recommendation of the director of public works, with a written notice stating the nature of the violation and providing a reasonable time limit, as determined by the director, for the satisfactory correction thereof. The offender shall, within the period of time stated in the notice, permanently cease all such violations.

(Code 1982, § 23-37)

Sec. 74-63. Liability of violator.

Any person violating any of the provisions of this division shall become liable to the city for any expense, loss or damage occasioned by the city by reason of such violation.

(Code 1982, § 23-38)

Sec. 74-64. Reports of industrial wastewater discharges; applicant to collect, analyze wastewater.

- (a) If deemed necessary by the director of public works, each applicant shall submit an annual report on July 1 each year, or such other time as designated by the authority, to the authority, with a copy to the city, containing information as to the minimum, average and peak flows of industrial wastewater discharges during the previous year and at such time or times designated by the authority, accompanied by designated analyses of wastewater samplings taken in an acceptable manner at approved times during the flow measuring periods.
- (b) Each applicant will be responsible, at his own expense, to collect and analyze wastewater from his property in a manner prescribed by the city.

(Code 1982, § 23-39)

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Sec. 74-65. Special agreement to treat industrial waste.

No statement contained in this division shall be construed as preventing any special agreement or arrangement between the city and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the city for treatment, subject to payment therefor by the industrial concern.

(Code 1982, § 23-40)

Sec. 74-66. Measurements and analyses of industrial wastes.

Measurement and analyses of industrial wastes are to include, but not necessarily be limited to, items from the following list where applicable. The analyses are to be conducted in accordance with the methods prescribed in the latest edition of Standard Methods for the Examination of Water and Waste Water, as published by the American Public Health Association, American Water Works Association and Water Environment Federation. If any item is not applicable, it shall be so stated on the report of the measurements and the reason for deletion stated.

(1) *Physical parameters:*

Flow

pH

Temperature

Color

Specific conductance

(2) *Chemical parameters:*

Total solids

Total volatile solids

Total suspended solids

Total dissolved solids

Acidity

Alkalinity

Five-day BOD

COD

Oil and grease

Chloride

Sulfate

Sulfide

Phenols

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NH₃ (as N)

NO₃ (as N)

NO₂ (as N)

Kjeldahl organic nitrogen (as N)

Ortho-phosphorous (as P)

Total phosphorous

Cr, Cu, Fe, Cd, Pb, Mn, Zn, F, As, Hg

(Code 1982, § 23-41)

Sec. 74-67. Sewerage system use charges.

- (a) From time to time, the city council upon recommendation from the director of public works and city administrator shall, after public notice and hearing, establish a schedule of rates for sewerage system use charges. The rate schedule shall include a minimum rate and a surcharge for high concentration wastewater.
- (b) The quantity of wastewater shall be the actual quantity of water supplied as determined from the water meter readings made by the water division of the department of public works, except that the director of public works upon approval of the city administrator shall adjust the amount of wastewater where it can be determined that the amount of wastewater is greater than or less than the amount of water supplied by the water division.
- (c) Where domestic wastewater is discharged by a person to a public sewer and water is supplied from sources other than the water department, the quantity of wastewater discharged shall be determined as the average quantity of wastewater discharged by five similar persons. Upon request by the person, the sewer department of the department of public works will install a water meter in the water supply system of the person for the purpose of determining the quantity of wastewater discharged.
- (d) The surcharge for high concentration wastewater shall be determined as provided for in section 74-68.
- (e) Billing for sewerage system use charges may be made quarterly.
- (f) Where sewerage system use charges are not paid within a reasonable time, the lien provisions of 30-A M.R.S.A. § 3406 shall become applicable to the unpaid balance.
- (g) The sewerage system use charges established in this division shall be collected from the owners, occupants and users of the premises within the city at the owner's cost.

(Code 1982, § 23-42)

Sec. 74-68. Surcharge limits defined.

- (a) Where the strength or characteristics of wastewater accepted into the public sewers exceeds the standards set forth in this section, and subject to the conditions set forth in section 74-57, a surcharge shall be added to the normal sewerage use charge. For the

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purpose of fixing surcharge rates, the characteristics indicating surchargeable wastewater strength are:

Suspended solids in excess of 300 mg/l.

Biochemical oxygen demand in excess of 250 mg/l.

- (b) The city may adjust these surchargeable characteristics and the surcharge levels whenever necessary.
- (c) This section does not interfere with the right of an industry to make a special agreement or arrangement with the city (section 74-65).

(Code 1982, § 23-43)

Secs. 74-69--74-80. Reserved.

DIVISION 3. PRIVATE FACILITIES

Sec. 74-81. Minimum standards; disclaimer of liability.

The provisions of this division are to be considered minimal, and compliance therewith shall not constitute or be construed to be grounds for any action against or liability on the part of the city or any of its employees for any subsequent failure of any part or of the whole of any sewage disposal system except as may be provided for by law.

(Code 1982, § 23-61)

Sec. 74-82. Violator's liability.

Any person violating any of the provisions of this division shall become liable to the city for any expense, loss or damage occasioned to the city by reason of such violation.

(Code 1982, § 23-62)

Sec. 74-83. Notice of violation.

Any person found to be violating or in violation of any provision of this division shall be served by the city, by its health officer, with a written notice stating the nature of the violation and providing a reasonable time limit, as determined by the plumbing inspector, for the satisfactory correction thereof. The offender shall, within the period of time stated in the notice, permanently cease all such violations.

(Code 1982, § 23-63)

Sec. 74-84. Sanitary facilities required.

- (a) Every building intended for human habitation, use or occupancy shall have sanitary facilities for disposing of human excreta and liquid conveyed material, including bathroom, kitchen and laundry wastes, approved by the plumbing inspector as provided for in this division.
- (b) The provisions of subsection (a) of this section shall not be applicable to an accessory

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structure located on the same lot as a principal building containing sanitary facilities which are available at all times to users or occupants of the accessory structure. If food is sold, served, prepared, processed, packaged or repackaged in or from the accessory structure, the provisions of this subsection do not apply.

(Code 1982, § 23-64)

Sec. 74-85. Independent system for each building; exception.

- (a) The sewer or drain and plumbing system of each new building and of new work installed in an existing building shall be separate from and independent of that of any other building except as provided for in this division; and every building shall have an independent connection with a public or community sewerage system when available, or a private sewage disposal system.
- (b) When one building stands or is to be constructed in the rear of another building on an interior lot and no sewer or drain is available or can be constructed to the rear building, the sewer or drain of the front building may be extended to the rear building and the whole will be considered as an independent connection.

(Code 1982, § 23-65)

Sec. 74-86. Existing systems--Use and abandonment.

The sewer or drain of a new building may be connected to an existing sewer or drain or sewage disposal system if, on examination and test, the existing sewer or drain or sewage disposal system is found to be adequate and in suitable condition for further use as provided for in this division. Any sewer or drain or sewage disposal system found not adequate or suitable shall be altered to meet the requirements of this division or shall be abandoned. Every abandoned sewer or drain shall be plugged with concrete for at least one foot of its length or, if the sewer or drain extends into a building, it shall be stopped by capping the sewer or drain with a cap properly leaded in place. Every abandoned septic tank or cesspool shall be drained and then filled with gravel or earth or other suitable material.

(Code 1982, § 23-76)

Sec. 74-87. Same--Inspection and permits.

The determination of the adequacy and condition of any existing sewer or drain connected to a public or community sewerage system shall be made by the director of public works and he shall issue a permit to make use of such existing sewer or drain only when the provisions of this division have been complied with. If such existing sewer or drain or sewage disposal system is private, the determination of its adequacy and condition shall be made by the plumbing inspector and he shall issue a permit to make use of such existing sewer or drain or sewage disposal system only when the provisions of this division have been complied with.

(Code 1982, § 23-77)

Sec. 74-88. Installation to be made apart from other utilities, exception.

The sewer or drain shall be installed in a trench not used in common with any other

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utility except that when the sewer or drain is installed in a trench excavated through bedrock, the director of public works may, at his discretion, permit joint use of the trench with other utilities in accordance with such rules and regulations as he may prescribe.

(Code 1982, § 23-78)

Sec. 74-89. Connection to public or community system.

If a public or community sewage disposal system is extended to the point where it becomes feasible to connect a sewer or drain already connected to a private sewage disposal system, such sewer or drain shall be connected without delay to the public or community system if the health officer declares that the operation or failure of the private sewage disposal system constitutes a nuisance or health hazard. The owner of the private sewage disposal system shall, at his own expense, connect his sewer or drain to the public or community system. No effluent from any septic tank or cesspool shall be allowed to enter a public or community sewage disposal system without prior approval from the director of public works.

(Code 1982, § 23-79)

Secs. 74-90--74-100. Reserved.

DIVISION 4. SEWER ASSESSMENTS

Sec. 74-101. Purpose.

The purpose of this division is to provide a means for property abutters to pay a sewer assessment on a term basis whenever a sanitary sewer project is undertaken. The abutter may choose to pay the assessment on a lump sum basis or on a term basis.

(Code 1982, § 23-101)

Sec. 74-102. Authorization to adopt policy.

The city council shall adopt a sanitary sewer assessment policy to carry out the purpose of this division, pursuant to 30-A M.R.S.A. § 3442.

(Code 1982, § 23-102)

Sec. 74-103. Payment on term basis.

The abutter opting for payment under this division on a term basis shall comply with the policy prescribed by the city council, and further execute an agreement to be recorded in the county registry of deeds.

(Code 1982, § 23-103)

Sec. 74-104. Payment due, interest rate.

The city council shall annually file with the collector a list of installment payments due the city, which shall be collected at the rate determined by the city council.

(Code 1982, § 23-104)

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Secs. 74-105--74-115. Reserved.

DIVISION 5. SEWER IMPACT FEES*

*State law references: Authority to establish schedule of charges for sewage disposal, 30-A M.R.S.A. § 3406.

Sec. 74-116. Purpose.

The purpose of this division is to provide a means for sanitary sewer users to pay a fee to offset the effect additional sewer connections and use will have on the existing sanitary sewer system and a means for sanitary sewer users to pay their fair share of the existing sewer system and improvements thereto, including sewer mains, pumping stations and the wastewater treatment plant. The fees shall be used to offset the effect of new or changed connections to the existing sanitary sewer system as may be provided by the capital improvement program, section 6.05 of the Charter. Such fees shall be paid prior to the issuance of a building permit and/or a sewer connection permit. Such fees may be applicable to both new structures and/or uses and existing structures and/or uses.

(Code 1982, § 23-125)

Sec. 74-117. Authorization to adopt policy.

The city council shall adopt a sewer impact fee policy to carry out the purpose of this division.

(Code 1982, § 23-126)

Secs. 74-118--74-199. Reserved.

ARTICLE III. NON-STORM WATER DISCHARGE

Sec. 74-200. Purpose.

The purpose of this article is to provide for the health, safety, and general welfare of the citizens of the City of Lewiston through the regulation of non-storm water discharges to the municipality's storm drainage system as required by federal and state law. This article establishes methods for controlling the introduction of pollutants into the city's storm drainage system in order to comply with requirements of the Federal Clean Water Act and state law.

(Ord. No. 05-14, 9-8-05)

Sec. 74-201. Objectives.

The objectives of this article are:

- (1) To prohibit unpermitted or unallowed non-storm water discharges to the storm drainage system; and
- (2) To set forth the legal authority and procedures to carry out all inspection, monitoring and enforcement activities necessary to ensure compliance with this

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article.

(Ord. No. 05-14, 9-8-05)

Sec. 74-202. Definitions.

For the purposes of this article, the following shall mean:

Clean Water Act. The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq., also known as the "Clean Water Act"), and any subsequent amendments thereto.

Discharge. "Discharge" means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of pollutants to "waters of the state", "direct discharge" or "point source" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged.

Enforcement authority. The person(s) or department authorized under section 74-204 of this article shall administer and enforce this article.

Exempt person or discharge. Means any person who is subject to a multi-sector general permit for industrial activities, a general permit for construction activity, a general permit for the discharge of stormwater from the Maine Department of Transportation and the Maine Turnpike Authority Municipal Separate Storm Sewer Systems, or a general permit for the discharge of stormwater from state or federally owned authority municipal separate storm sewer system facilities; and any non-storm water discharge permitted under a NPDES permit, waiver, or waste discharge license or order issued to the discharger and administered under the authority of the U.S. Environmental Protection Agency ("EPA") or the Maine Department of Environmental Protection ("DEP").

Illicit discharge. Any direct or indirect discharge to the municipal storm drain system that is not composed entirely of stormwater, except as exempted in this article. The term does not include a discharge in compliance with an NPDES storm water discharge permit or a surface water discharge permit, or resulting from fire fighting activities exempted pursuant to this article.

Industrial activity. Activity or activities subject to NPDES industrial permits as defined in 40 CFR, Section 122.26 (b)(14).

Municipality. The City of Lewiston, Maine.

Municipal separate storm sewer system, or MS4. "Municipal separate storm sewer system" or "MS4" means conveyances for storm water, including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains (other than publicly owned treatment works and combined sewers) owned or operated by any municipality, sewer or sewage district, fire district, state agency or federal agency or other public entity that discharges directly to surface waters of the state.

National pollutant discharge elimination system (NPDES) storm water discharge permit. This means a permit issued by the EPA or by the DEP that authorizes the

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discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-storm water discharge. Means any discharge to an MS4 that is not composed entirely of storm water.

Person. Means any individual, firm, corporation, municipality, quasi-municipal corporation, state agency or federal agency or other legal entity which creates, initiates, originates or maintains a discharge of storm water or a non-storm water discharge.

Pollutant. Means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

Premises. Means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within the municipality from which discharges into the storm drainage system are or may be created, initiated, originated or maintained.

Regulated small MS4. "Regulated small MS4" means any small MS4 regulated by the State of Maine "General permit for the discharge of stormwater from small municipal separate storm sewer systems", dated June 3, 2003 ("general permit"), including all those located partially or entirely within an urbanized area (UA) and those additional small MS4s located outside a UA that as of the issuance of the general permit have been designated by the DEP as regulated small MS4s.

Small municipal separate storm sewer system, or small MS4, means any MS4 that is not already covered by the Phase I MS4 stormwater program including municipally owned or operated storm sewer systems, state or federally-owned systems, such as colleges, universities, prisons, Maine Department of Transportation and Maine Turnpike Authority road systems and facilities, and military bases and facilities.

Storm drainage system. The municipality's regulated small MS4 and areas outside the UA that drain into the regulated MS4 and all premises.

Storm water. Any storm water runoff, snowmelt runoff, and surface runoff and drainage; "Stormwater" has the same meaning as "storm water".

Urbanized area ("UA"). "Urbanized area" or "UA" means the areas of the State of Maine so defined by the latest decennial census by the U.S. Bureau of the Census.

(Ord. No. 05-14, 9-8-05)

Sec. 74-203. Applicability.

This article shall apply to all persons discharging storm water and/or non-storm water discharges from any premises into the storm drainage system.

(Ord. No. 05-14, 9-8-05)

Sec. 74-204. Responsibility for administration.

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The city administrator or his/her designee is the enforcement authority who shall administer, implement, and enforce the provisions of this article.

(Ord. No. 05-14, 9-8-05)

Sec. 74-205. Prohibition of non-storm water discharges.

- (a) *General prohibition.* Except as allowed or exempted herein, no person shall create, initiate, originate or maintain a non-storm water discharge to the storm drainage system. Such non-storm water discharges are prohibited notwithstanding the fact that the municipality may have approved the connections, drains or conveyances by which a person discharges un-allowed non-storm water discharges to the storm drainage system.
- (b) *Allowed non-storm water discharges.* The creation, initiation, origination or maintenance of the following non-storm water discharges to the storm drainage system is allowed:
 - (1) Landscape irrigation; diverted stream flows; rising ground waters; uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)); uncontaminated pumped ground water; uncontaminated flows from foundation drains; air conditioning and compressor condensate; irrigation water; flows from uncontaminated springs; uncontaminated water from crawl space pumps; uncontaminated flows from footing drains; lawn watering runoff; flows from riparian habitats and wetlands; residual street wash water (where spills/leaks of toxic or hazardous materials have not occurred, unless all spilled material has been removed and detergents are not used); hydrant flushing and fire fighting activity runoff; water line flushing and discharges from potable water sources; and individual residential car washing;
 - (2) Discharges specified in writing by the enforcement authority as being necessary to protect public health and safety; and
 - (3) Dye testing, with verbal notification to the enforcement authority prior to the time of the test.
- (c) *Exempt person or discharge.* This article shall not apply to an exempt person or discharge, except that the enforcement authority may request from exempt persons and persons with exempt discharges copies of permits, notices of intent, licenses and orders from the EPA or DEP that authorize the discharge(s).

(Ord. No. 05-14, 9-8-05)

Sec. 74-206. Suspension of access to the municipality's small MS4.

The enforcement authority may, without prior notice, physically suspend discharge access to the storm drainage system to a person when such suspension is necessary to stop an actual or threatened non-storm water discharge(s) to the storm drainage system which present or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the storm drainage system, or which may cause the municipality to violate the terms of its environmental permits. Such suspension may include, but is not limited to, blocking pipes, constructing dams or taking other measures, on public ways or public property, to physically block the discharge to prevent or minimize non-storm water discharges to the storm drainage system. If the person fails to comply with a suspension order issued in an emergency,

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the enforcement authority may take such steps as deemed necessary to prevent or minimize damage to the storm drainage system, or to minimize danger to persons, provided, however, that in taking such steps the enforcement authority may only enter upon the premises that is the source of the actual or threatened non-storm water discharge to the storm drainage system with the consent of the premises' owner, occupant or agent. (Ord. No. 05-14, 9-8-05)

Sec. 74-207. Monitoring of discharges.

In order to determine compliance with this article, the enforcement authority may enter upon and inspect premises subject to this article at reasonable hours with the consent of the premises' owner, occupant or agent; to inspect the premises and connections thereon to the storm drainage system; and to conduct monitoring sampling and testing of the discharge to the storm drainage system.

(Ord. No. 05-14, 9-8-05)

Sec. 74-208. Enforcement.

It shall be unlawful for any person to violate any provision of or to fail to comply with any of the requirements of this article. Whenever the enforcement authority believes that a person has violated this article, the enforcement authority may enforce this article in accordance with 30-A M.R.S.A. § 4452.

- (1) *Notice of violation.* Whenever the enforcement authority believes that a person has violated this article, the enforcement authority may order compliance with this article by written notice of violation to that person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:
 - a. The elimination of non-storm water discharges to the storm drainage system;
 - b. The cessation of discharges, practices, or operations in violation of this article;
 - c. At the person's expense, the abatement or remediation (in accordance with best management practices in DEP rules and regulations) of non-storm water discharges to the storm drainage system and the restoration of any affected property; and/or
 - d. The payment of fines, of the municipality's remediation costs and of the municipality's reasonable administrative costs and attorneys' fees and costs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement or restoration must be completed.
- (2) *Penalties/fines/injunctive relief.* Any person who violates this article shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the municipality's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violations continues shall constitute a separate

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violation. Moreover, any person who violates this article also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred by the municipality for violation of federal and state environmental laws and regulations caused by or related to that person's violation of this article; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this section.

- (3) *Consent agreement.* The enforcement authority may, with the approval of the municipal officers, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this article for the purposes of eliminating violations of this article and of recovering fines, costs and fees without court action.
- (4) *Appeal of notice of violation.* Any person receiving a notice of violation or suspension notice may appeal the determination of the enforcement authority to the board of appeals in accordance with the City's Code of Ordinances. The notice of appeal must be received within 30 days from the date of the notice of violation. The board of appeals shall hold a de novo hearing on the appeal within 30 days from the date of receipt of the notice of appeal. The board of appeals may affirm, reverse or modify the decision of the enforcement authority. A suspension under section 74-206 of this article remains in place unless or until lifted by the board of appeals or by a reviewing court. A party aggrieved by the decision of the board of appeals may appeal that decision to the Maine Superior Court within 45 days of the date of the board of appeals decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.
- (5) *Enforcement measures.* If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal, within 45 days of the decision of the municipal board of appeals upholding the decision of the enforcement authority, then the enforcement authority may recommend to the municipal officers that the town attorney file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.
- (6) *Ultimate responsibility of discharger.* The standards set forth herein are minimum standards; therefore this article does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants into waters of the U.S. caused by said person. This article shall not create liability on the part of the municipality, or any agent or employee thereof for any damages that result from any person's reliance on this article or any administrative decision lawfully made hereunder.

(Ord. No. 05-14, 9-8-05)

Sec. 74-209. Severability.

The provisions of this article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this article.

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(Ord. No. 05-14, 9-8-05)

Sec. 74-210. Basis.

The City of Lewiston enacts this article pursuant to 30-A M.R.S.A. § 3001 (Municipal Home Rule Ordinance Authority), 38 M.R.S.A. § 413 (the "Wastewater Discharge Law"), 33 U.S.C. § 1251 et seq. (the "Clean Water Act"), and 40 CFR Part 122 (U.S. Environmental Protection Agency's regulations governing the National Pollutant Discharge Elimination System ("NPDES")). The Maine Department of Environmental Protection, through its promulgation of the "general permit for the discharge of stormwater from small municipal separate storm sewer systems", dated June 3, 2003, has listed the City of Lewiston as having a regulated small municipal separate storm sewer system ("small MS4"); under this general permit, listing as a regulated small MS4 necessitates enactment of this article as part of the municipality's storm water management program.

(Ord. No. 05-14, 9-8-05)

Secs. 74-211--74-299. Reserved.

ARTICLE IV. STORMWATER UTILITY

Sec. 74-300. Findings.

Whereas the city council finds that water quality in the watersheds within and surrounding the city, including but not limited to watersheds associated with the Androscoggin River, No Name Pond, Garcelon Bog, Jepson Brook, Hart Brook, No Name Brook, Stetson Brook, Gully Brook, Goff Brook, Moody Brook and Salmon Brook, along with their tributaries are potentially threatened by pollutants associated with existing land use and future development; and

Whereas the city council finds that poor water quality in the watershed can threaten public health, safety, and welfare; and

Whereas the existing stormwater management system is deteriorating and may be inadequate to meet existing and future needs, and flooding concerns may arise; and

Whereas requirements of the U.S. Environmental Protection Agency ("EPA") demand a comprehensive approach to municipal stormwater management, and the city wishes to take a proactive approach to these requirements; and

The city council makes the following additional findings:

- The stormwater management needs of the city have been identified in a needs analysis entitled (Stormwater/CSO Utility Feasibility Study Preliminary Results) dated April 11, 2002, by Camp Dresser and McKee, Inc. and an analysis entitled "Clean Water Act Master Plan" dated December 12, 2000, by Metcalf & Eddy ("stormwater studies") that indicate more effective stormwater management in the city would contribute to the health, safety and welfare of the residents. Further, this analysis reveals that stormwater facilities and activities associated with stormwater management provide services and benefits to all properties, property owners, residents and citizens of the city.

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- Given the scope of stormwater management needs identified by the stormwater studies, it is appropriate and necessary to authorize the formation of a stormwater utility unit, as a program comprised of personnel from the city's department of public services and department of public works and with dedicated funding components, charged with the responsibility to establish, operate, maintain, control, and enhance the stormwater management programs, services, systems, and facilities of the city.
- In order to establish, operate, and maintain the stormwater infrastructure of the city, ensure the future usefulness of the existing system through additions and improvements, and provide other services associated with stormwater and watershed management, sufficient and stable funding is required for the operation, maintenance and improvement of the stormwater management programs, services, systems, and facilities of the city.
- A stormwater utility service fee schedule that efficiently takes into account impervious surface area, and uses intensity and nature of land use as the most appropriate and equitable method of allocating the cost of stormwater management programs, services, systems, and facilities of the city and between and among rural and urbanized areas of the city and residential dwelling units, non-residential properties and other developed lands for governing assessments and collections of the utility.

(Ord. No. 06-10, 7-27-06)

Sec. 74-301. Purpose.

Stormwater runoff is one (1) of the largest contributors to water quality violations in urban and urbanizing areas of Maine. According to the US EPA, polluted stormwater runoff is a leading cause of impairment to the nearly forty (40) percent of surveyed U.S. water bodies which do not meet water quality standards (U.S. EPA, 1995). When polluted stormwater runoff is discharged directly into surface water bodies, several adverse effects can occur: public health can be threatened from contaminated drinking water sources, food sources, and recreational waters; aquatic habitats can be damaged or destroyed; and aesthetic values of waterways can decline. Management of stormwater is critical to ensuring the integrity of valuable surface water resources. An effective approach to managing stormwater and related impacts is creation of a utility that delivers stormwater management services to a community.

Therefore, the city hereby establishes a stormwater management utility for the following purposes:

- To determine the necessary level of municipal stormwater management services for the city;
- To maintain and improve the drainage facilities of the city, to ensure that they perform to design capacity while using best management practices to meet local, state, and federal water quality standards;
- To mitigate the damaging effects of uncontrolled and unmanaged stormwater runoff;
- To support and promote sound stormwater management practices that mitigate non-point source pollution, reduce flooding, and enhance area drainage within the city

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and;

- To support the goals and objectives of the city ordinances addressing stormwater management in other sections of this Code of Ordinances and to comply with applicable law, including the Maine Department of Environmental Protection Stormwater Management Regulations.

(Ord. No. 06-10, 7-27-06)

Sec. 74-302. Authority and jurisdiction.

- (a) Under the authority of the Maine Constitution, Article VIII, and Title 30-A M.R.S.A. § 3001, the city hereby establishes the Lewiston Stormwater Utility ("utility") as a program comprised of personnel of the department of public services and department of public works to provide stormwater management programs, services, systems, and facilities of the city. The city administrator will appoint a superintendent of stormwater management and a director of field operations to carry out the responsibilities of the utility.
- (b) The utility or its designee is authorized to assess and collect service fees from all persons owning land within the municipality that benefit from the services provided by the utility, including all persons that own land from which stormwater runoff discharges directly or indirectly to the stormwater management systems and facilities managed by the utility.
- (c) The utility will assume all responsibility for providing stormwater management programs, services, systems, and facilities of the city, including maintaining and improving stormwater infrastructure; providing engineering services for stormwater management; regulating, in accordance with local, state and federal regulations, stormwater discharges from each parcel contributing to the stormwater management systems and facilities; and collecting utility fees. The superintendent of stormwater management, or his/her designated representative, is authorized to make recommendations for stormwater management plans during any required review process for new and/or existing development.
- (d) The boundaries and jurisdiction of the stormwater utility shall encompass all portions of the City of Lewiston.

(Ord. No. 06-10, 7-27-06)

Sec. 74-303. Definitions.

The definitions contained in Maine's Stormwater Management Law and Regulations (38 M.R.S.A. § 420D; 06-096 CMR Ch. 500 (Oct. 30, 2005)), are incorporated herein by reference. Additional terms used in this article are defined as follows:

Credit: Credit shall mean a conditional reduction in the amount of a stormwater service fee to an individual property based on the provision and continuing presence of an effectively maintained and operational on-site stormwater system or facility or other service or activity that reduces the stormwater management utility's cost of providing services.

Customers of the stormwater utility: Customers of the stormwater utility shall include all persons, properties, and entities served by and/or benefiting from the utility's

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acquisition, management, maintenance, extension, and improvement of the public stormwater management systems and facilities and regulation of public and private stormwater systems, facilities, and activities related thereto, and persons, properties, and entities which will ultimately be served or benefited as a result of the stormwater management program.

Developed land: Developed land shall mean property altered from its natural state by removal of vegetation, construction, or installation of improvements such as buildings, structures, or other impervious surfaces, or by other alteration of the property that results in a meaningful change in the hydrology of the property during and following rainfall events (agricultural and forestry operations that do not create impervious surface area excepted).

Ephemeral stream: A channel that flows only during wet weather following a precipitation event and typically flows no more than a few days after the storm.

Equivalent residential unit (ERU): A measure used to standardize the utility service fees for residential properties, or classes of residential properties, and based on the average amount of impervious area of a base residential parcel. The ERU shall also be used as the basis for standardizing and determining the equivalent size of non-residential properties and other developed lands. The staff of the utility, together with consulting engineers, shall undertake an analysis to identify the amount of square feet of impervious surface area of an ERU and this will be identified as part of the stormwater service fee schedule policy.

Exemption: Exemption shall mean not applying to, or removing the application of the stormwater management utility service fee from, a property. No permanent exemption shall be granted based on taxable or non-taxable status or economic status of the property owner.

Hydrologic response: The hydrologic response of a property is the manner whereby stormwater collects, remains, infiltrates, and is conveyed from a property.

Impervious surfaces: Impervious surfaces are those areas that prevent or impede the infiltration of stormwater into the soil as it entered in natural conditions prior to development. Impervious areas include, but are not limited to, rooftops, sidewalks, walkways, patio areas, driveways, parking lots, storage areas, compacted gravel surfaces, awnings and other fabric or plastic coverings, and other surfaces that prevent or impede the natural infiltration of stormwater runoff which existed prior to development.

Intermittent stream: A stream or river that flows during both wet and dry weather only during the wettest part of the year and exhibits no flow during dry weather during at least a portion of the year, and is depicted as a thin solid line on United States Geological Survey (USGS) quadrangle maps.

Other developed lands: Other developed lands shall mean, but not be limited to, mobile home parks, commercial and office buildings, public buildings and structures, industrial and manufacturing buildings, storage buildings and storage areas covered with impervious surfaces, parking lots, parks, recreation properties, public and private schools and universities, colleges, research facilities and stations, hospitals and convalescent centers, airports, agricultural uses covered by impervious surfaces, water and wastewater treatment plants, and lands in other uses which alter the hydrology of the property from

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that which would exist in a natural state.

Perennial stream: A stream or river that flows during both wet and dry weather throughout the year and over multiple years in duration, and that is depicted as a bold line on USGS quadrangle maps.

Pollution: The contamination or other alteration of the physical, chemical or biological properties of any natural waters of the City of Lewiston, or the discharge of any liquid, gaseous, solid or radioactive or other substance into any such waters as will or is likely to create a nuisance, or render such water harmful, detrimental, or injurious to the public health, safety and welfare or to other beneficial uses.

Residential dwelling unit: Residential dwelling unit shall mean developed land containing one or more structures and which contains one or more bedrooms, with a bathroom and kitchen facilities, designed for occupancy for dwelling purposes. Dwelling units may include single-family houses, single duplex units under common ownership, manufactured homes, condominiums, townhouses, and mobile homes located on one or more individual lots or parcels of land. Developed land may be classified as a residential dwelling unit despite the presence of incidental structures associated with residential uses such as barns, garages, carports, or small storage buildings such as tool sheds or woodsheds.

Stormwater: Precipitation as it falls to the earth, surface runoff and drainage, and paths taken by such water.

Stormwater management programs, services, systems, and facilities: Stormwater management programs, services, systems, and facilities are those administrative, engineering, operational, regulatory, and capital improvement activities and functions performed by the City of Lewiston in connection with managing the stormwater management systems and facilities of the city, plus all other activities and functions necessary to support the provision of such programs and services.

Stormwater management systems and facilities: Those natural and man-made channels, swales, ditches, swamps, rivers, streams, creeks, branches, reservoirs, ponds, drainage ways, inlets, catch basins, pipes, head walls, storm sewers, lakes, city and state roads including the Maine Turnpike and other physical works, properties, and improvements which transfer, control, convey or otherwise influence the movement of stormwater runoff and its discharge to and impact upon receiving waters.

Stormwater service fees: Stormwater service fees shall mean the periodic service fee imposed pursuant to this article for the purpose of funding costs related to stormwater management programs, services, systems, and facilities.

Stormwater service fee schedule policy: The policy approved by the city council identifying the specific fee structure and formulas upon which stormwater service fees and credits will be based.

Undeveloped land: Land in its unaltered natural state or which has been modified to such minimal degree as to have a hydrologic response comparable to land in an unaltered natural state shall be deemed undeveloped. Undeveloped land shall have no pavement, asphalt, or compacted dirt or gravel surfaces or structures which create an impervious surface that would prevent infiltration of stormwater or cause stormwater to

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collect, concentrate, or flow in a manner materially different than that which would occur naturally.

Lewiston Stormwater Utility: The program within the City of Lewiston staffed by the public services department and public works department, responsible for providing the stormwater management programs, services, systems, and facilities pursuant to this article.

(Ord. No. 06-10, 7-27-06; Ord. No. 06-14, 11-2-06)

Sec. 74-304. Establishment of stormwater fund.

- (a) The city administrator shall establish a dedicated stormwater fund in the city budget and an accounting system for the purpose of managing all funds collected for the purposes and responsibilities of the utility. All revenues and receipts of the utility shall be placed in the stormwater fund, which shall be separate from all other funds, and only the expenses of stormwater management programs, services, systems, and facilities of the city shall be paid by the fund.
- (b) The utility and the stormwater fund may also accept loans, state, federal and private grants, and allocations of funds from the city's general fund or special purpose funds.
- (c) Stormwater service fees will be set at a rate that covers the costs necessary to carry out the stormwater management programs, services, systems and facilities approved by the city as necessary to carry out the functions of the utility. Expenditure of funds from the stormwater fund is limited to the following:
 - Operating expenses;
 - Non-operating expenses, such as equipment and supplies;
 - Payment on principal and interest on debt obligations;
 - Capital investments including stormwater best management practices (BMPs) and components (e.g., purchase of plants and other amenities to support stormwater management alternatives utilizing vegetation);
 - Reserve expenses; and
 - Others costs as deemed necessary by the city council.

(Ord. No. 06-10, 7-27-06)

Sec. 74-305. Requirements for on-site stormwater management.

All property owners and developers of property within the city shall provide, manage, maintain and operate their stormwater systems to meet all requirements of the Maine Stormwater Management Law, and regulations and all other applicable stormwater management requirements now specified or later specified in this Code of Ordinances, including, but not limited to, the non-stormwater discharge ordinance (section 74-200 et seq.), the private stormwater elimination policy, and applicable development performance standards contained in the Code of Ordinances. The city council hereby adopts and incorporates the requirements of the private stormwater elimination policy, subject to revision and amendment by the council upon recommendation of the superintendent of stormwater.

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Failure to comply with these requirements shall constitute a nuisance and be subject to abatement action, in addition to the enforcement actions described in subsection 74-311(a). In the event that a public nuisance is found to exist by a court of appropriate jurisdiction, and the property owner fails to abate said nuisance within a reasonable time as allowed by the court, the city may take all legally authorized actions necessary to enforce the court's judgment, including entering upon the property and causing such work as is reasonably necessary to be performed, with the actual cost thereof assessed against the owner in the same manner as a tax levied against the property. From the date of filing such action, the city shall have lien rights that may be perfected, after judgment, by filing a notice of lien in the court of appropriate jurisdiction. The city shall have the right, pursuant to this article, for its designated officer and employees to enter upon private and public property owned by entities other than the city, upon reasonable notice to the owner thereof, to inspect the property and conduct surveys and engineering tests thereon in order to ensure compliance. Failure to comply with the standards identified herein will also subject the property owner to enforcement action, as described in section 74-311, herein.

(Ord. No. 06-10, 7-27-06)

Sec. 74-306. Services provided.

- (a) For the purposes of operating, maintaining and improving the stormwater management system and facilities, the city owns or has legal access to portions of the system that:
 - Are located within public streets, easements, and rights-of-way of the jurisdiction; and/or
 - Are subject to access provisions established by city for the purpose of operating, maintaining, and/or improving stormwater systems and facilities.
- (b) Stormwater systems located on private property or on public property for which no access provisions have been made shall be considered the legal responsibility of the property owner.
- (c) The utility may provide some or all of the following services in exchange for collecting a service fee:
 - Administer the stormwater management program for the city;
 - Perform necessary studies and analysis of the service area or potential service area(s);
 - Acquire, construct, operate, maintain, manage, protect, and enhance the stormwater infrastructure, including betterments and connections to the public drainage system; mapping of natural and man-made features affecting stormwater management;
 - Detect and eliminate illicit discharges to the stormwater management system;
 - Periodically inspect properties to determine contribution to municipal stormwater load;
 - Inventory stormwater management facilities;
 - Maintain an up-to-date database of residential and non-residential properties in the service area, billing class codes for each parcel, runoff contributions of each property to the stormwater system for non-residential properties, and charges and payments for each account;

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- Determine compliance with applicable local, state and federal regulations, the stormwater discharges from each parcel contributing to the stormwater system;
 - Perform inspections of stormwater management structures and facilities, both during and after development/construction;
 - Perform master planning and engineering for watershed management and capital improvements;
 - Recommend and provide advice to update and/or revise local comprehensive plans with respect to stormwater management;
 - Obtain federal and state permits necessary to conduct its duties;
 - Obtain and administer grants and loans from public and private sources as authorized by the city council;
 - Receive and track service fees collected by the city;
 - Review development plans and provide comment to the planning and code enforcement department of the city;
 - Make recommendations regarding acquisition of property, easements and rights-of-way in critical areas serving as buffers, retention or infiltrating areas, or providing means to gain access to properties to perform utility duties.
 - Educate and inform the public about the impacts of stormwater runoff and the components of a stormwater management plan; and
 - Perform any and all other necessary functions in connection with stormwater management programs, services, systems, and facilities of the city.
- (d) The utility will be responsible for addressing all applicable state and federal quantity and water quality standards for stormwater. This includes the responsibility for addressing all applicable state and federal stormwater permits required for the city, including National Pollutant Discharge Elimination System (NPDES) municipal separate storm sewer systems (MS4) permits and other Phase I and Phase II industrial stormwater permits for applicable municipal activities, and carrying out applicable actions under all local stormwater ordinances. Whereas the City of Lewiston is regulated under Phase II of the NPDES permit program, the utility will assume responsibility for meeting federal NPDES permit requirements for MS4s, including compliance with the six federally mandated minimum control measures:
- (1) Public education and outreach
 - (2) Public participation/involvement
 - (3) Illicit discharge detection and elimination
 - (4) Construction site runoff control
 - (5) Post-construction runoff control
 - (6) Pollution prevention/good housekeeping

(Ord. No. 06-10, 7-27-06)

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Sec. 74-307. Service area.

The service area of the utility will include all areas within the municipal boundaries of the City of Lewiston.

(Ord. No. 06-10, 7-27-06)

Sec. 74-308. Stormwater utility service fees.

- (a) The city may determine and modify from time to time the service fees of the utility in order that the funds generated correspond to the cost of stormwater management programs, services, systems, and facilities of the city. In general, funding for the stormwater utility shall be equitably derived based on methods that establish a link between the fees and degree of impact imposed on the stormwater management system and facilities.
- (b) To the extent that other funding methods are employed by the city to manage stormwater both within and outside the service area, stormwater service fees shall support and be consistent with plan review and inspection fees, special fees for services, fees in lieu of regulatory requirements, impacts fees, special assessments, and other fees. Fees collected to fund stormwater management activities of the utility can also be supplemented by other revenues available to the city, most notably state, federal, and private grants or loans.
- (c) After adoption of the ordinance, the utility, guided by the city administrator and with the assistance of those consultants deemed necessary by the utility and city administrator, shall undertake an analysis of the cost of stormwater management programs, services, systems, and facilities of the city for the purpose of setting an annual rate schedule for properties served by the utility. The recommendations of the utility (and/or city administrator) shall be submitted for approval by the city council. The fee schedule approved by the city council shall be designated as the stormwater service fee schedule and be made part of the city's policy manual. No bills will be issued to customers prior to city council approval of the stormwater service fee schedule.
- (d) Rate studies shall be conducted periodically by the utility to determine all changes and future updates to the stormwater utility use fee schedule policy. Any revision to the stormwater service fee schedule policy will be approved by the city council prior to implementation.

(Ord. No. 06-10, 7-27-06)

Sec. 74-309. Credits and exemptions.

- (a) Credits against service charges are an appropriate means of adjusting payments to the utility and will only be granted to those properties that go beyond the requirements of state and local laws and regulations. Credits against service charges may be granted on a sliding scale for properties providing on-site or off-site stormwater management measures that reduces the impact of the property on the cost of providing stormwater management services, provided that such systems are adequately maintained and exceed performance standards specified under Maine's Stormwater Management Law and regulations as well as any additional stormwater management performance standards

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imposed by this Code of Ordinances. A fee credit schedule and a manual for the stormwater utility shall be developed by the utility's staff and consultants specifying the necessary performance standards for stormwater systems to qualify for a credit. The scale for credits shall reflect the extent to which the subject properties reduce the peak rate of runoff from the property, or avoid other costs incurred by the stormwater management utility in the delivery of services, and shall be determined by the director, department of public services. The fee credit schedule shall be submitted to and approved by the city council as part of the stormwater service fee schedule policy and be made part of the city's policy manual.

- (b) Credits may be provided for the following:
- (1) Properties upon which a permanent and/or perpetual conservation or other protective easement has been provided may receive service fee credits, as established by the city council, provided such easement:
 - a. Reduces or compensates for the impact that the subject property, or an unrelated property, has on public or private stormwater systems or water quality of receiving waters;
 - b. Improves the function of public stormwater systems or the water quality of receiving waters; or
 - c. Provides other substantial benefits as identified by the city council.
 - (2) Creation of freshwater wetlands (assuming the created wetland is not part of a mitigation project associated with a permitted impact to a natural wetland);
 - (3) Stormwater management practices (e.g., on-site detention and retention facilities); and
 - (4) Peak flow reduction (may be same as c).
- (c) Exemptions from stormwater service fees are not allowed, except as provided in this section. Exemptions shall be allowed for:
- All city and state-owned or maintained roads and rights-of-way, including the Maine Turnpike, because these roads are part of the stormwater management systems and facilities.

(Ord. No. 06-10, 7-27-06; Ord. No. 06-14, 11-2-06)

Sec. 74-310. Fee collection schedule.

Stormwater service fees shall be collected quarterly. To minimize administrative costs, notification and collection of stormwater utility fees shall be coordinated, to the extent possible with the collection of water and sewer service charges. A customer shall have 30 days from receipt of a service fee bill to make payment. Interest, at a rate determined by the city council as part of the stormwater utility use fee schedule shall be charged on delinquent accounts after 30 days.

(Ord. No. 06-10, 7-27-06)

Sec. 74-311. Right to enforcement and violations.

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- (a) The city administrator, or his authorized designee is the enforcement authority who shall administer, implement, and enforce the provisions of this article.
- (b) It shall be unlawful for any person to violate or to fail to comply with the stormwater management requirements of section 74-305. Whenever the enforcement authority believes that a person has violated section 74-305, the enforcement authority may enforce this article in accordance with 30-A M.R.S.A. § 4452 and section 1-8 of the Code of Ordinances.
 - (1) *Notice of violation.* Whenever the enforcement authority believes that a person has violated this section 74-305, the enforcement authority may order compliance with this article by written notice of violation to that person indicating the nature of the violation and ordering the action necessary to correct it including, without limitation: the cessation of discharges, practices, or operations in violation of this article; at the person's expense, the abatement or remediation of conditions; and/or the payment of fines, of the city's remediation costs and of the city's reasonable administrative costs and attorneys' fees and costs. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement or restoration must be completed.
 - (2) *Penalties/fines/injunctive relief.* Any person who violates section 74-305 shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the city's attorneys' fees and costs, all in accordance with 30-A M.R.S.A. § 4452 and section 1-8 of the Code of Ordinances. Each day such violations continue shall constitute a separate violation. Moreover, any person who violates section 74-305 also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred by the city for violation of federal and state environmental laws and regulations caused by or related to that person's violation of section; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this section.
 - (3) *Consent agreement.* The enforcement authority may enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this article for the purposes of eliminating violations of section 74-305 and of recovering fines, costs and fees without court action.
 - (4) *Appeal of notice of violation.* Any person receiving a notice of violation or suspension notice may appeal the determination of the enforcement authority to the board of appeals in accordance with the City's Code of Ordinances, App. A, Art. IX. The notice of appeal must be received within 30 days from the date of the notice of violation. The board of appeals shall hold a de novo hearing on the appeal within 30 days from the date of receipt of the notice of appeal. The board of appeals may affirm, reverse or modify the decision of the enforcement authority. A party aggrieved by the decision of the board of appeals may appeal that decision to the Maine Superior Court within 45 days of the date of the board of appeals decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.
 - (5) *Enforcement measures.* If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal, within 45 days of the decision of the board of appeals upholding the decision of the enforcement authority, then the enforcement authority may initiate an

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enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.

- (c) Delinquent fees.
- (1) Any person that fails to pay the service fee when due shall be responsible for the amount of the unpaid service fee, interest on the unpaid amount at a rate determined by the city council as part of the stormwater utility use fee schedule, a minimum penalty of \$200.00, and attorneys' fees and other costs of collection. Delinquent amounts may be collected by a civil action against the person.
 - (2) A customer of the utility may request review of the amount of the service fee imposed on such customer by written request to the superintendent of stormwater within 30 days of the date the customer receives a service fee bill. The superintendent shall review the service fee and issue a determination, in writing, within 30 days. A customer may appeal the superintendent's decision to the city council within 30 days of the date of the superintendent's decision. Aggrieved persons may appeal a decision of the council to a court of competent jurisdiction within 30 days of the date of the council decision.

(Ord. No. 06-10, 7-27-06)

Sec. 74-312. Limitation of liability.

Floods from stormwater may occasionally occur which exceed the capacity of the storm drainage facilities constructed, operated, or maintained by funds made available under this chapter. This chapter shall not be interpreted to mean that property subject to the fees and charges established herein will always (or at any time) be free from stormwater flooding or flood damage, or that stormwater systems capable of handling all storm events can be cost-effectively constructed, operated or maintained. Therefore the following limitations on liability are set forth:

- (1) It is the express intent of the city that this stormwater utility ordinance will protect the public health, safety and welfare of properties and persons in general. However, this ordinance does not create any special duty or relationship with any individual person or specific property either within or outside the jurisdiction of the stormwater utility.
- (2) The city shall not be held liable for flood damage or assessing and removing pollution sources, and reserves the right to assert all available immunities and defenses in any action seeking monetary compensation from the city, or its officers, agents or employees for alleged damages arising from alleged failure or breach of duties or relationship as may now exist or hereafter be created.
- (3) The issuance of any permit, plan approval or inspection shall not constitute a warranty, express or implied, nor shall it afford the basis for any action seeking the imposition of monetary damages against the city or its officers, employees or agents.
- (4) Operation of stormwater systems located on private property or public property not owned by the City of Lewiston and for which there has been no public dedication of such systems and facilities for operation, maintenance and/or improvements of the system, shall be the legal responsibility of the property

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owner, except as may be affected by the laws of the State of Maine and the United States of America.

(Ord. No. 06-10, 7-27-06)

Sec. 74-313. Severability.

Each section of this ordinance is severable from all other sections. If any part of this ordinance is deemed invalid by a court or competent jurisdiction, remaining portions of the ordinance shall not be affected and shall continue in full force. Whenever this ordinance conflicts with any other ordinance of the city, State of Maine, or federal government, the stricter standard shall apply, except as limited by state or federal law.

(Ord. No. 06-10, 7-27-06)

Sec. 74-314. Applicability.

This ordinance and the fees, obligations and requirements identified herein shall apply to all use of and benefit from the city's stormwater management systems and facilities, occurring on or after July 1, 2006. All persons owning land within the municipality that benefit from the services provided by the utility shall be subject to service fees for their use of the stormwater management systems and facilities occurring on or after July 1, 2006.

(Ord. No. 06-10, 7-27-06)

Chapter 78

VEGETATION*

Article I. In General

Secs. 78-1--78-25. Reserved.

Article II. Dutch Elm Disease

Sec. 78-26. Right of entry to inspect for.
Sec. 78-27. Order to correct dangerous conditions.
Sec. 78-28. Service of order.
Sec. 78-29. Compliance with order; failure to comply.
Sec. 78-30. Appeal from order.
Sec. 78-31. Cost of remedying conditions, assessment.
Sec. 78-32. Disclaimer of liability; negligence.
Secs. 78-33—78-39. Reserved

Article III. Community Forest

Sec. 78-40. Findings.
Sec. 78-41. Purpose.
Sec. 78-42. Authority.
Sec. 78-43. Definitions.
Sec. 78-44. Management.
Sec. 78-45. Harvest revenues.
Sec. 78-46. Administration
Sec. 78-47. Municipal arborist.
Sec. 78-48. Duties of the municipal arborist.
Sec. 78-49. Request to the municipal arborist; written permits required; appeals.
Sec. 78-50. Notice by municipal arborist of proposed tree work; appeals.
Sec. 78-51. Notice of tree work by utilities.
Sec. 78-52. Lewiston-Auburn community forest board.
Sec. 78-53. Penalty.

*Cross references: Environment, ch. 34.

State law references: Cutting and removal of trees, 30-A M.R.S.A. §§ 3283, 3291; preservation along public ways and water, 30-A M.R.S.A. § 3281 et seq.

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ARTICLE I. IN GENERAL

Secs. 78-1--78-25. Reserved.

ARTICLE II. DUTCH ELM DISEASE*

*State law references: Municipal authority to determine the presence of the Dutch elm disease and control such disease on public or private grounds, 30-A M.R.S.A. § 5725.

Sec. 78-26. Right of entry to inspect for.

The director of public works may enter private grounds to inspect and determine the necessary control measures and sanitation measures to prevent the infection and spread of the Dutch elm disease on elm trees located thereon and to determine the presence of the Dutch elm disease. (Code 1982, § 27-16)

Sec. 78-27. Order to correct dangerous conditions.

When the director of public works shall find it necessary to order the removal of trees on private property, or of sanitation work to correct a condition not complying to standards of the elm tree program as set forth by the state forestry service, he shall serve a written order to correct the dangerous condition upon the owner, operator, occupant or other person responsible for its existence. (Code 1982, § 27-17)

Sec. 78-28. Service of order.

The order required by section 78-27 shall be served in one of the following ways:

- (1) By making personal delivery of the order to the person responsible.
- (2) By leaving the order with some person of suitable age and discretion upon the premises.
- (3) By affixing a copy of the order to the door at the entrance of the premises in violation.
- (4) By mailing a copy of the order to the last known address of the owner of the premises, by registered mail.
- (5) By publishing a copy of the order in a local newspaper once a week for three successive weeks.

(Code 1982, § 27-18)

Sec. 78-29. Compliance with order; failure to comply.

(a) The order required in this article shall set forth a time limit for compliance dependent upon the hazard and danger created by the violation. In cases of extreme danger to other trees, the director of public works shall have the authority to require compliance immediately upon service of the order.

(b) When a person to whom an order under this article is directed shall fail to comply within the time specified therein, the director of public works shall remedy the condition or contract with others for such purpose and charge the cost thereof to the person to whom the order is

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directed. The person remedying a condition under a contract made under this article shall be authorized to enter premises for that purpose. (Code 1982, § 27-19)

Sec. 78-30. Appeal from order.

A person to whom an order is directed in accordance with this article shall have the right, within 24 hours of the service of such order, to appeal to the city council, who shall review such order at its next regular meeting and file its decision thereon. Unless the order is revoked or modified, it shall remain in full force and be obeyed by the person to whom directed. No person to whom an order is directed shall fail to comply with such order within five days after a decision on such appeal shall have been determined. (Code 1982, § 27-20)

Sec. 78-31. Cost of remedying conditions, assessment.

If the cost of remedying a condition under this article is not paid within 30 days after receipt of a statement therefor from the director of public works, such cost shall be levied against the property upon which such hazard exists, as a special assessment. Such special assessment shall be certified by the director to the city treasurer and shall thereupon become and be a lien upon such property, shall be included in the next tax bill rendered to the owner or owners thereof unless paid before, and shall be collected in the same manner as other taxes against such property. (Code 1982, § 27-21)

Sec. 78-32. Disclaimer of liability; negligence.

The city shall be liable for no damages under this article except those occasioned by negligence. (Code 1982, § 27-22)

ARTICLE III. COMMUNITY FOREST

Sec. 78-40. Findings.

The City Council finds that the community forest is important in advancing the economic and ecological health of the community and in protecting and enhancing its historic and esthetic characteristics. The City Council also finds that public trees beautify our streets and neighborhoods and also serve important environmental and economic purposes in that they release oxygen into the air, absorb carbon dioxide, reduce stormwater runoff, and reduce energy costs by providing shade in warm weather and protection from cold winter winds. (Ord. No. 12-07, 7-19-12)

Sec. 78-41. Purpose.

The purpose of this ordinance is to promote these values and to provide for the public health and safety by regulating the planting, maintenance, removal, and harvesting of trees and shrubs which are part of the community forest. (Ord. No. 12-07, 7-19-12)

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Sec. 78-42. Authority.

The City has authority to enact this ordinance under its home rule powers provided in 30-A M.R.S.A. §§ 2003 and 2004. (Ord. No. 12-07, 7-19-12)

Sec. 78-43. Definitions.

- (a.) *Board*: The Lewiston-Auburn Community Forest Board as described in § 78-52 of this ordinance.
- (b.) *Community forest*: includes all trees growing on public property as well as all trees growing within the limits of any public way located within the Urban Compact Zone.
- (c.) *Forest management plan*: A written document, prepared by a Maine licensed professional forester, which, considering landowner objectives, establishes direction and goals for the management of a specific forest land area. A plan normally provides a description of the woodlot including maps, timber inventory data, wildlife habitat, recreation potential, historic features, and special attributes. It will specify silvicultural practices and activities necessary to harvest products, improve forest health, and minimize adverse environmental impacts. The forest management plan serves as the basis for specific harvest plans.
- (d.) *Pruning*: systematic trimming or cutting branches throughout a tree or plant to enhance its health.
- (e.) *Public tree*: any tree or other woody vegetation which is located within the limits of any public way situated within the Urban Compact Zone.
- (f.) *Shrub*: any woody vegetation likely to grow to a mature height of fifteen (15) feet or less.
- (g.) *Topping*: the severe cutting back of tree limbs to stubs larger than three (3) inches in diameter within the tree's crown to such a degree as to reduce the height of the tree by removing or substantially diminishing the normal canopy and disfiguring the tree.
- (h.) *Trimming*: includes pruning

(Ord. No. 12-07, 7-19-12)

Sec. 78-44. Management.

The broad objectives stated in § 78-40 "Findings" and § 78-41 "Purpose" will be achieved by the active management of the community forest, using best known practices and, within the guidelines of a forest management plan, to promote public safety, forest health, species diversity, and environmental benefit to the community. Harvesting trees may be part of the overall management objectives of this plan.

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Sec. 78-45. Harvest revenues.

If and when revenues generated from any timber harvests exceed the expense of conducting that harvest, the surplus revenues will be distributed as outlined below:

- (a.) 80% to municipal general fund
- (b.) 20% to designated account established for the purpose of protecting and enhancing the community forest
(Ord. No. 12-07, 7-19-12)

Sec. 78-46. Administration.

The Municipal Arborist shall administer the management plan in coordination with such other municipal agencies/departments that now or may in the future share in the responsibility of caring for and maintaining the community forest.

(Ord. No. 12-07, 7-19-12)

Sec. 78-47. Municipal arborist.

The Director of the Department of Public Works shall appoint the Municipal Arborist who shall have a degree in forestry, arboriculture, or urban forestry from an accredited college or university or have equivalent field experience. The Municipal Arborist shall at all times during his or her employment hold a valid arborist's license issued by the State of Maine. (Ord. No. 12-07, 7-19-12)

Sec. 78-48. Duties of the municipal arborist.

- (a.) The Municipal Arborist shall have responsibility for planting, maintaining, preserving, and removing trees and plants which are part of the community forest in order to promote public safety and to protect and preserve the symmetry, health, and beauty of the community forest and the places where public trees and shrubs are located. The Municipal Arborist shall maintain a list that includes trees and shrubs which are suitable for planting as well as those which are unsuitable in general or under specific circumstances. This list shall be made readily available to members of the public.
- (b.) The Municipal Arborist may order the trimming or removal of trees or shrubs which are located within the public right of way to lessen the danger of travel or to suppress tree pests or insects as provided in 30-A M.R.S.A. § 3283. The Municipal Arborist may also order the trimming or removal of trees or shrubs located on private property outside the right of way for similar reasons by notifying the owner of the property in writing of the required action. In the event that a property owner does not initiate the requested action within 10 business days of receiving notice to do so, the Municipal Arborist may cause such action to be taken at the city's expense. The property owner may appeal the decision of the

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Municipal Arborist in the manner provided by § 78-49(e) and the Municipal Arborist shall take no action during the pendency of such appeal.

- (c.) The Municipal Arborist shall develop rules and regulations as well as standards of practice governing the planting, placement, maintenance, removal, fertilization, pruning, and bracing of trees in public rights of way and other public sites. These rules shall be reviewed by the Lewiston-Auburn Community Forest Board which may recommend changes and additions for the Municipal Arborist and the City Council to consider. Once adopted by the City Council, the rules and regulations shall have the force of law and violators of any such rules and regulations shall be subject to the penalties established by this ordinance. Copies of such rules and regulations shall be available from the City Clerk and from the Municipal Arborist and shall be posted on the city's website. The Municipal Arborist shall be responsible for initiating proceedings to enforce such rules and regulations.

(Ord. No. 12-07, 7-19-12)

Sec. 78-49. Requests to the municipal arborist; written permits required; appeals.

- (a.) No person shall plant, prune, remove, or otherwise disturb, above or below ground, any public tree without first filing an application with and obtaining a permit from the Municipal Arborist. Any permit granted shall contain a definite date of expiration and may contain conditions attached thereto by the Municipal Arborist. Any violation of this article or the terms of the permit shall be grounds for revocation of the permit, after notice and hearing. In emergency situations, such as storm damage to trees requiring immediate pruning or removal, the work may be performed without permits; however, the Municipal Arborist shall be notified as soon as possible.
- (b.) It is the intent of this article to preserve public trees. The Municipal Arborist may issue a permit to cut down, remove, or destroy a public tree under one or more of the following circumstances:
 - (1) The tree is diseased, injured, in danger of falling too close to existing or proposed structures, interferes with existing utility services, creates unsafe vision clearance or other traffic hazard, or is otherwise dangerous to people or property.
 - (2) The tree is located in an area where a structure or other improvements will be placed in accordance with plans approved under the Land Use Ordinance.
- (c.) Requests for Tree Removal, Pruning, or Trimming

Persons owning or occupying property abutting a public way or their representatives may request the Municipal Arborist to remove or top trees located within the limits of the public way or, alternatively, for a permit authorizing them to do the work on their own. If the Municipal Arborist concludes that the request is not urgent, he may decline to do the work and issue a written permit allowing

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the property owner or his or her representative to undertake the work on their own and at their own expense. The permit may specify conditions and shall establish an expiration date. Failure to comply with the conditions specified in the permit will subject the property owner and his or her representatives to the penalties established by this ordinance. In lieu of initiating enforcement proceedings when the conditions imposed by the permit are violated, the Municipal Arborist may cause any necessary corrective work to be done at the expense of the property owner or his or her representatives.

(d.) Requests to Plant Trees or Shrubs

Persons owning land abutting a public way or their representatives may request the Municipal Arborist to issue a written permit to plant trees or shrubs within the limits of the public way. The Municipal Arborist shall issue a permit if he or she determines that the proposed planting will not be harmful to public health or safety, will not damage or encroach upon existing public trees, shrubs, or utility lines, will not damage the public street, sidewalk, or public or private utilities located in the right of way, and that suitable arrangements have been made to provide for future maintenance of the proposed tree or shrub. The Municipal Arborist may specify reasonable conditions in the permit which the property owner or his or her representatives must follow in carrying out the work. Failure to comply with the conditions in the permit will subject the property owner to the penalties established by this ordinance. In lieu of initiating proceedings to enforce the conditions stated in the permit, the Municipal Arborist may cause any necessary corrective work to be done at the expense of the abutting owner.

(e.) Appeals

Any person who is denied permission by the Municipal Arborist to act under this section or who disagrees with a restriction or condition imposed on the action to be taken may appeal the same by filing a notice of appeal to the Board within ten (10) days from the date the action appealed from was taken. The notice of appeal shall contain the name and address of the person filing the appeal, the date and nature of the action from which the appeal is being taken, and a brief description of the basis for the appeal. The notice of appeal shall be filed with the Municipal Arborist who shall promptly forward it, as well as a response to the appeal, to the Chair and Secretary of the Board. The Board shall hear and decide the appeal within thirty (30) days from the date that the appeal was taken. A majority of the members of the Board shall constitute a quorum for purposes of hearing an appeal. The Board shall develop procedures governing the processing of such appeals. Such procedures to be made available to the public.

(Ord. No. 12-07, 7-19-12)

Sec. 78-50. Notice by municipal arborist of proposed tree work; appeals.

- (a.) Except in the case of an emergency, the Municipal Arborist shall notify any abutting property owner at least ten (10) days before removing, topping, or spraying any public tree. In the case of an abutting property owner who does not

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occupy the property, notice may be given to any occupant of suitable age and discretion. Notice may be given by mail, by telephone, by electronic transmission, by leaving written notice attached to the person's door, or in person. The notice shall describe the work to be done, when it is scheduled to begin, the process by which an appeal may be taken, and how to contact the Municipal Arborist. With respect to pruning and trimming public trees, no formal notice is required, but the Municipal Arborist shall make a good faith effort when feasible to advise abutting property owners of the work to be done and to provide them with an opportunity to express any objections they may have.

- (b.) Within ten (10) days of the date when notice of the Municipal Arborist's intention to remove, top, or spray a tree is given, an abutting owner or his or her representative may give notice to the Municipal Arborist that he or she is appealing the decision to the Board. Such notice of appeal may be given in person, by telephone, mail, or electronic communication. The procedure with respect to appeals under this section shall be the same as that for appeals under § 78-49(e) of this ordinance except that the proposed action shall be held in abeyance until the appeal has been heard and the Board has rendered a decision.

(Ord. No. 12-07, 7-19-12)

Sec. 78-51. Notice of tree work by utilities.

- (a.) At least thirty (30) days before initiating any trimming, cutting, or removal of public trees, a utility company must notify the Municipal Arborist who may request the City Council to hold a public hearing to discuss the request.
- (b.) At least thirty (30) days before initiating any trimming, cutting, or removal of public trees, a utility company shall publish notice of its proposal on its website and in at least one newspaper which has daily circulation in the area in which the work is to be done. The notice shall describe the work which is proposed, the streets on which the work is scheduled to be carried out, and the dates on which the work is to be done. The notice shall be published in a display advertisement format which is easily readable and sufficiently prominent so that it is likely to come to the attention of persons whose property will be affected by the proposed tree work. The published notice shall also advise the members of the public of their right pursuant to state law to be added to a list of persons who must be consulted by the utility company before it trims, cuts, or removes trees in which they have a legal interest.

(Ord. No. 12-07, 7-19-12)

Sec. 78-52. Lewiston-Auburn community forest board.

- (a.) *Statement of purpose.* The existence of the Lewiston-Auburn Community Forest Board is formally recognized. The Board shall develop and implement a community forest program which promotes the economic, environmental, and esthetic values of the community forest.

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- (b.) *Members.* The Board shall consist of nine members appointed by the respective mayors.
- (c.) *Qualifications of members.* Members must be residents of Lewiston or Auburn, or own property in either city, and be interested in developing and preserving a healthy community forest. There shall be a minimum of four members from each city although five members shall constitute a quorum and may act regardless of whether there are vacant positions on the Board. When members of the Board are acting as a Board of Appeals, a quorum shall require the participation of at least two (2) members from each city.
- (d.) *Ex officio members.* There shall be six (6) ex officio members of the Board consisting of the Director (or Superintendent) of the Parks Department in Auburn and the Public Works Director in Lewiston, a member of each city's Planning Board or planning staff to be chosen by the respective Mayors, and the Municipal Arborist from each city. The Board may adopt a by-law regarding the election of associate members of the Board who may participate in the affairs of the Board, but they will not be eligible to vote except in the absence of a regular member of the Board.
- (e.) *Members' terms of office.* Each member shall serve for a term of three (3) years and may be reappointed by their respective mayors. Members currently serving may complete their current terms of office and may be reappointed for additional three-year terms. Terms of office will continue to be staggered to provide for continuity in the Board's program and activities.
- (f.) *Vacancies.* When vacancies occur, the Board shall take appropriate steps to recruit applicants to fill the vacant positions. Members appointed to fill vacant positions on the Board shall serve out the terms of the persons they are replacing.
- (g.) *Compensation.* Members of the Board shall serve without compensation.
- (h.) *Duties and responsibilities.* The Board shall:
 - (1) Develop a plan for and provide advice to city staff and agencies regarding the management of the community forest including the anticipated impact of proposed development;
 - (2) Raise community awareness regarding the importance of the community forest;
 - (3) Raise funds to establish a community forest trust fund;
 - (4) Hear appeals filed pursuant to this ordinance;
 - (5) Adopt by-laws to govern the internal affairs of the Board; and
 - (6) Perform such other functions as are permitted by this ordinance.

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- (i.) *Administration.* The Board shall elect a Chair, Vice Chair, Secretary, and Treasurer. Except for the Chair, the officers shall serve for renewable one-year terms. The Chair shall be elected for a renewable two-year term. The Board may allow the duties of the Secretary and Treasurer to be performed by the same person.

(Ord. No. 12-07, 7-19-12)

Sec. 78-53. Penalty.

- (a.) Any violator of any provision of this article shall be subject to a civil penalty payable to the city. Each act of violation shall constitute a separate offense.
- (b.) Should any public tree be destroyed, the person causing the destruction shall also make restitution to the city or to the abutting landowner in an amount equal to the cost of removing the destroyed tree plus its replacement value. Replacement value shall be calculated as follows:
- (1) For a tree up to and including 2 inches in diameter measured at a distance of 4.5 feet from the ground, the replacement value shall be \$200.
 - (2) The replacement value of a tree in excess of 2 inches in diameter as measured at a distance of 4.5 feet from the ground shall be calculated by using the following formula: $\text{restitution} = \$200 + (d^2 \times \$40)$ not to exceed \$2,500 where d equals the diameter of the trunk as measured in inches.
- (c.) The court may also order the violator to reimburse the city for the cost of any action which was necessary to correct violations of the ordinance. If the city is the prevailing party in an enforcement action, it shall be awarded reasonable attorneys' fees and costs.

(Ord. No. 12-07, 7-19-12)

Chapter 82

VEHICLES FOR HIRE*

Article I. In General

Sec. 82-1. Definitions.
Secs. 82-2--82-25. Reserved.

Article II. Taxicabs

Division 1. Generally

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Sec. 82-29. Record of daily trips.
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Division 2. Licenses

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Article III. Buses

Sec. 82-81. Applicability.
Sec. 82-82. Stopping on crosswalks or at intersections.
Sec. 82-83. Entering and leaving bus.
Sec. 82-84. Procedure for taking on and letting off passengers.
Sec. 82-85. Stopping restricted to designated areas, exception.

***Cross references:** Advertising, ch. 6; businesses, ch. 22; traffic and vehicles, ch. 70.

State law references: Municipal authority to regulate rates of fare, routes and standing places of vehicles for hire, 30-A M.R.S.A. § 3009(1)(F); insurance for vehicles for hire, 29 M.R.S.A. § 831.

VEHICLES FOR HIRE

ARTICLE I. IN GENERAL

Sec. 82-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Disqualifying criminal conviction means and includes any conviction for any criminal offense which is, or any juvenile offense which, if committed by an adult is, punishable by imprisonment for any period of time, whether or not the sentence was imposed or served, but shall not include any conviction which is shown to have been set aside on appeal or collaterally, or for which a pardon, certificate of rehabilitation, or the equivalence under the law of the sentencing jurisdiction has been granted, or which is not rationally related to the purpose of licensing under this chapter.

Motor buses means motor vehicles designed and constructed for the general transportation of passengers for hire and possessing a manufacturer's rated seating capacity of 15 or more passengers.

Taxicab means a motor vehicle used for the conveyance of passengers for hire; provided, however, that nothing in this chapter shall be construed to apply to motor vehicles owned by undertakers and used for funeral services nor to motor vehicles for hire while being used for services at funerals or weddings, nor to motor buses as defined in this section.

(Code 1982, § 28-1)

Cross references: Definitions generally, § 1-2.

Secs. 82-2--82-25. Reserved.

ARTICLE II. TAXICABS*

***Cross references:** Restricted use of taxi zones, § 70-172.

DIVISION 1. GENERALLY

Sec. 82-26. Condition; doors required.

Every taxicab operated on the streets of the city shall be maintained in a clean and serviceable condition and in adequate repair. Each such taxicab shall have two doors affording direct entrance and exit to and from the passenger compartment. Clean and adequate repair shall mean and include without limitation, the following:

- (1) No visible tears in carpeting;
- (2) No dents larger than six inches in diameter;
- (3) No tears in seat upholstery;
- (4) No loose trash or large amounts of dirt or sand in the interior passenger area, whether or not the area is currently occupied by a passenger;
- (5) No missing trim or body work;

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- (6) No cracks in windshield or windows;
- (7) Seat belts for all passenger seats visible and in working order;
- (8) No missing hubcaps;
- (9) No visible primer paint; and
- (10) No rust greater than one inch in diameter.

(Code 1982, § 28-13; Ord. No. 00-3, 3-16-00)

Sec. 82-27. Markings.

Each taxicab shall bear on the outside letters not less than two inches, nor more than six inches in height, the name of the owner and, in addition, may bear an identifying design approved by the city clerk and the business telephone number of the owner; no other legend than the name of the owner, the approved design and the telephone number may be used on the door. Any name, legend or design proposed for use elsewhere on the taxicab shall be submitted to and approved by the city clerk before being so used.

Any vehicle that is no longer in service as a licensed taxicab shall have any markings distinguishing the vehicle as a taxicab removed.

(Code 1982, § 28-14; Ord. No. 07-05, 6-14-07)

Sec. 82-28. Display of cards required.

- (a) All licensed taxicabs shall have cards of such size and form as may be required by the city clerk which shall show:
 - (1) The license number assigned to the vehicle by the city clerk and a statement to the effect that in cases of complaint, the city clerk shall be notified, giving the number of the taxicab license.
 - (2) The driver's identification card and number.
- (b) The cards required by this section shall be displayed on the interior of the vehicle in clear view of the passenger and so placed or secured in the frame in which enclosed that they may not be easily tampered with or destroyed.

(Code 1982, § 28-16)

Sec. 82-29. Record of daily trips.

The owner of a licensed taxicab shall keep daily records of all trips made by such vehicle upon such form and in such manner as shall be approved by the city clerk, which record upon demand shall be open to inspection by the city clerk or any police officer.

(Code 1982, § 28-17)

Sec. 82-30. Number of passengers.

No driver shall permit more persons to be carried in a taxicab than the seating capacity of the cab. (Code 1982, § 28-18)

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Sec. 82-31. Inspection; costs.

- (a) The city clerk shall have the power to designate such person and place of inspection as the city clerk may deem proper to determine whether taxicabs are being maintained in adequate repair.
- (b) Whenever an inspection is made by a person designated by the city clerk, the cost of such inspection shall be paid by the owner of the taxicab.

(Code 1982, § 28-15)

Sec. 82-32. Receipts for fare charged.

Every driver, when requested by the passenger, shall give a receipt showing the owner's name, date and amount of fare charged, and shall sign such receipt.

(Code 1982, § 28-19)

Sec. 82-33. Consent of passenger required before adding others.

No driver of a taxicab shall carry any other person than the passenger first employing his taxicab without the consent of the first passenger.

(Code 1982, § 28-20)

Sec. 82-34. Rates and zones; publishing requirement.

- (a) The city clerk, finance director, and purchasing agent shall have the power to approve uniform schedules of rates and zones submitted by the taxicab operators subject to the approval of the council, which schedules of rates and zones shall be kept on file in the office of the city clerk.
- (b) In cases of dispute or disagreement between the taxicab operators in the matter of rates and zones, the city clerk shall submit the matter to the council, who shall have the power to fix and determine schedules of fares and define the limits of the zones for such fares, after notice and hearing.
- (c) Before any schedule of rates and zones, and any changes therein, shall become effective, the city clerk shall cause the same to be published in the daily newspapers published in the city at least one week before the same shall come into effect.

(Code 1982, § 28-21)

Sec. 82-35. Insurance, cancellation.

Should an insurance policy of any licensed taxi business in the city be canceled before its expiration date, the issuing company shall mail a 30-day written notice to the City of Lewiston. This notice should be sent to the chief of police and city clerk.

(Ord. No. 00-3, 3-16-00)

Secs. 82-36--82-45. Reserved.

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DIVISION 2. LICENSES

Sec. 82-46. Required.

No person shall operate or cause to be operated a taxicab upon the streets of the city unless the taxicab and driver are licensed in accordance with the provisions of this article.

(Code 1982, § 28-27)

Sec. 82-47. Application.

(a) Applications for licenses required under this division shall be filed in accordance with chapter 22. In addition to the requirements of that chapter:

(1) *Taxicab business licenses:*

- a. Every application shall be signed and verified by each of the principal officers of the applicant if the applicant is a corporation, and in all other cases by all persons having actual ownership interests in the applicant. If the applicant is a corporation, the application shall state the name and address and the date and place of birth of each of the principal officers of the applicant and of every person having management authority in the business of the applicant. In all other cases, the application shall state the name and address and the date and place of birth of every person having an actual ownership interest or having management authority in the business of the applicant.
- b. A record of any disqualifying criminal conviction or a statement that no such conviction exists shall be provided.
- c. The make, type, year, serial number and license plate number of each vehicle for which a taxicab business license is sought and the address of the garage or other terminal at which the vehicle will be stationed when not in service shall be stated.
- d. A detailed description of the graphic design, insignia, working and coloring which will appear upon the vehicle, if licensed, shall be included.
- e. The application shall contain an appropriate form of statement over the signature of each person signing the application, giving all persons and governmental agencies having information relevant to the above items permission to release the same to the clerk.

(2) *Taxicab drivers' licenses.* The taxicab driver's license shall:

- a. State the age of the applicant;
- b. Contain a complete statement of the applicant's health and physical condition;
- c. Contain a complete record of the applicant with respect to any disqualifying criminal conviction or a statement that no such conviction exists;

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- d. Contain a record of convictions for reckless driving, driving to endanger, operating or attempting to operate under the influence during the year preceding the application; and
 - e. State whether any driver's license held by the applicant is presently revoked or has been revoked during the three years preceding the application and the reasons for such revocation or revocations.
- (b) The application shall contain an appropriate form of statement over the signature of the applicant giving all persons and governmental agencies having information relevant to the items required under this section permission to release such information to the clerk and shall be accompanied by two photographs of the applicant of such size as the clerk may specify.

(Code 1982, § 28-28)

Sec. 82-48. Standards for denial.

In addition to those standards set forth in chapter 22, a license under this division shall be denied to the following persons:

- (1) *Taxicab business licenses.*
 - a. A corporation which is not licensed to do business in the state;
 - b. An applicant other than the registered owner of the vehicle;
 - c. A corporation if any principal officer thereof or any person having actual ownership interest therein has a disqualifying criminal conviction;
 - d. An applicant, other than a corporation, if such applicant or any person having an actual ownership interest or management authority therein has a disqualifying criminal conviction;
 - e. Any applicant whose taxicab business license has been revoked within the three years preceding the application; and
 - f. Any applicant, if any person whose taxicab license has been revoked within the three years preceding the application, and who was a principal of any corporation whose taxicab business license has been revoked within the three years preceding the application, is or will be substantially involved in the ownership or management of the business.

The clerk shall make and keep a written record of every decision to deny an application for a taxicab business license in the manner required by 1 M.R.S.A. § 401 et seq.

- (2) *Taxicab driver's licenses.*
 - a. An applicant who has not attained the age of 18 years;
 - b. An applicant who is unable to safely operate a taxicab or who presents a danger to the health, safety or general welfare to the public;
 - c. An applicant who has been convicted of (a) any class A, class B or class C crime; or (b) a crime committed under the laws of the United States of

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America or of any other state or territory thereof, which is punishable (whether or not such punishment was actually imposed) by a sentence at least as harsh as that which is authorized for the commission of a class C crime under Maine law; provided that such conviction was for an offense which is rationally related to the purpose of licensing taxicab drivers;

- d. An applicant who has been given a disqualifying criminal conviction at any time during the five years immediately preceding application; or who has been imprisoned at any time during such period for a disqualifying criminal conviction; provided that such conviction was for an offense which rationally related to the purpose of licensing taxicab drivers;
- e. An applicant who has been convicted at any time during the three years immediately preceding application of reckless driving; driving to endanger; operating under the influence; operating after suspension of driver's license; attempting to operate under the influence; or an equivalent offense in any other jurisdiction; or whose privilege to operate a motor vehicle in any jurisdiction has been revoked at any time during such period for any reason;
- f. Any applicant whose taxicab driver's license has been suspended, withdrawn or revoked within the three years preceding the application. If the drivers license was suspended, withdrawn or revoked due to nonpayment of state mandated child support or due to lack of personal vehicle insurance coverage, this standard for denial is not applicable;
- g. Any applicant who does not possess a current and valid Maine driver's license;
- h. Any applicant who has outstanding warrants of arrest in Maine or any other jurisdiction; and
- i. Any applicant who is a convicted sex offender and who is required to register as a sex offender within the state.

The clerk shall make and keep a written record of every decision to deny an application for a taxicab driver's license in the manner required by 1 M.R.S.A. § 401 et seq.

(Code 1982, § 28-29; Ord. No. 04-03, 3-18-04; Ord. No. 06-01, 3-9-06; Ord. No. 07-05, 6-14-07; Ord. No. 07-06, 7-5-07; Ord. No. 07-07, 9-13-07)

Sec. 82-49. Inspection prerequisite to issuance.

- (a) Before a taxicab license shall be granted, all taxicabs shall be thoroughly inspected in regard to mechanical condition and general appearance.
- (b) Every person operating a taxicab shall present such taxicab for inspection whenever the city clerk may require it.

(Code 1982, § 28-30)

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Sec. 82-50. Expiration and application dates.

Licenses for taxicabs shall expire on the last day of February following the date of issuance.
(Code 1982, § 28-35)

Sec. 82-51. Nontransferable.

No taxicab license provided for in this division shall be assigned or transferred without first obtaining the consent and approval of the city clerk. (Code 1982, § 28-36)

Sec. 82-52. Surrender of license when relinquishing ownership.

Any licensee who shall cease to be the owner of a taxicab shall at once surrender his license to the city clerk. (Code 1982, § 28-37)

Sec. 82-53. City clerk's power to suspend.

- (a) *Business or driver's license.* In addition to the grounds for suspension or revocation of licenses set forth in chapter 22, either a taxicab business license or a taxicab driver's license may be suspended or revoked upon a determination that the licensee:
- (1) Knowingly took a longer route to his destination than was necessary, unless so requested by the passenger;
 - (2) Knowingly conveyed any passenger to a place other than that which the passenger specified;
 - (3) Transported any person other than the passenger first engaging the taxicab without the express consent of such passenger;
 - (4) Drove a taxicab when not clean and neat in appearance;
 - (5) Refused to transport any orderly person upon request unless, in the case of a single taxicab business, the taxicab is engaged, or in the case of a taxicab business operating more than one taxicab, all taxicabs operated by such business and then in service are engaged. If no taxicab is available at the time when a request for taxicab service is telephoned to a dispatch service, the dispatch service shall arrange with the caller for transportation by the next available taxicab using such dispatch service unless the caller expressly declines to make such arrangement;
 - (6) Charged more than the maximum fare specified in this article;
 - (7) Failed to notify the clerk of any change of any material fact set forth in the application for such license; or
 - (8) Removed from a taxicab or obscured or caused to be removed from a taxicab or obscured the notice required by section 82-28.
- (b) *Taxicab drivers' licenses only.* In addition to the provisions of subsection (a) of this section, a taxicab driver's license may be suspended or revoked upon the determination that the driver:
- (1) Engaged in any loud argument, fight or other disturbance; harassed, threatened or assaulted another person; intentionally damaged, destroyed or threatened to damage or destroy any property; or in any other manner engaged in conduct

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- detrimental to the orderly and efficient transportation of passengers;
- (2) Is unable to safely operate a taxicab or presents a danger to the health, safety or general welfare to the public;
 - (3) Has been convicted or adjudicated of a disqualifying criminal conviction at any time since such license was last issued or renewed; or
 - (4) Has been convicted at any time since such license was last issued or renewed of reckless driving; driving to endanger; operating under the influence; attempting to operate under the influence; or an equivalent offense in any other jurisdiction; or whose privilege to operate a motor vehicle in any jurisdiction has been revoked.

Maximum suspensions of taxicab driver's licenses shall be as follows: Five days for the first violation, 14 days for the second violation, 30 days for the third violation within a one-year period. Fourth violations shall result in revocation of the taxi driver's license and may be the basis for further action with respect to the taxicab business license.

- (c) *Taxicab business licenses.* In addition to the provisions of subsection (a) of this section, taxicab business licenses shall be subject to suspension or revocation where it is determined that there have been repeated violations by the driver or drivers thereof which resulted in four or more suspensions for similar conduct by the same driver, or eight or more suspensions by employees of the same person holding more than one taxicab business license for similar conduct, establishing a pattern of conduct by the holder of the taxicab business licenses.
- (d) *Either license.* Notwithstanding the foregoing provisions of this section, a taxicab business or driver's license may be suspended or revoked if a licensee used, or allowed another to use, a taxicab in connection with, or to promote or solicit for, any unlawful business or activity.

(Code 1982, § 28-38; Ord. No. 06-01, 3-9-06)

Sec. 82-54. Right to appeal from suspension or denial; procedure.

Any licensee under this division aggrieved by an order of suspension or denial shall have the right to appeal, provided such licensee shall file in writing with the city clerk a request for a hearing. A hearing shall be held within 15 days from the date of request and shall be conducted by an appeals committee comprised of the deputy city administrator and two city councilors, and notice of such hearing shall be posted in the city clerk's office at least 48 hours prior to the date of the meeting. The appeals committee shall have the power to temporarily suspend, revoke or deny a taxicab driver's license when continued operation by the license holder presents a danger to the health, safety or general welfare of the public. After such hearing, the appeals committee may affirm, modify or vacate the order of suspension appealed from.

(Code 1982, § 28-39; Ord. No. 00-14, 7-6-00; Ord. No. 04-03, 3-18-04; Ord. No. 05-25, 2-16-06)

Sec. 82-55. City council's power to revoke.

The city council may, after notice and hearing, revoke the taxicab license of any person upon complaint filed by the city clerk. (Code 1982, § 28-40)

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Sec. 82-56. Effect on operator after suspension or revocation.

The person whose taxicab license has been suspended or revoked shall forthwith cease to operate taxicabs, and the city clerk shall order that any taxicab which is being operated by any person whose license has been suspended or revoked be removed from service forthwith.

(Code 1982, § 28-41)

Sec. 82-57. Notification of address change required.

When a licensed taxicab owner changes his business address or his residence address, or the place at which a taxicab owned by him is garaged, he shall, within 24 hours of such change, notify the city clerk. (Code 1982, § 28-42)

Secs. 82-58--82-80. Reserved.

ARTICLE III. BUSES

Sec. 82-81. Applicability.

The provisions of this article are hereby established for the due regulation of the motor buses used for the conveyance of passengers in the streets of the city and shall be observed by the officers, agents and servants of the corporation or companies owning and operating such buses. (Code 1982, § 28-68)

Sec. 82-82. Stopping on crosswalks or at intersections.

- (a) No bus shall be allowed to stop on a crosswalk, nor in front of an intersecting street, except to avoid collision or to prevent damage or injury to persons in the street.
- (b) When the driver of any bus is required to stop at the intersection of two streets to receive or land passengers, the bus shall be stopped so as to leave the entrance slightly over the further crossing.

(Code 1982, §§ 28-69, 28-70)

Sec. 82-83. Entering and leaving bus.

Drivers shall not allow any person to enter or leave the bus while in motion.

(Code 1982, § 28-71)

Sec. 82-84. Procedure for taking on and letting off passengers.

All motor buses shall, except in an emergency, pull over to the righthand curb of the street when taking on or discharging passengers.

(Code 1982, § 28-72)

Sec. 82-85. Stopping restricted to designated areas, exception.

No motor bus shall, except in an emergency, stop to pick up or discharge passengers except in a regularly designated bus stop. (Code 1982, § 28-73)

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE I. TITLE AND PURPOSE

Sec. 1. Title.

This Code shall be known and may be cited as the "Zoning and Land Use Code of the City of Lewiston, Maine," and will be referred to herein as the Code.

Sec. 2. Purpose.

The purpose of this Code is to regulate in the City of Lewiston the location and use of real estate for industrial, commercial, residential and other purposes; the construction, height, number of stories, area and bulk of all structures, the size and open spaces of real estate; population density and setback of structures along public ways. This Code is an integral part of a comprehensive plan for municipal development, the purpose of which is to promote the health, safety and general welfare of the residents of the City of Lewiston and, among other things, is designed to encourage the most appropriate use of land throughout the municipality, to promote traffic safety, to provide safety from fire and other elements, to provide adequate light and air, to prevent overcrowding of real estate, to promote a wholesome living environment, to prevent housing developments in unsanitary areas, to provide an adequate water system, to promote the coordinated development of unbuilt areas, to encourage the formation and preservation of neighborhoods, to provide an allotment of land area in new developments sufficient for all requirements of community life, to encourage the provision of employment opportunities for the residents of the city, and to provide for adequate public services. To achieve said purposes, this Code divides the city into districts and imposes other regulations as hereafter designated, defined and described.

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE X. CONDITIONAL USES

Sec. 1. Conditional use permit.

- (a) A building, structure, or parcel of land may be employed for a conditional use if the use is specifically listed as a conditional use in the regulations governing the zoning district in which the use is proposed and, except as provided in subsection (b) hereof, a conditional use permit is approved by the board of appeals.
- (b) A building, structure or parcel of land may be employed for a conditional use if the use is specifically listed as a conditional use in the regulations governing the zoning district in which the use is proposed and, when the proposed development is a major development as defined in article XIII, subsection 3(a)(2), if a conditional use permit is approved by the planning board.

(Ord. No. 89-3, 4-7-89)

Sec. 2. Application.

Applications for conditional use permits shall be submitted to the office of the director of code enforcement. A nonrefundable application fee, as established from time to time by the city council to cover administrative costs and costs of a hearing, shall accompany each application. The application shall be on forms provided by the city for that purpose and shall contain the following information and documentation:

- (1) The applicant's name and address and his interest in the subject property;
- (2) The owner's name and address, if different than the applicant;
- (3) The address and map and lot number, as shown in the records of the office of the assessor, of the subject property;
- (4) The particular provision of this Code authorizing the proposed conditional use;
- (5) The zoning classification and present use of the subject property;
- (6) A general description of the proposed conditional use;
- (7) A drawing, which is substantially to scale, of the site, showing existing and proposed buildings, roads, drives, parking areas and utilities, the actual relationship of these facilities to each other and the boundaries of the parcel and the location of buildings or abutting lots which are within 50 feet of the property line of the site. Where development approval is required by article XIII of this Code, the drawing shall meet the requirements of article XIII, subsection 3(h)(3) of that article.

Sec. 3. Standards for conditional use permits.

A conditional use permit shall be granted by the board of appeals or planning board unless the board finds that the granting of the permit would violate one or more of the following standards:

- (1) Neither the proposed use nor the proposed site upon which the use will be located is of such a character that the use will have significant adverse impact upon the

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE X. CONDITIONAL USES

value or quiet possession of surrounding properties greater than would normally occur from such a use in the zoning district. The board may not find that this standard is satisfied unless it finds that:

- a. The size of the proposed use is comparable to surrounding uses; and
 - b. The amount and type of traffic to be generated, hours of operation, expanse of pavement, and the number of parking spaces are comparable to surrounding uses; and
 - c. The generation of noise, dust, odor, vibration, glare, smoke, litter and other nuisances is comparable to surrounding uses; and
 - d. The impact of the use on the quality and quantity of groundwater available to abutting properties is comparable to surrounding uses; and
 - e. Unusual physical characteristics of the site, including size of the lot, shape of the lot, topography, and soils, do not aggravate adverse impacts upon surrounding properties.
- (2) Vehicular and pedestrian access to, into and within the site will be safe and will not be overburdened or create hazards because they are inadequate. The board may not find that this standard is satisfied unless it finds that:
- a. Vehicular access to the site will be on roads which have adequate capacity to accommodate the additional traffic generated by the development.
 - 1. Adequate capacity means that:
 - (i) Intersections on major access routes to the site within one-half mile of any entrance road will function after development at a minimum at Level of Service C; or
 - (ii) If they are functioning at a Level of Service D or lower prior to the development, the project will not reduce the current level of service.
 - 2. The board of appeals or planning board may approve a conditional use permit for an application not meeting this requirement if the applicant demonstrates that:
 - (i) A public agency has committed funds to construct the improvements necessary to bring the level of access to said standard, or
 - (ii) The applicant will assume financial responsibility for the improvements necessary to bring the level of service to said standard and will guarantee the completion of the improvements within one year of approval of the permit.
 - b. The topography of the site shall permit the construction of all driveways, entrances or proposed streets to meet the standards of the City of Lewiston's Policy for the Design and Construction of Streets and Sidewalks.

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE X. CONDITIONAL USES

- c. Facilities are present to assure the safety of pedestrians passing by or through the site.
- (3) Municipal or other facilities serving the proposed use will not be overburdened or create hazards because they are inadequate. The board may not find that this standard is satisfied unless it finds that:
- a. The capacity of sewerage and water supply systems is adequate to accommodate the proposed use;
 - b. The capacity of the storm drainage system is adequate to accommodate the proposed use; and
 - c. The ability of the fire department to provide necessary protection services to the site and development is adequate.
- (4) The soils on the proposed site shall have adequate capacity and stability to support all loadings, including fill, developed by the proposed use and the use will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water to the extent that a dangerous or unhealthy condition may result on the site or upon the land of abutters or the environment. In considering whether this standard is satisfied, the board shall take into account the elevation above sea level of the site and surrounding properties, its relation to flood plains, the slope and vegetation of the land and their effects on drainage.
- (5) The scale and design of the proposed structures with respect to materials, scale and massing shall be compatible with existing structures within 500 feet of the site in areas where the existing structures are of a similar scale and architectural treatment.

(Ord. No. 89-3, 4-7-89; Ord. No. 01-23, 2-7-02; Ord. No. 07-02, 3-22-07)

Sec. 4. Additional standards in shoreland areas.

For conditional use permit applications in shoreland areas, the board of appeals or planning board shall grant the application only if it finds that the proposed use:

- (1) Will not result in damage to spawning grounds, fish, aquatic life, bird and other wildlife habitat;
- (2) Will conserve shoreland vegetation;
- (3) Will conserve visual points of access to waters as viewed from public facilities;
- (4) Will conserve actual points of public access to waters;
- (5) Will conserve natural beauty; and
- (6) Will avoid problems associated with floodplain development or use such as erosion, increased risk of flood damage to upstream properties or increased flood damage.

(Ord. No. 89-3, 4-7-89)

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE X. CONDITIONAL USES

Sec. 5. Limitations on conditional use permits.

No conditional use permit shall be valid for a period longer than six months from the date of issue, or such other time, up to two years, as was fixed when the permit was granted, unless the conditional use has been commenced or construction has actually begun within that period and is thereafter diligently pursued to completion. However, one or more extensions of said time, each not to exceed one year, may be granted by the board of appeals or planning board if the facts which supported the granting of the permit have not materially changed. A conditional use permit shall be deemed to authorize only the particular use for which it was issued and such permit shall automatically expire and cease to be of any force or effect if such use is, for any reason, discontinued for a period of 12 consecutive months. In addition, a conditional use permit authorizes only the activity expressly described in the application. Any additions to buildings or structures, construction of new buildings or structures, or other enlargement, expansion or intensification of the use shall require the issuance of a new conditional use permit.

(Ord. No. 89-3, 4-7-89)

Sec. 6. Miscellaneous provisions.

The provisions relating to appeals contained in article IX, subsections 2(b)--(f) and sections 5, 6, 8 and 11 are also applicable to the administration of conditional use permit applications.

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE XI. DISTRICT REGULATIONS

***Editor's note:** Ord. No. 00-19, adopted Oct. 5, 2000, added §§ 5, 9, 13, 17 and 22. Hence, §§ 5--7, 8--10, 12--14, 15--18 was renumbered as §§ 6--8, 10--12, 14--16, and 18--21, respectively. See the Code Comparative Table.

Sec. 1. Rural-agricultural district (RA).

- (a) *Statement of purpose.* The purpose of the rural-agricultural district is to provide areas within the city for the development of very low density residential uses while protecting the rural character of these portions of the city. Within the rural-agricultural district the retention of active agricultural uses is encouraged. Development which occurs within the district should be sensitive to the rural nature of the district and should preserve open space and agricultural land to the maximum extent possible.

(Ord. No. 89-3, 4-7-89; Ord. No. 89-11, 9-15-89; Ord. No. 90-3, 5-17-90; Ord. No. 90-10, 10-4-90; Ord. No. 91-8, 10-3-91; Ord. No. 92-27, 11-19-92; Ord. No. 97-7, 9-11-97; Ord. No. 98-6, 7-2-98; Ord. No. 98-7, 9-10-98; Ord. No. 00-27, 1-11-01; Ord. No. 12-15, 2-7-13)

Sec. 2. Low-density residential district (LDR).

- (a) *Statement of purpose.* The purpose of the low-density residential district is to provide areas within the city for the development of single-family homes on individual residential lots and well planned mixed residential developments in environments which protect them from the adverse impacts of incompatible land uses. The standards of the district provide for residential development of up to six units per acre with the availability of public sewerage.

(Ord. No. 89-3, 4-7-89; Ord. No. 89-11, 9-15-89; Ord. No. 90-3, 5-17-90; Ord. No. 90-10, 10-4-90; Ord. No. 91-8, 10-3-91; Ord. No. 92-27, 11-19-92; Ord. No. 96-6, 7-4-96; Ord. No. 97-7, 9-11-97; Ord. No. 98-6, 7-2-98; Ord. No. 00-27, 1-11-01; Ord. No. 12-15, 2-7-13)

Sec. 3. Suburban residential district (SR).

- (a) *Statement of purpose.* The purpose of the suburban residential district is to provide areas within the city for the development of high quality single-family homes on individual residential lots in environments which protect them from the adverse impacts of incompatible land uses. The standards of the district provide for residential development of up to two units per acre with the availability of public sewerage.

(Ord. No. 89-3, 4-7-89; Ord. No. 89-11, 9-15-89; Ord. No. 90-3, 5-17-90; Ord. No. 90-10, 10-4-90; Ord. No. 91-8, 10-3-91; Ord. No. 92-27, 11-19-92; Ord. No. 96-6, 7-4-96; Ord. No. 97-7, 9-11-97; Ord. No. 98-6, 7-2-98; Ord. No. 98-7, 9-10-98; Ord. No. 00-27, 1-11-01; Ord. No. 12-15, 2-7-13)

Sec. 4. Medium-density residential district (MDR).

- (a) *Statement of purpose.* The purpose of the medium-density residential district is to provide areas within the city for the development of good quality multifamily housing at densities up to eight units per acre, and good quality single-family housing, at densities of up to two units per acre, including mobile homes where appropriate, while protecting established neighborhoods from undesirable impacts from these uses.

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(Ord. No. 89-3, 4-7-89; Ord. No. 89-11, 9-15-89; Ord. No. 90-3, 5-17-90; Ord. No. 90-10, 10-4-90; Ord. No. 91-8, 10-3-91; Ord. No. 92-4, 2-20-92; Ord. No. 92-27, 11-19-92; Ord. No. 92-31, 1-7-93; Ord. No. 96-6, 7-4-96; Ord. No. 97-7, 9-11-97; Ord. No. 98-6, 7-2-98; Ord. No. 00-27, 1-11-01; Ord. 10-13, 12-23-10; Ord. No. 12-15, 2-7-13)

Sec. 5. Riverfront (RF).

- (a) *Statement of purpose.* The purpose of the riverfront district is to promote redevelopment of the riverfront area for recreation, employment and mixed-age and mixed-income housing by encouraging the development of new buildings or the reuse or conversion of existing buildings and other areas that will enhance the use of the Androscoggin River as an amenity.

(Ord. No. 00-19, 10-5-00; Ord. No. 05-07, 3-17-05; Ord. No. 12-04, 04-05-12; Ord. No. 12-15, 2-7-13)

Editor's note: See editor's note at article XI.

Sec. 6. Neighborhood conservation "A" district (NCA).

- (a) *Statement of purpose.* The purpose of the neighborhood conservation "A" district is to promote neighborhood stability by requiring the development of new buildings or the reuse or conversion of existing buildings to conform to the type and density of housing existing within the immediate neighborhood. The standards of the district restrict housing to single-family detached dwellings unless the existing pattern of use in the immediate neighborhood is two-family or predominantly multifamily dwellings.

(Ord. No. 89-3, 4-7-89; Ord. No. 89-11, 9-15-89; Ord. No. 90-3, 5-17-90; Ord. No. 91-8, 10-3-91; Ord. No. 92-25, 11-5-92; Ord. No. 92-27, 11-19-92; Ord. No. 92-34, 1-7-93; Ord. No. 95-12, 9-14-95; Ord. No. 97-7, 9-11-97; Ord. No. 98-6, 7-2-98; Ord. No. 00-18, 8-17-00; Ord. No. 00-19, 10-5-00; Ord. No. 00-27, 1-11-01; Ord. No. 03-18, 1-1-04; Ord. No. 12-15, 2-7-13)

Editor's note: See editor's note at article XI.

Sec. 7. Neighborhood conservation "B" district (NCB).

- (a) *Statement of purpose.* The purpose of the neighborhood conservation "B" district is to promote the stability and improvement of older multifamily residential neighborhoods by requiring the development of new buildings or the replacement, reuse or conversion of existing buildings to conform to the type and density of housing existing within the immediate neighborhood. The standards of the district allow multifamily housing while encouraging the upgrading of this housing stock.

(Ord. No. 89-3, 4-7-89; Ord. No. 89-11, 9-15-89; Ord. No. 90-6, 5-17-90; Ord. No. 91-8, 10-3-91; Ord. No. 92-34, 1-7-93; Ord. No. 97-7, 9-11-97; Ord. No. 98-6, 7-2-98; Ord. No. 00-19, 10-5-00; Ord. No. 00-27, 1-11-01; Ord. No.10-02, 3-4-2010; Ord. 10-13, 12-23-10; Ord. No. 12-15, 2-7-13)

Editor's note: See editor's note at Article XI.

Sec. 8. Office-residential district (OR).

- (a) *Statement of purpose.* The purpose of the office-residential district is to provide for the orderly transition of older residential areas along major traffic arteries to low-intensity nonresidential uses and multifamily housing. The conversion of existing properties from

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residential to nonresidential use should occur in a manner which preserves the architectural character of the neighborhood, provides controlled traffic access and adequate parking and protects adjoining residential neighborhoods from undesirable impacts.

(Ord. No. 89-3, 4-7-89; Ord. No. 90-3, 5-17-90; Ord. No. 90-11, 10-4-90; Ord. No. 91-8, 10-3-91; Ord. No. 92-18, 9-10-92; Ord. No. 92-27, 11-19-92; Ord. No. 97-7, 9-11-97; Ord. No. 98-6, 7-2-98; Ord. No. 99-9, 4-15-99; Ord. No. 00-19, 10-5-00; Ord. No. 00-27, 1-11-01; Ord. No. 04-19, 7-15-04; Ord. 10-13, 12-23-10; Ord. No. 12-15, 2-7-13)

Sec. 9. Downtown residential district (DR).

- (a) *Statement of purpose.* The purpose of the downtown residential district is to promote the improvement of older residential neighborhoods within the downtown by encouraging a transition to more mixed use neighborhoods, including owner-occupied, mixed-age and mixed-income housing with less density where desired and appropriate, low-intensity nonresidential uses, more open space and other neighborhood amenities, creating diverse, mixed-use neighborhoods. The standards of the district will encourage the upgrading of the existing neighborhoods by removing blight and vacancy, providing an opportunity for new residential and commercial development, and fostering a sense of community and place through neighborhood meeting, gathering and cultural places.

(Ord. No. 00-19, 10-5-00; Ord. No. 00-27, 1-11-01; Ord. No. 05-07, 3-17-05; Ord. 10-13, 12-23-10; Ord. No. 12-04, 04-05-12; Ord. No. 12-15, 2-7-13)

Sec. 10. Institutional-office (IO).

- (a) *Statement of purpose.* The purpose of the institutional-office district is to provide areas within the city for the location of major community facilities including hospitals, schools, colleges and similar institutions. The standards of the district are designed to provide these institutions with flexibility within their property limits but to establish safeguards to protect adjoining residential areas from undesirable impacts associated with these uses.

(Ord. No. 89-3, 4-7-89; Ord. No. 90-3, 5-17-90; Ord. No. 92-11, 6-4-92; Ord. No. 92-18, 9-10-92; Ord. No. 92-27, 11-19-92; Ord. No. 93-8, 6-17-93; Ord. No. 95-6, 6-1-95; Ord. No. 97-2, 4-17-97; Ord. No. 97-7, 9-11-97; Ord. No. 98-6, 7-2-98; Ord. No. 00-19, 10-5-00; Ord. No. 00-27, 1-11-01; Ord. No. 05-07, 3-17-05; Ord. No. 09-09, 12-31-09; Ord. No. 12-15, 2-7-13)

Editor's note: See editor's note at article XI.

Sec. 11. Community business district (CB).

- (a) *Statement of purpose.* The purpose of the community business district is to provide areas within the city for the location of major shopping facilities, including shopping centers which serve the wider community. The standards of the district are intended to encourage well planned commercial developments which have controlled vehicular access and high standards of site design.

(Ord. No. 89-3, 4-7-89; Ord. No. 90-3, 5-17-90; Ord. No. 90-8, 8-10-90; Ord. No. 92-12, 6-4-92; Ord. No. 92-18, 9-10-92; Ord. No. 92-27, 11-19-92; Ord. No. 96-3, 4-18-96; Ord. No. 97-7, 9-11-97; Ord. No. 98-6, 7-2-98; Ord. No. 00-10, 6-15-00; Ord. No. 00-19, 10-5-00; Ord. No. 04-18, 7-15-04; Ord. No. 05-07, 3-17-05; Ord. No. 12-15, 2-7-13)

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Editor's note: See editor's note at article XI.

Sec. 12. Highway business district (HB).

- (a) *Statement of purpose.* The purpose of the highway business district is to provide areas within the city for the location of businesses which are dependent on automobile borne customers and which require large parking areas to be successful. The standards of this district are intended to allow commercial uses while requiring controlled highway access, good quality site design and protection of adjacent residential property. In addition, the standards require the preparation of a master development plan prior to the development

(Ord. No. 89-3, 4-7-89; Ord. No. 90-3, 5-17-90; Ord. No. 90-17, 1-11-91; Ord. No. 92-12, 6-4-92; Ord. No. 92-18, 9-10-92; Ord. No. 94-14, 10-20-94; Ord. No. 96-3, 4-18-96; Ord. No. 97-7, 9-11-97; Ord. No. 98-2, 3-19-98; Ord. No. 98-6, 7-2-98; Ord. No. 00-19, 10-5-00; Ord. No. 00-27, 1-11-01; Ord. No. 02-07, 5-2-02; Ord. No. 05-07, 3-17-05; Ord. No. 10-14, 1-6-11; Ord. No. 12-15, 2-7-13)

Editor's note: See editor's note at Article XI.

Sec. 13. Centreville district (CV).

- (a) *Statement of purpose.* The purpose of the Centreville district is to encourage a concentration of economic enterprises in the central business district that is convenient and attractive for a wide range of retail, service, financial, government, professional, entertainment and appropriate residential uses in a setting conducive to a high volume of pedestrian traffic. The standards of the district will initiate economic revitalization through increased occupancy of downtown properties, improved real estate values, increased consumer activity, and encourage the restoration and preservation of historic buildings and honor the rich Franco-American cultural heritage of the community.

(Ord. No. 00-19, 10-5-00; Ord. No. 00-27, 1-11-01; Ord. No. 04-07, 4-15-04; Ord. No. 05-07, 3-17-05; Ord. No. 10-09, 10-7-10; Ord. 10-13, 12-23-10; Ord. No. 12-04, 04-05-12; Ord. No. 12-15, 2-7-13)

Sec. 14. Office service (OS).

- (a) *Statement of purpose.* The purpose of the office-service district is to set aside areas within the city for the development of major economic activities which do not have significant environmental issues associated with them. The standards of the district provide for well-planned developments with attention to controlled traffic access and buffering of adjacent residential areas. The standards of this district also require that a master development plan be prepared for large parcels prior to the development of the site.

(Ord. No. 89-16, 11-30-89; Ord. No. 90-3, 5-17-90; Ord. No. 92-12, 6-4-92; Ord. No. 92-18, 9-10-92; Ord. No. 93-1, 2-4-93; Ord. No. 96-3, 4-18-96; Ord. No. 97-7, 9-11-97; Ord. No. 98-6, 7-2-98; Ord. No. 00-19, 10-5-00; Ord. No. 00-27, 1-11-01; Ord. No. 05-07, 3-17-05; Ord. No. 10-14, 1-6-11; Ord. No. 12-15, 2-7-13)

Editor's note: See editor's note at article XI.

Sec. 15. Industrial district (I).

- (a) *Statement of purpose.* The purpose of the industrial district is to set aside areas of the city for the development of major economic activities, including manufacturing and processing, and to protect these areas from encroachment from noncompatible residential or commercial uses.

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(Ord. No. 89-16, 11-30-89; Ord. No. 90-3, 5-17-90; Ord. No. 90-12, 11-16-90; Ord. No. 91-6A, 7-4-91; Ord. No. 92-12, 6-4-92; Ord. No. 92-18, 9-10-92; Ord. No. 93-1, 2-4-93; Ord. No. 96-16, 12-19-96; Ord. No. 97-7, 9-11-97; Ord. No. 98-6, 7-2-98; Ord. No. 00-19, 10-5-00; Ord. No. 02-06, 5-2-02; Ord. No. 02-08, 5-16-02; Ord. No. 03-16, 1-1-04; Ord. No. 06-07, 5-18-06; Ord. No. 10-14, 1-6-11; Ord. No. 12-15, 2-7-13)

Editor's note: See editor's note at article XI.

Sec. 16. Urban enterprise district (UE).

- (a) *Statement of purpose.* The purpose of the urban enterprise district is to encourage the improvement, reuse and redevelopment of older mixed use areas of the city by allowing a wide range of uses with appropriate development standards.

(Ord. No. 89-3, 4-7-89; Ord. No. 90-3, 5-17-90; Ord. No. 92-12, 6-4-92; Ord. No. 92-18, 9-10-92; Ord. No. 92-27, 11-19-92; Ord. No. 93-1, 2-4-93; Ord. No. 93-2, 2-4-93; Ord. No. 94-9, 8-18-94; Ord. No. 95-8, 7-20-95; Ord. No. 96-3, 4-18-96; Ord. No. 97-3, 5-15-97; Ord. No. 97-7, 9-11-97; Ord. No. 98-6, 7-2-98; Ord. No. 99-16, 10-12-99; Ord. No. 99-18, 11-20-99; Ord. No. 00-19, 10-5-00; Ord. No. 04-07, 4-15-04; Ord. No. 05-07, 3-17-05; Ord. 10-13, 12-23-10; Ord. No. 10-14, 1-6-11; Ord. No. 12-15, 2-7-13)

Editor's note: See editor's note at article XI.

Sec. 17. Mill district (M).

- (a) *Statement of purpose.* The purpose of the mill district is to develop a major employment center in the downtown by fostering the development of mixed use commercial enterprises and appropriate high-density residential areas while preserving and restoring historic buildings and properties. Developments located within this district should enhance the commercial, cultural, educational and residential vitality of the downtown and link the downtown to the riverfront through a series of pedestrian corridors, pocket parks and open spaces, utilizing the historic canal system, with expanded arts and recreational amenities.

(Ord. No. 00-19, 10-5-00; Ord. No. 05-07, 3-17-05; Ord. No. 12-04, 04-05-12; Ord. No. 12-15, 2-7-13)

Sec. 18. Resource conservation district (RC).

- (a) *Statement of purpose.* The purpose of the resource conservation district is to protect fragile ecological systems, vulnerable areas and areas of unique natural or scenic value from development or use which would adversely affect water quality, productive or unique wildlife and aquatic habitat, biotic systems, ecological relationships or scenic and natural values or which would create unreasonable risks to the public safety and welfare due to flooding, earth movement or slides or unstable soil conditions. To accomplish this purpose, uses are permitted which avoid disruption of the natural environment and are compatible with the natural risks associated with development within these areas while allowing productive use to be made of the land.

(Ord. No. 92-18, 9-10-92; Ord. No. 00-19, 10-5-00; Ord. No. 12-15, 2-7-13)

Editor's note: See editor's note at article XI.

Sec. 19. Groundwater conservation overlay district (GC).

- (a) *Statement of purpose.* The purpose of the groundwater conservation overlay district is to

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protect, preserve and maintain the quality and quantity of the existing and potential groundwater supply within the city by controlling the use, storage and disposal of potential contaminants of the groundwater in areas of the city and identified significant sand and gravel aquifers and by assuring the groundwater recharge areas associated with these aquifers are protected from overdevelopment.

(Ord. No. 92-5, 3-5-92; Ord. No. 00-19, 10-5-00; Ord. No. 12-15, 2-7-13)

Editor's note: See editor's note at article XI.

Sec. 20. No name pond conservation overlay district (LC).

- (a) *Statement of purpose.* The purpose of the no name pond conservation overlay district is to protect the water quality of no name pond by controlling the discharge of surface runoff into the lake, thereby limiting nutrient loading to levels which will not result in substantial degradation of the pond's water quality.

(Ord. No. 92-5, 3-5-92; Ord. No. 00-19, 10-5-00; Ord. No. 02-24, 2-6-03; Ord. No. 06-17, 2-8-07; Ord.No. 08-08, 10-2-08; Ord. No. 12-15, 2-7-13)

Editor's note: See editor's note at article XI.

Sec. 21. Mobile home park overlay district (MH).

- (a) *Statement of purpose.* The purpose of the mobile home park overlay district is to provide for the accommodation of mobile homes in planned, integrated mobile home parks, and mobile homes on individual residential lots, at a standard consistent with the protection of the health, safety and general welfare of the residents of the city while establishing safeguards to minimize the adverse impacts on neighboring property owners.

(Ord. No. 90-10, 10-4-90; Ord. No. 92-31, 1-7-93; Ord. No. 00-19, 10-5-00; Ord. No. 12-15, 2-7-13)

Editor's note: See editor's note at article XI.

Sec. 22. Land Use Requirements.

- (a) *Land Use Requirements* - All buildings or structures hereafter erected, reconstructed, altered, enlarged, or relocated, and uses of premises shall be in conformity with the provisions of this Code. No building, structures, land or water area shall be used for any purpose or in any manner except as permitted within the District in which such building, structure, land and water area is located. The District designation for a particular site shall be determined and apply to all land shown on the "Official Zoning Map, City of Lewiston".

- (b) *Key to Table*

KEYWORD	DEFINITION
(P)	Allowed/Permitted(the use must be in conformance with all applicable sections of the Zoning and Land Use Code)
(C)	Allowed/Permitted only after the issuance of a conditional use permit in accordance with Article X of this Code (the use must be in conformance with all applicable sections of the Zoning and Land Use Code)

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Blank/Empty Column	Use not allowed/permitted; space and bulk requirement not applicable
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- (c) *Land Use Table* – uses appearing in the table are part of this Code and set forth the uses allowed in all district.

(Ord. No. 12-15, 2-7-13)

Land Use Table: All Zoning Districts 12.18.12	Rural Agricultural (RA)	Low Density Residential (LDR)	Suburban Residential (SR)	Medium Density Residential (MDR)	Riverfront (RF)	Neighborhood Conservation on "A" (NCA)	Neighborhood Conservation on "B" (NCB)	Office Residential (OR)	Downtown Residential (DR)	Institutional Office (IO)	Community Business (CB)	Highway Business (HB)	Centreville (CV) ⁽³⁶⁾	Office Service (OS)	Industrial (I)	Urban Enterprise	Mill (M)	Resource Conservation (RC) ⁽¹⁸⁾	Groundwater conservation overlay district (GC) ⁽²⁸⁾	No Name Pond Conservation Overlay District (NNP) ⁽²⁹⁾	Mobile Home Park overlay district (MH) ⁽³⁰⁾
USES(15)(33)																					
Accessory use or structure	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P			
Commercial-Service																					
Veterinary facilities excluding kennels and humane societies								P		P	P	P									
Veterinary facilities including kennels and humane societies	C													P		P					
Small day care facilities	C	P(22)	P(22)	P(22)		P(22)	P	P	P	P	P	P		P	P	P					
Day care centers	C				P			P	P	P	P	P		P	P	P	P				
Day care centers accessory to public schools, religious facilities, multifamily or mixed res. developments, and mobile home parks		C(22)	C(22)	C(22)		C(22)	C(22)														
Business and professional offices including research, experimental, testing laboratories, engineering, research, management and related services					P(9)		C(31)	P(9)	P(9)	P	P(9)	P	P(9)	P	P	P	P	P(6)			
Restaurants					P(1)				P(1)	P(5)	P(26)	P(26)	P(1)	P	P(6)	P	P(1)				
Drinking places					P						C	C	P		P(6)		P				
Adult business establishments											C										
Hotels, motels, inns					P				C	P(4)	P	P	P	P		P	P				
Movie theaters except drive-in theaters					P				P		P	P	P	P		P	P				
Places of indoor assembly, amusement or culture					P						P	P	P	P		P	P				
Art and crafts studios					P		C		P	C	P	P	P	P		P	P				
Personal Services					P		P	P	P	P	P	P	P	P	P(6)	P	P				
Retail stores					P				P		P	P	P		P(6)	P	P				
Neighborhood retail stores				C(21)			P			C											
Lumber and building materials dealer											C					P	P				
Gasoline service stations												P				P					
Gasoline service stations which are a part of and subordinate to a retail use											P	P									
New and used car dealers												P				P(8,17)					
Recreational vehicle, mobile home dealers												P				P					
Equipment dealers and equipment repair												C			P	P					
Automotive services including repair											P(9)	P				P		C(9)			
Registered dispensary(27)												C		C	C	C					
Registered primary caregivers engaged in the cultivations of medical marijuana for two to five registered patients.												P		P	P	P					
Industrial																					
Light industrial uses												P(9)		P	P	P	P				
Industrial uses													P(16)		P	C	C				
Building and construction contractors												P(6)		P(6)	P(6,7)	P(6,7)	P(6,7)				
Fuel oil dealers and related facilities															P	P(6,7)					
Wholesale sales, warehousing and distribution facilities and self-storage facilities												P		P	P	P	P				
Self storage facilities														P		P	P				
Commercial solid waste disposal facilities															C						
Junkyards and auto graveyards															C						
Recycling and reprocessing facilities															C	C	P(9)				
Private industrial/commercial developments(23)											P	P		C	P	P	P				
Transportation																					
Airports or heliports	C																				
Commercial parking facilities					P		C		C(3)	C	C	P	P			P	P				
Transit and ground transportation facilities					P				C				P								
Transportation facilities												P		C	P	P	P(10)				
Public and Utility																					
Pumping stations, standpipes or other water supply uses involving facilities located on or above the ground surface and towers for municipal use	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P			
Power transmission lines, substations, telephone exchanges, microwave towers or other public utility or communications use	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C			
Municipal buildings and facilities	C	C	C	C	P	C	C	C	P	C	P	P	P	P	P	P	P	C			
Preservation of historic areas; emergency and fire protection activities; bridges and public roadways																		P			
Dams																		C			

Land Use Table: All Zoning Districts 12.18.12	Rural Agricultural (RA)	Low Density Residential (LDR)	Suburban Residential (SR)	Medium Density Residential (MDR)	Riverfront (RF)	Neighborhood Conservation on "A" (NCA)	Neighborhood Conservation on "B" (NCB)	Office Residential (OR)	Downtown Residential (DR)	Institutional Office (IO)	Community Business (CB)	Highway Business (HB)	Centerville (CV) ⁽³⁶⁾	Office Service (OS)	Industrial (I)	Urban Enterprise	Mill (M)	Resource Conservation (RC) ⁽¹⁸⁾	Groundwater conservation overlay district (GC) ⁽²⁸⁾	No Name Pond Conservation Overlay District (NNP) ⁽²⁹⁾	Mobile Home Park overlay district (MH) ⁽³⁰⁾
Institutional																					
Religious facilities	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P	P				
Cemeteries	P	P	P	P		P	P														
Congregate care/assisted living facilities, institutions for the handicapped, nursing or convalescent homes, group care facilities				C	P		C	P	P	P	P	P	P	P		P	P				
Hospitals, medical clinics					P		C	P	C	P	P	P	P	P		P	P				
Museums, libraries, and non-profit art galleries and theaters					P				P	P			P				P				
Academic institutions, including buildings or structures for classroom, administrative, laboratory, dormitories, art, theater, dining services, library, bookstores, athletic facilities and student recreational uses, together with buildings accessory to the foregoing permitted principal buildings or structures				C(13)	P		C(13)	C	P	P(12)(24)	P	P	P	P	P	P	P				
Civic and social organizations							C	P		C			P								
Public community meeting and civic function buildings including auditoriums					P				P	P			P				P				
Residential(8)																					
Single-family detached dwellings on individual residential lots	P	P	P	P		P	P(2)	P	P(11)	P(2)											
Mobile homes on individual residential lots	P			P(35)																	
Two-family dwellings				P		P(37)	P	P	P(11)			P(14)									
Multifamily dwellings in accordance with the standards of Article XIII				P(34)	P(11)		P	P	P(11)	P	P		P			P	P				
Single-Family attached dwelling in accordance with the standards of Article XIII	C			P(34)	P(11)		P	P	P(11)	P											
Mixed single-family residential developments in accordance with the standards of Article XIII	C	P		P			P														
Mixed residential developments in accordance with the standards of Article XIII		P		P			P	P													
Mixed use structures					P(11)		P	P	P(11)	P	P	P	P			P	P				
Lodging houses							P		P(11)												
Home occupations	P	P	P	P		P	P	P	P		P					C					
Bed and breakfast establishments as a home occupation	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P	P				
In-law apartments in accordance with the standards of Article XII	P	P	P	P		P	P	P	P				P				P				
Single family cluster development	P	P	P	P																	
Family day care home	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P				
Shelters							C		C												
Natural Resource																					
Agriculture	P(8)																	P			
Farm Stands	P																				
Forest management and timber harvesting activities in accordance with the standards of Article XIII	P	P	P	P		P	P	P			P	P		P	P	P		P			
Earth material removal	C													C	C						
Community gardens(20)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P				
Water dependent uses, e.g. docks and marinas					P												P	C			
Non-residential structures for educational, scientific or nature interpretation purposes, containing a maximum floor area of not more than ten thousand (10,000) square feet																		C			
Recreation																					
Campgrounds	C																	C			
Public or private facilities for nonintensive outdoor recreation	C	C	C	C	P	C	C	C	C								P	P			
Commercial outdoor recreation and drive-in theaters					P						C	C		C			P(32)				
Fitness and recreational sports centers as listed under NAICS Code 713940								C							P						

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Land Use Table Notes

- (1) Excludes drive-in restaurants.
- (2) Allowed only on existing lot of record as of the date of adoption of this code.
- (3) Limited to two (2) parking levels.
- (4) Limited to less than twenty-five (25) rooms.
- (5) If accessory to an allowed use.
- (6) Provided there is no exterior storage of materials or equipment visible from a public street or abutting property.
- (7) Screening shall be at least eight (8) feet tall
- (8) Farm housing on the premise of an agricultural operation.
- (9) Must be fully enclosed with no exterior storage.
- (10) Except those that include truck transportation as classified under group 484, NAICS 2012 unless approved as a conditional use.
- (11) All new residential construction shall comply with the design standards of Article XII Sec. 22.
- (12) Dormitories must be at least 125 feet from all district boundaries unless approved as a conditional use.
- (13) Excluding residential facilities and dormitories.
- (14) Existing non-conforming single-family dwellings in lawful existence as of January 9, 1988 may be converted to a two-family dwelling as long as the conversion is done within the existing building envelope.
- (15) Buildings, structures and uses accessory to permitted or conditional uses are allowed in all districts.
- (16) Limited to commercial bakeries and printing facilities including newspaper publishers and information services.
- (17) Used car dealerships may be deemed an accessory use to gasoline service station, auto repair garages and automotive services, except repair uses, if the following criteria are met: that all the criteria outlined in the definition of accessory use under Article II, section 2 are adhered to; that the parking and on-site circulation for both the existing and proposed use is reviewed and approved pursuant to development review under Article XIII; that the maximum number of used vehicles for sale on site, at any one (1) time, does not exceed six (6) vehicles. Used car dealerships which are not an accessory use to gasoline service stations, auto repair garages and automotive services, except repair uses, are permitted only after the issuance of a conditional permit in accordance with Article X of this Code, and the project is reviewed and approved pursuant to development review under Article XIII.
- (18) Any use involving the construction of nonresidential floor space or the conversion of an existing structure from one (1) use to another shall be subject to the development review requirements of Article XIII of the Code.
- (19) Limited to group homes.
- (20) Shall comply with Article XII, Section 4.
- (21) Neighborhood stores as part of a multifamily development, mixed single-family residential development or mixed residential development provided that the gross floor area devoted to retail use shall not exceed ten percent of the total floor area of the development.
- (22) Accessory to public schools, religious facilities, multifamily or mixed residential developments and mobile home parks.

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- (23) Shall comply with Article XIII, Section 10.
- (24) Includes housing facilities on the premise of academic institutions permitted for staff members of such institutions and service buildings or structures ancillary to and affiliated with permitted institutional uses including but not limited to pharmacies and medical supply outlets.
- (25) Drive-in restaurants are allowed as part of and subordinate to restaurants.
- (26) Includes drive-in restaurants.
- (27) Only one allowed in the city.
- (28) Any land located within the Ground Water Conservation Overlay District shall apply to the applicable criteria of Article XI, Section 19 of the Code.
- (29) Any land located within the No Name Pond Conservation Overlay District shall apply to the applicable criteria of Article XI, Section 20 of the Code.
- (30) Any land located within the Mobile Home Park Overlay District shall apply to the applicable criteria of Article XI, Section 21 of the Code.
- (31) Limited to business and professional offices, not including research, experimental, testing laboratories, engineering, research, management and related services.
- (32) Excluding drive-in theaters.
- (33) The performance standards of Article XII shall apply, unless otherwise specified.
- (34) Only permitted if serviced by public sewerage.
- (35) Placement of mobile homes on individual lots is permitted only in areas within a mobile home park overlay district.
- (36) For those historic building and structure identified in Appendix A, Article XV, Sections 6 through 10 of this Code located in the Centreville district, a nonconforming use may be reestablished to its original use pursuant to Article VI, Section 4 of this Code.
- (37) A parcel may be developed with a two-family dwelling, only if both of the following criteria are met:
 - a. More than 50 percent of the impacted properties that are developed contain residential structures with two or more dwelling units; and
 - b. More than 50 percent of the adjoining properties that are developed contain residential structures with two or more dwelling units.An existing single-family dwelling may be converted to a two-family dwelling only if both of the following criteria are met:
 - a. Forty percent or more of the impacted properties that are developed contain residential structures with two or more dwelling units; and
 - b. Forty percent or more of the adjoining properties that are developed contain residential structures with two or more dwelling units.

(Ord. No. 12-15, 2-7-13)

Sec. 23. Space and Bulk Requirements

Space and Bulk Table - Lots in each District shall meet or exceed the following minimum space and bulk standards as noted in the Space and Bulk Standards Table.

Space and Bulk Table: All Zoning District 12.18.12

Dimensional Requirements (13)	Rural Agricultural (RA)	Low Density Residential (LDR)	Suburban Residential (SR)	Medium Density Residential (MDR)	Riverfront (RF) (2)	Neighborhood Conservation A (NCA)	Neighborhood Conservation B (NCB)	Office Residential (OR) (12)	Downtown Residential (DR) (2)	Institutional Office (IO)	Community Business (CB) (12)	Highway Business HB (18)	Centreville (CV)	Office Service (OS) (18)	Industrial (I) (11)	Urban Enterprise (UE)	Mill (M)	Resource Conservation (RC)	Groundwater Conservation Overlay District (GC)	No Name Pond Conservation Overlay District (LC)	Mobile Home Park Overlay District (MH) additional
Mixed residential development (14)		50 ft		30 ft					None												
Multifamily dwellings				30 ft																	
Mixed use structures																					
Agriculture	50 ft								None												
Religious facilities	25 ft	50 ft	50 ft	50 ft		20 ft (21,22)															
Veterinary facilities	25 ft								None												
Other uses	25 ft	20 ft	25 ft	50 ft		20 ft (21,22)															
All permitted uses					None		10 ft (21,22)	20 ft (22,23)	None (22)	30 ft (17, 27)	20ft	20ft	none (22)	50 ft	50 ft	25ft (22)	none (22)	50 ft (8)			50 ft
Minimum front yard																					
Single family detached, mobile homes on individual lots	25 ft	20 ft	25 ft	20 ft		15 ft (21)															
Single family attached	50 ft			20 ft																	
Two-family dwellings				20 ft		15 ft (21)															
Single family cluster development	50 ft	50 ft	50 ft	30 ft		50 ft															
Mixed single family residential development (14)	50 ft	50 ft		30 ft																	
Mixed residential development (14)		50 ft																			
Multifamily dwellings				30 ft																	
Mixed use structures	25 ft																				
Religious facilities	25 ft	20 ft	25 ft	30 ft		20 ft (21)															
Veterinary facilities	25 ft																				
Other uses	25 ft	20 ft	25 ft	30 ft		20 ft (21)															
All permitted uses					None		10 ft (21,22)	10 ft (23)	None (22)	10 ft (17)	15 ft	15ft	none (22)	20 ft	25 ft (6)	10 ft	none (22)	20 ft			25 ft
Minimum side and rear setback																					
Single family detached, mobile homes on individual lots	25 ft	10 ft	15 ft	10 ft		10 ft															
Single family attached				30 ft																	
Two-family dwellings				30 ft		10ft															
Single family cluster development	50 ft	30 ft	30 ft	30 ft		30 ft															
Mixed single family residential development (14)	50 ft	30 ft		30 ft																	
Mixed residential development (14)		30 ft		30 ft																	
Multifamily dwellings				30 ft																	
Religious facilities	50 ft	50 ft	50 ft			30 ft															
Mixed use structures																					
Veterinary facilities	50 ft																				
Farm structures for keeping of animals	100 ft																				
Other uses	50 ft	25 ft	30 ft	30 ft		30 ft															
All permitted uses					10 ft		5 ft	15 ft (23)	10 ft	20 ft	20 ft	20 ft (15)	none	25 ft	25 ft	20 ft	none	25 ft			
Minimum side and rear yard																					
Single family detached, mobile homes on individual lots	10 ft	10 ft	15 ft	30 ft		10 ft															
Single family attached	50 ft			30 ft																	
Two-family dwellings				30 ft		10 ft															
Single family cluster development			30 ft	30 ft		30 ft															
Mixed single family residential development (14)	50 ft	30 ft		30 ft																	
Mixed residential development (14)	50 ft	30 ft		30 ft																	
Multifamily dwellings		30 ft		30 ft																	
Mixed use structures				30 ft																	
Religious facilities		25ft	30 ft			30 ft (16)															
Veterinary facilities	25 ft	25 ft																			
Farm structures for keeping of animals	25 ft																				
Other uses	25 ft		30 ft	30 ft		30 ft (16)															
All permitted uses	25 ft	25 ft			10 ft		5 ft (16,21)	10 ft (16,23)	10 ft (required on one side)	10 ft (16,17)	10 ft	10 ft	None	10 ft (7,10)	10 ft (10,20)	10 ft (10,16)	None	15 ft			
Maximum height																					
Agriculture	75 ft																				
Other permitted uses	35 ft	35 ft	35 ft	35 ft	75 ft	35 ft	65 ft	35 ft	60 ft	75 ft	50 ft	65 ft	No less than 20 ft; no greater than 150 feet (25)	75 ft	100 ft	80 ft	100 ft	35 ft			
Hospital, nursing homes and medical offices									120 ft												
Ratios																					
Maximum lot coverage	0.15	0.3	0.20	0.30	0.25	0.40	0.65	0.30		0.75(28)	0.50	0.50	1.00	0.50	0.75	0.60	1.00	0.10			0.4
Maximum impervious coverage					0.75		0.85	0.60	0.75	0.75(28)	0.75	0.75	1.00	0.75	0.75	0.80	0.90	0.10	0.25	0.1	

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Space and Bulk Table Notes

- (1) This development shall meet the requirements set forth in Article XIII, Section 8.
- (2) All new residential development shall comply with the design standards of Article XII, Section 22.
- (3) Or a larger minimum lot size based on the requirements of the Maine Subsurface Wastewater Disposal Rules
- (4) All uses
- (5) Reference must be made Use Matrix and Use Matrix Additional Standards.
- (6) Where the front yard area for uses other than residential is located across the street from an abutting property in a residential zoning district and in residential use, a twenty-five (25) foot buffer area shall be maintained in the front yard area meeting the standards of Article XIII. In the Industrial district, buffer areas may not be reduced by modification or variance.
- (7) Where the side or rear yard area is located within fifty (50) feet of a residential zoning district, a fifty-foot wide buffer strip shall be maintained in accordance with the buffer standards of Article XIII.
- (8) 75 ft minimum setback from shoreline all structures other than permitted piers, docks, marinas, dams, bridges and other water dependent uses; 50 ft minimum shoreline and 25 ft minimum stream buffers to be maintained in natural vegetative state
- (9) Minimum shoreline frontage 100 ft
- (10) Any required side or rear yard area located within fifty (50) feet of a lot containing a dwelling not in a residential zoning district shall be maintained as a buffer area meeting the standards of Article XIII. In the Industrial district, buffer areas may not be reduced by modification or variance.
- (11) The industrially-zoned land on the east side of River Road, from Alfred A. Plourde Parkway to the northwesterly property line of 380 River Road is subject to the following additional standards:
 - a. The minimum front setback for all uses is 100 feet.
 - b. The minimum front yard for all uses is 100 feet, and shall be maintained as a buffer area meeting the standards of article XIII.
 - c. No new vehicular access points are allowed along the frontage between 326 River Road and that portion of 9 Gendron Drive that has frontage on River Road.
 - d. The above referenced setback, yard, and buffer requirements shall also apply to the portion of 380 River Road located directly across from 367 River Road.

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- e. Only one vehicular access point no wider than 50 feet within the 100-foot buffer of 380 River Road shall be permitted.
- (12) The land on the on the east side of Main Street from Brooks Avenue to the Russell Street overpass, including 579 Main Street and 15-18 Pettingill Street, and the land on the west side of Main Street to the Maine central Railroad right-of-way from Strawberry Avenue south to the Russell Street overpass is subject to the following additional standards:
- a. Modifications of the space and bulk standards may not be granted by granted by the board of appeals, planning board, staff review committee or code enforcement officials, with the exception of side and rear yards where the abutting use is nonresidential.
 - b. In all cases, trees on the entire site with a diameter of greater than six (6) inches shall be preserved unless removal is necessary for development activity as determined by the appropriate reviewing authority.
 - c. The front yard must be planted with deciduous street trees (not including flowering ornamental trees) at intervals of fifteen (15) to thirty (30) feet on center, shall have a minimum two and one-half (2 1/2) inch caliber, and shall be at least eight (8) to twelve (12) feet high at the time of planting. Existing impervious front yard areas must be revegetated to these standards, when a property is subject to development review.
 - d. Each premises is permitted one (1) free standing ground sign not exceed seventy-two (72) square feet. Each business entity is permitted a wall sign not to exceed five (5) percent of the ground floor principal facade area of that business or a minimum of sixteen (16) square feet, whichever is greater. Ground signs are encouraged to be pedestal type ground signs not exceeding eight (8) feet in height.
 - e. Access is prohibited onto Brooks Avenue, with the exception of single-family homes.
 - f. The following design standards are encouraged for any project subject to development review; however, may be waived by the appropriate reviewing authority due to site limitations and the nature of the development:
 - (1) Off street parking is to be located on the side and rear of buildings;
 - (2) Any new development or renovations shall generally relate in design features to the surrounding building, showing respect for the local context of Main Street, as seen from Holland Street to Montello Street;
 - (3) Gable or hipped roofs should be used to the greatest extent possible with any new development or renovations. Flat and shed style roofs are discouraged, unless architectural features are applied to minimize the roofs appearance from Main Street (i.e., false fronts, parapets, etc.)
 - (4) Shared driveway entrances shall be encouraged with adjacent sites, in order to minimize curb cuts.
 - (5) Additional landscaping, buffering, and screening are encouraged to minimize views of parking areas from streets and abutting properties.
- (13) Modifications (i.e. relaxation of standards) of setbacks, yards, maximum lot coverage ratios, maximum impervious surface ratios, minimum open space ratios, and

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maximum building height as contained in the district space and bulk standard may be granted by the board of appeals, planning board, staff review committee and the code enforcement official pursuant to Articles V, VII, VIII, IX, and XIII of this Code.

- (14) This development shall meet the requirements set forth in Article XIII, Section 8.
- (15) Ten (10) foot minimum side and rear setback in HB District for structures measuring less than 125 square feet accessory to residential uses
- (16) Any required side or rear yard area for uses other than residential located within fifty (50) feet of a residential zoning district or dwelling shall be maintained as a buffer area meeting the standards of Article XIII.
- (17) For the purpose of determining compliance with front, rear and side setback and yard requirements, an enclosed walkway connecting structures on abutting lots in the institutional-office (IO), whether it be underground, elevated or at grade, shall not be considered a structure but shall be considered a walkway. Similarly, awnings and canopies installed on lots in the institutional-office (IO) district that provide shelter from the elements, whether made of permanent or non-permanent material shall not be considered as structures and may extend into the front, side, and rear yard areas to the extent necessary to provide adequate shelter from the elements as long as the installation will not result in undue impact on adjacent properties, due to the placement of the awnings or canopies, location of service, parking or storage areas, or blocking of solar access, and shall in no way interfere with utilities or with the convenient and safe use of the sidewalk and street right-of-way by all pedestrians and vehicles, but in no case may the canopy be closer than two (2) feet from the property line.
- (18) Existing lots of record having 150 feet or less of frontage on a street functionally classified as an arterial shall be limited to one point of vehicular access to the arterial to serve all development on the lot including the division of the lot into additional lots.

Existing lots of record having more than 150, but less than 500 feet of frontage on a street functionally classified as an arterial shall be limited to two points of vehicular access to the arterial to service all development on the lot including the division of the lot into additional lots. Existing lots of record having 500 feet or more of frontage on a street functionally classified as an arterial shall be limited to two points of vehicular access to the arterial for up to 1,000 feet of frontage, plus one additional point of access to the arterial for each additional 500 feet of frontage on the arterial or portion thereof. These points of access shall service all development on the lot, including the division of the lot into additional lots.

Prior to the division of any existing lot of record having a gross lot area of five acres or more or 500 or more feet of street frontage on a road functionally classified as an arterial or the submission of a development plan for all or a portion of the lot, the owner shall file a master development plan with the planning board. The master development plan shall be conceptual in nature and shall be based upon a site

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inventory plan identifying the major development opportunities and constraints associated with the site. This inventory shall be prepared by a registered landscape architect or registered professional engineer and shall show in a conceptual manner natural drainage features, environmentally sensitive areas, prime development areas, potential points of vehicular access, and other significant manmade and natural features of the site.

The master development plan shall address the overall use of the parcel, the overall vehicular circulation system within the parcel, the coordination of accesses onto the arterial street, the general layout of utilities and drainage and provisions for buffering. The master development plan shall also demonstrate how the requirements of the office service district and the standards of article XIII will be met. Once the master development plan has been filed with the planning board, any division of land or application for approval shall be consistent with the plan unless a revised master development plan is filed.

- (19) The land on the on the west side of Main Street from Brooks Avenue to the Main Central railroad right-of-way from Strawberry Avenue south to the Russell Street overpass is subject to the following additional standards:
- a. Modifications of the space and bulk standards may not be granted by granted by the board of appeals, planning board, staff review committee or code enforcement officials, with the exception of side and rear yards where the abutting use is nonresidential.
 - b. In all cases, trees on the entire site with a diameter of greater than six (6) inches shall be preserved unless removal is necessary for development activity as determined by the appropriate reviewing authority.
 - c. The front yard must be planted with deciduous street trees (not including flowering ornamental trees) at intervals of fifteen (15) to thirty (30) feet on center, shall have a minimum two and one-half (2 1/2) inch caliper, and shall be at least eight (8) to twelve (12) feet high at the time of planting. Existing impervious front yard areas must be revegetated to these standards, when a property is subject to development review.
 - d. Each premises is permitted one (1) free standing ground sign not exceed seventy-two (72) square feet. Each business entity is permitted a wall sign not to exceed five (5) percent of the ground floor principal facade area of that business or a minimum of sixteen (16) square feet, whichever is greater. Ground signs are encouraged to be pedestal type ground signs not exceeding eight (8) feet in height.
 - e. The following design standards are encouraged for any project subject to development review; however, may be waived by the appropriate reviewing authority due to site limitations and the nature of the development:
 - (1) Off street parking is to be located on the side and rear of buildings;
 - (2) Any new development or renovations shall generally relate in design features to the surrounding building, showing respect for the local context of Main Street, as seen from Holland Street to Montello Street;

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- (3) Gable or hipped roofs should be used to the greatest extent possible with any new development or renovations. Flat and shed style roofs are discouraged, unless architectural features are applied to minimize the roofs appearance from Main Street (i.e., false fronts, parapets, etc.)
 - (4) Shared driveway entrances shall be encouraged with adjacent sites, in order to minimize curb cuts.
 - (5) Additional landscaping, buffering, and screening are encouraged to minimize views of parking areas from streets and abutting properties.
- (20) Where the side or rear yard area for uses other than residential is located within fifty (50) feet of a residential zoning district, a minimum fifty (50)-foot wide buffer area shall be maintained along the side and rear yards in accordance with the buffer standards of Article XIII. In the Industrial district, buffer areas may not be reduced by modification or variance.
- (21) Notwithstanding, applicable setback and yard requirements and the provisions of Article XII, section 17(f)(3), the area between the required front yard and the front wall of the portion of the building or structure closest to the street and running the full width of that portion of the building shall be maintained as a yard area, except that only one (1) of the two (2) following options may be instituted: a. Access roads or drives in this area are permitted only when a minimum of twenty (20) feet of front yard area can be maintained (forty (40) feet in the NCA District); or b. No more than one (1) parking space shall be created in this area.
- (22) In areas where the existing buildings have an established uniform setback relationship to the street, any new building or modification to an existing building shall maintain this established relationship notwithstanding the setback provisions of that district. An established uniform setback relationship is deemed to exist when the distances between the front face of the building and the edge of the travel way in the adjoining street for the two adjacent parcels fronting on the same street on each side of the subject parcel are within +/- five (5) feet of mean of this distance for the four (4) parcels. For the purposes of this provision, lots shall be deemed to be adjacent even if separated by a street or public easement.
- (23) Fifty (50) percent of the area between the required front yard and the front wall of the portion of the building or structure closest to the street and running the full width of that portion of the building shall not be used for parking and shall be maintained as additional yard area, except that access roads or drives and sidewalks are permitted in this area.
- (24) Minimum lot size may be reduced by the Planning Board for single family cluster developments pursuant to Article XIII section 7.
- (25) Building height to be measured at principal facade of the building or structure.
- (26) The required minimum lot area per dwelling unit for any residential use in the neighborhood conservation "B" district shall be 120 percent of the average lot area per dwelling unit of impacted properties as of the date of adoption of this Code. The

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maximum number of dwelling units that can be placed on a parcel in the district shall be figured by the following procedures: The total lot area of all developed impacted properties shall be calculated. In determining the total area of the impacted properties, the tax records of the City of Lewiston shall be used unless the applicant or the owner of an impacted property presents definitive evidence to the contrary. The total number of legally existing dwelling units as of the date of adoption of this Code shall be calculated. The total lot area shall be multiplied by 120 percent and then divided by the total number of dwelling units existing on the impacted properties. This figure divided into the lot area of the subject parcel yields the total dwelling units which can be placed on the lot. If less than 50 percent of the impacted properties are in residential use, the minimum lot area per dwelling unit shall be the greater of: (1) One thousand five hundred square feet per dwelling unit; or (2) The minimum area derived by the procedure outlined above.

- (27) The minimum front setback and front yard requirements for hospitals, nursing homes and medical offices are zero provided the lot directly across the street is in the institutional-office (IO) district.
- (28) Maximum lot coverage and impervious ration in the institutional-office (IO) for hospitals, nursing homes and medical offices is 1.00.

(Ord. No. 12-15, 2-7-13)

Sec. 24. Additional District Regulation Requirements

1) Groundwater conservation overlay district (GC).

- (a) Statement of purpose. The purpose of the groundwater conservation overlay district is to protect, preserve and maintain the quality and quantity of the existing and potential groundwater supply within the city by controlling the use, storage and disposal of potential contaminants of the groundwater in areas of the city and identified significant sand and gravel aquifers and by assuring the groundwater recharge areas associated with these aquifers are protected from overdevelopment.
- (b) Applicability. The standards of the groundwater conservation overlay district shall apply to any land meeting any of the following criteria:
 - (1) Is located above a significant sand and gravel aquifer as identified by the Maine Geologic Survey, Maine Department of Conservation, "Hydrogeologic Data for Significant Sand and Gravel Aquifers," Maps 11 and 16; or
 - (2) Is located within 100 feet of a significant sand and gravel aquifer; or
 - (3) Is located within the recharge area of a significant sand and gravel aquifer as defined by the extent of permeable stratified sand and gravel and recharging wetlands within them that drain into the aquifer; or
 - (4) Is located within the seasonal high water limits of any stream that flows into a recharge area of a significant sand and gravel aquifer.

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Where the bounds delineated are in doubt or in dispute, the burden of proof shall be upon the owner(s) of the land in question to show where they should properly be located. At the request of the owner(s), the city may engage a professional geologist, geotechnical engineer, or soil scientist to determine more accurately the location and extent of an aquifer or recharge area, and shall charge the owner(s) for the cost of the investigation.

These standards shall apply in addition to the standards of the underlying zoning district in which the property is located.

- (c) Permitted uses. Any use permitted in the underlying zoning district and not prohibited by subsection (e) shall be permitted in the groundwater conservation overlay district.
- (d) Conditional uses. Any use permitted with a conditional use permit in the underlying zoning district and not prohibited by subsection (e) shall be permitted as a conditional use in the groundwater conservation overlay district.
- (e) Prohibited uses. Any use prohibited in the underlying zoning district together with the following uses, even if permitted in the underlying zoning district, shall be prohibited in the groundwater conservation overlay district:
 - (1) The disposal of solid wastes, other than brush and stumps in accordance with Solid Waste Disposal Rules and Regulations of the State of Maine;
 - (2) The storage of gasoline or other refined petroleum products except as heating fuel stored within a building or accessory to an allowed use and in accordance with the standards of the Maine Department of Environmental Protection for Permitting Underground Oil Storage Facilities;
 - (3) The storage of road salt or other deicing chemicals;
 - (4) The dumping of snow brought in from outside of the district;
 - (5) The storage or disposal of hazardous wastes as defined by the hazardous waste regulations promulgated by the Bureau of Land Quality Control, Maine Department of Environmental Protection;
 - (6) Automotive and equipment service and repair shops;
 - (7) Junkyards and salvage yards;
 - (8) Cemeteries.
- (f) Space and bulk standards. Any building, structure or use of land within the groundwater conservation overlay district shall comply with the following requirements in addition to the space and bulk regulations of the underlying zoning district:

Maximum impervious surface ratio	0.25 or as otherwise provided in subsection
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- (g) Additional standards. Any building, structure or use of land within the

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groundwater conservation overlay district shall comply with the following requirements:

- (1) Timber harvesting.
 - a. Over any ten-year period, harvesting shall not remove more than 50 percent of the volume of trees over four inches in diameter. For the purpose of these standards, volume may be considered equivalent to basal area.
 - b. Burning of slash is prohibited. Export of woodchips to wood-to-energy plants or on-site chipping and broadcast application to the land are recommended for slash disposal.
- (2) Agriculture.
 - a. Land application of sludge and spray irrigation of industrial wastewater or sewage are prohibited in the groundwater conservation district.
 - b. Manure spreading is permitted if carried out in conformance with a conservation plan which meets the standards of the state soil and water conservation commission and is approved by the Androscoggin Valley Soil and Water Conservation District. The conservation plan must include provisions for control of surface water runoff and nonpoint source pollution.
- (3) Animal husbandry.
 - a. Animal husbandry and associated manure handling must be carried out in conformance with a conservation plan which meets the standards of the state soil and water conservation commission and is approved by the Androscoggin Valley Soil and Water Conservation District. The conservation plan must include provision for control of surface water runoff and nonpoint source pollution.
- (4) Impervious surface.
 - a. The impervious surface ratio for nonresidential uses may be increased if a groundwater study prepared by a groundwater hydrologist demonstrates that such increase will not have an adverse impact on either the quality or quantity of groundwater or that proposed mitigation measures will result in there being no adverse impact to either the quality or quantity of the groundwater.
- (5) Industrial and commercial uses.
 - a. Facilities shall be designed so that all stored, spilled or leaked hazardous materials are contained on-site;
 - b. Facilities shall be designed so that no stored, spilled or leaked hazardous materials can infiltrate into the ground;
 - c. Permanent disposal of any waste containing hazardous materials shall

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- not be allowed on-site;
 - d. Interior floor drains shall not be directed to any stream, storm drain, dry well or subsurface wastewater disposal system. They shall be directed to holding tanks, treatment systems or the public sewer system;
 - e. Above ground storage tanks for hazardous materials shall be located within a diked area which is impervious to the substance(s) being stored and large enough to contain the entire contents of the tank(s);
 - f. Storage areas for drums shall be contained within a diked area which is impervious to the substances being stored. All drums shall be stored in product-tight containers which are protected from leakage, accidental damage and vandalism;
 - g. Commercial or industrial activities which have uncovered storage areas shall have specially designed stormwater drainage facilities which provide for disposal of stormwater in a manner that will not adversely affect groundwater quality;
 - h. Dumpsters used to store industrial or commercial wastes shall be covered;
 - i. The design of storage and containment storage shall be approved by the city engineer for conformance with standard engineering practice.
- (6) Subsurface wastewater disposal systems.
- a. In areas which are not served by public sewer, no more than one dwelling unit may be connected to a subsurface waste disposal system, and no "engineered systems" are permitted unless a full hydrogeologic study which examines the specific groundwater impacts of the proposed system indicates that there will be no off-site impacts on groundwater quality. The study must be conducted by a state certified geologist with proven experience in hydrogeology.
 - b. Disposal of hazardous materials to wastewater disposal systems is prohibited.
- (7) Earth material extraction.
- a. Extraction shall not be allowed below the average seasonal high water table. No ditches, trenches, pumping or other methods shall be used to artificially lower the water table to permit more gravel extraction than could occur under natural conditions.
 - b. All petroleum products shall be kept out of the pit. If refueling and oil changes must be conducted in the pit, a special area must be constructed that would prevent the maximum possible spill from entering the ground. Absorbent pads shall be kept onsite to be used immediately, should any petroleum products be spilled on the soil.

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- c. The pit shall not be used for storage or dumping of any substances that could produce a harmful leachate.
 - d. Any washing or crushing operations shall be conducted in a manner that will minimize runoff and evaporation.
 - e. Access and haul roads into and around the pit shall not be oiled or salted.
 - f. Access to the pit shall be strictly controlled at all times with locking gates. When the pit is permanently closed, all vehicular entrances shall be made impassable.
 - g. When the pit is permanently closed, it shall be loamed and seeded. Application of fertilizer, manure or other soil amendments to bare soil whose topsoil has been removed is prohibited.
- (8) Pesticides and herbicides. The application of pesticides and herbicides for nondomestic or nonagricultural uses shall be carried out with all necessary precautions to prevent hazardous concentrations of pesticides and herbicides in the water and on the land within the groundwater conservation district as a result of such application. Such precautions include, but are not limited to; erosion control techniques, the control of runoff water (or the use of pesticides having low-solubility in water), the prevention of volatilization and redeposition of pesticides and the lateral displacement (i.e. wind drift) of pesticides.
- (9) Development approval. All nonresidential projects requiring development review shall prepare a groundwater protection plan which shall identify proposed measures for protecting the groundwater from adverse impacts from loss of recharge capacity, exfiltration from sewer pipes and contamination by oils, chemicals or nutrients.

2) *No name pond conservation overlay district (LC).*

- (a) Statement of purpose. The purpose of the no name pond conservation overlay district is to protect the water quality of no name pond by controlling the discharge of surface runoff into the lake, thereby limiting nutrient loading to levels which will not result in substantial degradation of the pond's water quality.
- (b) Applicability. The standards of the no name pond conservation overlay district shall apply to any land located within the watershed of no name pond which discharges surface water either directly or indirectly to no name pond, as shown on the Official Zoning Map, City of Lewiston. These standards shall apply in addition to the standards of the underlying zoning district in which the property is located.
- (c) Permitted uses. Any use permitted by right in the underlying zoning district shall be permitted in the no name pond conservation overlay district.
- (d) Conditional uses. Any use permitted with a conditional use permit in the underlying zoning district shall be permitted as a conditional use in the No Name

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Pond conservation overlay district.

- (e) Prohibited uses. Any use prohibited in the underlying zoning district shall be prohibited in the No Name Pond conservation overlay district.
- (f) Space and bulk standards. Any building, structure or use of land within the no name pond conservation overlay district shall comply with the following requirements in addition to the space and bulk regulations of the underlying zoning district:

Minimum setback from shoreline (all structures other than permitted piers, docks, marinas and similar water dependent uses)	100 feet
Minimum shoreline buffer retained in natural vegetated state	50 feet
Minimum shoreline frontage for any abutting on the pond	100 feet
Minimum buffer from perennial or intermittent stream or open stormwater drainage course retained in natural vegetated state	50 feet
Maximum impervious surface ratio	0.1

- (g) Additional standards. Any building, structure or use of land within the no name pond conservation overlay district shall comply with the following requirements:
 - (1) Fertilizer use:
 - a. The use of fertilizers within the required shoreline, stream or drainage course buffers is prohibited.
 - b. The use of solid chemical fertilizers for agricultural or other nondomestic purposes is prohibited.
 - c. The use of liquid chemical fertilizers or manure for agricultural or other nondomestic purposes shall be done in accordance with a fertilizing plan approved by the District Conservationist of the Androscoggin Valley Soil and Water Conservation District. This plan shall be filed with the code enforcement official at least 48 hours prior to application of any fertilizer. A plan for a year-long or similar time period may be submitted to the code enforcement official to avoid having to file a separate plan for each application.
 - (2) The total area of any lot devoted to lawns and gardens shall not exceed 30 percent of the total area of the lot. Any lot exceeding this requirement as of January 9, 1988 shall be permitted to retain all existing lawn and garden areas. No new lawn or garden area shall be established within the required shoreline, stream or drainage course buffers.
 - (3) Private sewage disposal systems:
 - a. For all proposed on-site sewage disposal systems within the no name pond conservation overlay district and within 250 feet of the shoreline of no name pond, the minimum separation distance required by the applicable state subsurface wastewater disposal rules, between the disposal area bottom and the most limiting

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- soil or groundwater condition (seasonable high groundwater table, restrictive layer or bedrock), must be increased by a factor of 1.5.
- b. For all proposed on-site sewage disposal systems within the no name pond conservation overlay district within 1,000 feet but greater than 250 feet of the shoreline of no name pond, the minimum separation distance required by the applicable state subsurface wastewater disposal rules, between the disposal area bottom and the most limiting soil condition, must be increased by a factor of 1.25.
 - c. The installation of any on-site sewage disposal system within 250 feet of the shoreline of no name pond, any perennial or intermittent stream tributary to no name pond or any open stormwater drainage course shall comply with the above standard and all the other requirements of the applicable state subsurface wastewater disposal rules without variance.
 - d. The installation of any on-site sewage disposal system with a design capacity in excess of 1,000 gallons per day shall be permitted only if a detailed groundwater hydrology study, acceptable to the city engineer, demonstrates that the system will not have an adverse impact on the water quality of no name pond.
 - e. Replacement or reconstruction of lawfully-existing private residential sewage disposal systems in existence and in use on the effective date of this ordinance and systems on lots in subdivisions approved prior to the effective date of this ordinance, shall not be subject to the requirements of subsections (3)a and (3)b, but shall be required to comply with the applicable requirements of the state subsurface wastewater disposal rules.
- (4) Proposals for the development of all new or existing lots within the no name pond conservation overlay district, including single-lot residential development, shall comply with the following additional requirements as part of the approval of the project:
- a. The applicant shall demonstrate, using methodology approved in advance by the Maine Department of Environmental Protection, that the proposed development will incorporate appropriate stormwater best management practices based on standards to assure that development within the watershed will not increase the total phosphorous concentration of no name pond by more than 0.75 part per billion. If the analysis demonstrates that this standard will not be met, the applicant shall propose modifications to the plan to bring the project into conformance with the standard.
 - b. The applicant shall demonstrate, using the soil conservation service methodology for small urban watersheds for a 25-year, 24-

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hour storm, that the total volume of stormwater discharged from the site in its post development condition shall not exceed the total runoff in its predevelopment condition by more than 20 percent. If this analysis demonstrates that this standard will not be met, the applicant shall propose modifications to the plan to retain runoff on the site to bring the project into conformance with the standard.

- c. The applicant shall prepare an erosion and sedimentation control plan to minimize, to the maximum extent possible, the discharge of sediments to no name pond. This plan shall be consistent with the practices set forth in the most recent edition of the Environmental Quality Handbook - Maine, published by the Maine Soil and Water Conservation Service and shall be reviewed and approved by the District Conservationist of the Androscoggin County Soil and Water Conservation District.
- (5) Projects within the no name pond conservation overlay district that include one acre or more of disturbed area, must comply with the Maine Stormwater Management Law, 38 MRSA Section 420-D, and any regulations issued thereunder, specifically Rules 500 and 502, having an effective date of December 31, 1997, repealed and replaced on November 16, 2005, and further amended on December 21, 2006. Furthermore, all projects within 250 feet distance from the normal high water line from no name pond must meet the standard under article XII, shoreland area standards.
- (h) Conflicts. In any case in which a provision of article XI, section 20 conflicts with provisions contained in other articles of this Code, the more stringent standard shall apply.

3) *Mobile home park overlay district (MH).*

- (a) *Statement of purpose.* The purpose of the mobile home park overlay district is to provide for the accommodation of mobile homes in planned, integrated mobile home parks, and mobile homes on individual residential lots, at a standard consistent with the protection of the health, safety and general welfare of the residents of the city while establishing safeguards to minimize the adverse impacts on neighboring property owners.
- (b) *Applicability.* The standards of the mobile home park overlay district shall apply to all land shown on the "Official Zoning Map, City of Lewiston" as being located within the mobile home park overlay district.
- (c) *Permitted uses.* Any use permitted in the underlying zoning district shall be permitted in the mobile home park overlay district. In addition the following uses shall be permitted whether or not they are permitted in the underlying district:
 - (1) Mobile home parks consisting of:
 - a. Residential mobile homes and accessory buildings or

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structures;

- b. Facilities for the operation and maintenance of the mobile home park including:
 - 1. A dwelling for the owner or manager;
 - 2. Laundry and restroom facilities;
 - 3. Offices and common areas for the management of the park;
 - 4. Indoor recreation facilities, meeting rooms and common facilities for the exclusive use of park residents and their guests;
 - 5. Outdoor recreation facilities for the exclusive use of park residents and their guests;
 - 6. Service and utility buildings for the storage and repair of equipment used in the operation and maintenance of the park; and
 - 7. Storage facilities for the exclusive use of ark tenants.
 - c. Facilities for the sales of mobile homes including a sales office and not more than five model units for parks having 50 or fewer sites plus one additional model for each 25 additional approved sites in excess of 50 to a maximum of 12 model units.
- (2) Mobile homes on individual residential lots.
- (d) Conditional uses. Any use permitted with a conditional use permit in the underlying zoning district shall be permitted as a conditional use in the mobile home park overlay district unless such use is made a permitted use by subsection (c) above.
 - (e) Prohibited uses. Any use prohibited in the underlying zoning district which is not a permitted or conditional use in the mobile home park overlay district shall be prohibited in the district.
 - (f) Space and bulk standards. Any use other than a mobile home park shall comply to the space and bulk standards of the underlying district. Mobile home parks shall comply with the following requirements:

Minimum lot size	5 acres
Minimum street frontage	200 feet
Minimum net lot area per dwelling unit	6,500 sq. feet
Minimum setback of mobile home from the perimeter of the site	50 feet
Minimum front yard	25 feet
Minimum side and rear yard	50 feet
Minimum side and rear buffer	25 feet
Maximum lot coverage ratio	.040
 - (g) Additional standards.
 - (1) The general standards of performance of article XII shall apply.

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- (2) The expansion or development of a mobile home park shall be subject to the development review requirements of article XIII of this Code.
- (3) The mobile home park shall conform to the off-street parking requirements of article XII.
- (4) The layout, design and construction of individual mobile home sites and related facilities shall conform to the standards set forth in article XII of this Code.
- (5) No development which is approved under this section as a mobile home park may be converted to another use without the approval of the planning board, and meeting the appropriate lot size, frontage, setbacks and other requirements. The plan to be recorded at the registry of deeds and filed with the city shall include the following restrictions as well as any other notes or conditions of approval:
 - a. The land within the park shall remain in a unified ownership and the fee to lots or portions of lots shall not be transferred.
 - b. No dwelling unit other than a manufactured housing unit shall be located within the park.
 - c. The owner or operator of a mobile home park shall be responsible for ensuring the maintenance of the park and code compliance with all provisions of the Revised Code of Ordinances of the City of Lewiston for all park owned structures, including recreation and open space areas and mobile home sites.

(Ord. No. 12-15, 2-7-13)

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ARTICLE XII. PERFORMANCE STANDARDS

Sec. 1. Applicability.

The performance standards contained in this article shall apply to all uses and activities in the city, unless otherwise specified, whether or not specific approval or a permit is required.

Sec. 2. Shoreland area standards.

(a) *Statement of purpose.* The purpose of this section is to further maintain the safe and healthful conditions of the city and neighboring communities; to prevent and control water pollution, to protect aquatic life, bird and other habitat; to protect buildings and lands from accelerated erosion and flooding; to protect historic resources; to protect wetlands; to control building sites, placement of structures and land uses; to conserve shore cover, and visual, as well as actual points of access to inland waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in the shoreland areas.

(b) *Applicability.* Unless otherwise specified, the standards of this section shall apply to:

- (1) All land areas within 250 feet, horizontal distance, of the normal high watermark of the Androscoggin River, No Name Pond, and to all areas included within the Resource Conservation District, as shown on the "Official Zoning Map of the City of Lewiston, Maine"; all land areas within 75 feet, horizontal distance, of the normal high-water line of No Name Brook, No Name Brook Tributary B, Stetson Brook and Salmon Brook (beginning at the confluence of Moody and Salmon Brook to the Androscoggin River).
- (2) All land areas within 250 feet, horizontal distance, of the defined upland edge of all ten acre or greater wetlands, located in the City of Lewiston, as shown on the City of Lewiston Fresh-Water Wetland Maps prepared by the Maine Department of Environmental Protection, dated 1989, and identified by the following wetland identification numbers: 56 through 62.
- (3) Any structure, existing or proposed, built on, over, or abutting a dock, wharf, or pier, or other structures extending beyond the normal high-water line of a water body or within a wetland.
- (4) All land areas within 25 feet, horizontal distance, of the normal high-water line of Salmon Brook, Moody Brook, No Name Brook Tributary A, Hart Brook and Jepson Brook.
- (5) The perimeters of the above referenced shoreland areas shall be superimposed over the underlying zoning districts. The provisions of the underlying zoning district shall be adhered to subject to compliance with the provisions of the shoreland area. Where uncertainty exists as to the exact location of shoreland area boundary lines, the Board of Appeals shall be the final authority as to location.

(c) *Land use standards.*

- (1) All land use activities within the Shoreland area shall conform with the space and bulk standards of the zoning district in which they are located, and the standards set forth in this section.
- (2) Nothing in this section shall permit uses in districts where such uses are not otherwise permitted.

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- (3) Whenever a provision of this section conflicts with or is inconsistent with another provision of this section, other sections, or any other ordinance, regulation or statute, the more restrictive provision shall be adhered to.
- (d) *Principal and accessory structures.*
- (1) All new principal and accessory structures shall be set back at least: 100 feet, horizontal distance, from the normal high-water line of No Name Pond; 75 feet, horizontal distance, from the Androscoggin River, and those "brooks" as listed under subsection (b)(1) of this section, or the upland edge of those wetlands as listed under subsection (b)(2) of this section; and 25 feet, horizontal distance, from the normal high-water line, from those "brooks" as listed under subsection (b)(4) of this section and in general development areas. This minimum setback distance for all new principal and accessory structures shall not be reduced by variance. These standards shall not apply to structures which require direct access to the water as an operational necessity, such as piers, docks and retaining walls, or other functionally water-dependent uses.
- (2) The maximum impervious surface ratio for all land areas within the Shoreland area shall not exceed 20 percent. However, if the standard is more stringent for the zoning district in which the land area is located, then the stricter standard shall apply. For all subdivisions, where all or a portion of the subdivision is located within the Shoreland area, this maximum impervious surface ratio shall be based on the entire portion of the subdivision which is located within the Shoreland area and shall not be computed on an individual lot basis. However, no individual lot, whether totally or partially within the Shoreland area shall exceed the maximum impervious surface ratio for the zoning district in which the lot is located. In some cases, the maximum impervious surface ratio that is allowed in a zoning district may need to be reduced on a lot-by-lot basis for those lots located totally or partially within a Shoreland area in order to meet the 20 percent maximum impervious surface ratio for the entire portion of the subdivision located within the Shoreland area. Deed covenants for those impacted lots must be submitted to the planning board limiting the maximum impervious surface ratio in order to meet the required standard. These maximum impervious surface ratios shall not be reduced by modification or variance.
- (3) Notwithstanding the aforementioned requirements, stairways or similar structures may be allowed with a permit from the code enforcement director, to provide shoreline access in areas of steep slopes or unstable soils, provided that all of the following are met:
- a. The applicant demonstrates that no reasonable access alternative exists on the property.
 - b. The structure is limited to a maximum of four feet in width.
 - c. The structure does not extend below or over the normal high-water line of a water body, or beyond the defined upland edge of a wetland unless permitted by the Department of Environmental Protection pursuant to Natural Resources Protection Act, Title 38, Sec. 480-C.
- (4) Nonconforming structures shall adhere to the standards outlined under article VI, section 3 of this Code.
- (e) *Minimum lot size and shore frontage.*

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- (1) For the purposes of this subsection, shore frontage shall be defined as follows; the length of a lot bordering on a great pond, river or stream, measured in a straight line between the intersections of the lot lines with the shoreline at normal high-water elevation or the length of a lot bordering the upland edge of those wetlands as listed under subsection (b)(2) of this section.
- (2) The minimum lot size for all residential uses located in a shoreland area shall be 40,000 square feet per dwelling unit. If the lot abuts No Name Pond, the Androscoggin River, or those "brooks" as listed under subsection (b)(1) of this section, or abuts the upland edge of those wetlands as listed under subsection (b)(2) of this section, then the lot must also have 200 feet of shore frontage. This standard shall also apply to all public and private recreational facilities.
The minimum lot size for all governmental, institutional, commercial, or industrial uses located in a shoreland area shall be 60,000 square feet per principal structure. If the lot abuts No Name Pond, the Androscoggin River, or those "brooks" as listed under subsection (b)(1) of this section, or abuts the upland edge of those wetlands as listed under subsection (b)(2) of this section, then the lot must also have 300 feet of shore frontage.
- (3) Two or more existing lots of record which do not meet the minimum lot size and shore frontage requirements outlined in subsection (2) above shall adhere to the standards as outlined under article VI, subsection 2(g) of this Code.
- (4) Land below the normal high-water line of a water body or upland edge of a wetland and land beneath roads serving more than two lots shall not be included toward calculating minimum lot area.
- (5) The minimum width of any portion of any lot within 100 feet, horizontal distance, of the normal high water line if a water body or upland edge of a wetland shall be equal to or greater than the shore frontage requirement for a lot with the proposed use.
- (f) *Parking areas.*
 - (1) Parking areas shall meet the setback requirements for new principal and accessory structures.
 - (2) Parking areas that service public boat launching facilities or other functionally dependent uses may be reduced to no less than 50 feet from the normal high-water line or upland edge of a wetland by the reviewing authority if it finds that no other reasonable alternative exists. If no review is required, the code enforcement director shall approve the reduction request.
- (g) *Agriculture.*
 - (1) Agricultural practices shall be conducted in such a manner as will minimize soil erosion and contamination of surface waters by sedimentation, nutrient enrichment and fecal bacteria.
 - (2) All spreading or disposal of manure shall be accomplished in conformance with the "Maine Standards for Manure and Manure Sludge Disposal on Land," issued by the University of Maine and the Maine Soil and Water Conservation Commission in 1972, as amended.
 - (3) An untilled filter strip of no less than 25 feet in width, measured as horizontal distance, of natural vegetation shall be retained between existing tilled ground and/or the normal

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- high-water line of the surface waters or the upland edge of those wetlands protected by this section, in accordance with a plan approved by the Androscoggin Valley Soil and Water Conservation District for compliance with the standards of the district's technical guide for preventing erosion and sedimentation.
- (4) Manure shall not be stored or stockpiled within 100 feet, horizontal distance, of the high-water line of No Name Pond, nor within 75 feet, horizontal distance, of the high-water line of the Androscoggin River, and those "brooks" as listed under subsection (b)(1) of this section, or the upland edge of those wetlands as listed under subsection (b)(2) of this section, nor within 25 feet horizontal distance, of the high-water line of those "brooks" as listed under subsection (b)(4) of this section. Within five years of the effective date of this ordinance [October 21, 1999], all manure storage areas within the Shoreland area must be constructed or modified such that the facility produces no discharge of effluent or contaminated stormwater. Existing facilities which do not meet the setback requirement may remain, but must meet the no discharge provision within the above five-year period.
- (5) Agricultural activities involving tillage of soil greater than 40,000 square feet in surface area, or the spreading, disposal or storage of manure within the Shoreland area shall require a soil and water conservation plan to be filed with the code enforcement director. Nonconformance with the provisions of said plan shall be considered to be a violation of this appendix.
- (6) There shall be no new tilling of soil within 100 feet, horizontal distance of the normal high-water line of No Name Pond, nor within 75 feet, horizontal distance, of the high-water line of the Androscoggin River, and those "brooks" as listed under subsection (b)(1) of this section, or the upland edge of those wetlands as listed under subsection (b)(2) of this section, nor within 25 feet horizontal distance, of the high-water line of those "brooks" as listed under subsection (b)(4) of this section. Operations in existence on the effective date of this ordinance [October 21, 1999] and not in conformance with this provision may be maintained.
- (7) After the effective date of this appendix, newly established livestock grazing areas shall not be permitted within 100 feet, horizontal distance of the normal high-water line of No Name Pond, nor within 75 feet, horizontal distance, of the high-water line of the Androscoggin River, and those "brooks" as listed under subsection (b)(1) of this section, or the upland edge of those wetlands as listed under subsection (b)(2) of this section, nor within 25 feet horizontal distance, of the high-water line of those "brooks" as listed under subsection (b)(4) of this section. Livestock grazing associated with ongoing farm activities, and which are not in conformance with the above setback provisions may continue, provided that such grazing is conducted in accordance with a soil and water conservation plan.
- (h) *Archaeological sites.* Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on, or eligible to be listed on the National Register of Historic Places, as determined by the permitting authority, shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least 20 days prior to action being taken by the permitting authority. The permitting authority shall consider comments received from the commission prior to rendering a decision on the application.
- (i) *Erosion and sedimentation control.* The applicant shall implement erosion and sedimentation control measures in compliance with Maine Law, 38 M.R.S.A. § 420-C, and

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regulations promulgated thereunder, as amended. In addition, the applicant shall implement specific erosion and sedimentation measures consistent with those identified in the Maine Erosion and Sedimentation Control BMP's Pub. No. DEPLW0588, published by the Maine Department of Environmental Protection, Bureau of Land and Water Quality, (March 2003).

- (1) On slopes greater than 25 percent, there shall be no grading or filling within 100 feet, horizontal distance, from the normal high-water line of No Name Pond, nor within 75 feet, horizontal distance, of the high-water line of the Androscoggin River, and those "brooks" as listed under subsection (b)(1) of this section, or the upland edge of those wetlands as listed under subsection (b)(2) of this section, nor within 25 feet horizontal distance, of the high-water line of those "brooks" as listed under subsection (b)(4) of this section, other than for road construction or water crossings, except to protect the shoreline and prevent erosion.
 - (2) All activities which involve filling, grading, lagooning, dredging, earth-moving, excavation, or other similar land use activities which result in unstabilized soil conditions shall be conducted in such manner to prevent, to the maximum extent possible, erosion and sedimentation of surface waters. Activities which require a permit, whether or not in conjunction with development review, shall require a written soil erosion and sedimentation control plan. The plan shall be submitted to the review and/or permitting authority for approval and shall meet the requirements of Maine Law, 38 M.R.S.A. § 420-C, and regulations promulgated thereunder, as amended. In addition, the plan shall be consistent with the standards identified in the Maine Erosion and Water Quality, (March 2003).
- (j) *Soils, buffers and wetland alteration.*
- (1) All land uses shall be located on soils in or upon which the proposed uses or structures can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, improper drainage, and water pollution, whether during or after construction. Proposed uses requiring subsurface waste disposal and commercial or industrial development and other similar intensive land uses, shall require a soils report based on an on-site investigation and be prepared by state-certified professionals. Certified persons may include Maine Certified Soil Scientists, Maine Registered Professional Engineers, Maine State Certified Geologists and other persons who have training and experience in the recognition and evaluation of soil properties. The report shall be based upon the analysis of the characteristics of the soil and surrounding land and water areas, maximum ground water elevation, presence of ledge, drainage conditions and other pertinent data which the evaluator deems appropriate. The soils report shall include recommendations for a proposed use to counteract soil limitations where they exist. Based on the results of the soils report, additional reports or studies may be required, such as wetland delineations and high-intensity soil surveys.
 - (2) No filling, dredging or other earth-moving shall be carried out within the limits of a wetland as identified by the Maine Department of Inland Fisheries and Wildlife or the Maine Department of Environmental Protection except in conjunction with road construction as set forth in subsection (1).
 - (3) Within 75 feet horizontal distance, from the normal high-water line of No Name Pond and 50 feet, horizontal distance, from the Androscoggin River and those "brooks" as listed under subsection (b)(1) of this section, on the upland edge of those wetlands as

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listed under subsection (b)(2) of this section; and 25 feet, horizontal distance, from other water bodies, tributary streams and wetlands within the Shoreland area, the land shall be maintained in a natural vegetative state.

All existing buildings and structures which do not meet this standard shall adhere to the nonconformance section of this appendix and subsection (d)(2) of this section, unless otherwise provided for under subsection (t). All other impervious surfaces shall meet the standard set forth in subsection (d)(2) of this section, unless otherwise provided for under subsection (t). If the current impervious surface ratio is in excess of this standard, the impervious surfaces shall not be expanded, unless other provided for under subsection (t).

(k) *Mineral exploration and extraction.* Mineral exploration to determine the nature or extent of mineral resources shall be accomplished by hand sampling, test boring or other methods which create minimal disturbance of less than 100 square feet of ground surface. A permit from the code enforcement officer shall be required for mineral exploration which exceeds the above limitation. All excavations, including test pits and holes shall be immediately capped, filled or secured by other equally effective measures, so as to restore disturbed areas and to protect the public health and safety.

Mineral extraction may be permitted under the following conditions:

- (1) A reclamation plan shall be filed with, and approved by the planning board (for major projects), development review committee (for minor projects), or code enforcement director (if no review is required) before a permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of subsection (4) below.
- (2) Unless authorized pursuant to the Natural Resources Protection Act, Title 38 M.R.S.A. Section 480-C, no part of any extraction operation, including drainage and runoff control features shall be permitted within 100 feet, horizontal distance, of the normal high-water line of No Name Pond, nor within 75 feet, horizontal distance, of the high-water line of the Androscoggin River, and those "brooks" as listed under subsection (b)(1) of this section, or the upland edge of those wetlands as listed under subsection (b)(2) of this section, nor within 25 feet horizontal distance, of the high-water line of those ""brooks" as listed under subsection (b)(4) of this section. Extraction operations shall not be permitted within 75 feet of any property line, without written permission of the owner of such adjacent property.
- (3) Developers of new gravel pits along the Androscoggin River shall demonstrate that no reasonable mining site outside the Shoreland area exists. When gravel pits must be located within the Shoreland area, they shall be set back as far as practicable from the normal high-water line and no less than 100 feet, horizontal distance, and screened from the river by existing vegetation. This standard shall not be reduced by variance. Existing, legally established gravel pits that do not meet the 100-foot setback shall not expand their earth removal activities which are located within the 100-foot setback.
- (4) Within 12 months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than 100 cubic yards of materials are removed in any consecutive 12-month period, ground levels and grades shall be established in accordance with the following:
 - a. All debris, stumps and similar material shall be removed for disposal in an approved location, or shall be buried on-site. Only materials generated on-site may be buried or covered on-site.

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Note: The State of Maine Solid Waste Laws, Title 38 M.R.S.A. section 1310 and Chapter 404 of the Department of Environmental Protection's regulations may contain other applicable provisions regarding disposal of such materials.

- b. The final graded slope shall be two to one slope or flatter.
 - c. Topsoil or loam shall be retained to cover all disturbed land areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.
- (5) In keeping with the purposes of this ordinance, the planning board (for major projects), development review committee (for minor projects), or code enforcement director (if no review is required), may impose such conditions as are deemed necessary to minimize the adverse impacts associated with mineral extraction operations on surrounding uses and resources.
- (1) *Roads, driveways, and water crossings.* The following standards shall apply to the construction and maintenance of roads, driveways, water crossings, drainage systems, culverts and other related features. In addition to these standards, roads shall be constructed in accordance with the City of Lewiston's Policy for the Design and Construction of Streets and Sidewalks, adopted by the city council pursuant to chapter 66, article IV, section 66-96 of this Code.
- (1) Roads and driveways shall be set back at least 100 feet, horizontal distance, from the normal high-water line of No Name Pond, 75 feet from the horizontal distance, of the high-water line of the Androscoggin River, and those "brooks" as listed under subsection (b)(1) of this section, or the upland edge of those wetlands as listed under subsection (b)(2) of this section, unless no reasonable alternative exists as determined by the planning board (for major projects), staff review committee (for minor projects), or code enforcement director (if no review is required). If no other reasonable alternative exists, the planning board (for major projects), staff review committee (for minor projects), or director of planning and code enforcement (if no review is required) may reduce the road and/or driveway setback requirement to no less than 50 feet, horizontal distance, upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body. All techniques used shall comply with Maine Law, 38 M.R.S.A. § 420-C, and regulations promulgated thereunder, as amended, and shall be consistent with measures identified in the Maine Erosion and Sedimentation Control BMPs Pub. No. DEPLW0588, published by the Maine Department of Environment Protection, Bureau of Land and Water Quality, (March 2003). Roads and driveways shall be set back at least 25 feet horizontal distance, from the high-water line of those "brooks" as listed under subsection (b)(4) of this section. On slopes of greater than 20 percent, the road and/or driveway setback shall be increased by ten feet, horizontal distance, for each five percent increase in slope above twenty percent. This subsection shall neither apply to approaches to water crossings nor to roads or driveways that provide access to permitted structures and facilities located nearer to the shoreline due to an operational necessity.
- (2) Existing public roads may be expanded within the legal road right-of-way regardless of its setback from a water body.
- (3) New roads and driveways are prohibited within the resource conservation district except:
- a. To provide access to structures or facilities within the zone; or

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- b. As by the planning board upon a finding that no reasonable alternative route or location is available out side the resource conservation district, in which case the road and/or driveway shall be set back as far as practicable from the normal high-water line of a water body, tributary stream or up land edge of a wetland and screened from the river by existing vegetation.
- (4) Road banks shall be no steeper than a slope of two horizontal to one vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in subsection (i).
- (5) Road grades shall be no greater than ten percent except for short segments of less than 200 feet.
- (6) In order to prevent road surface drainage from directly entering water bodies, roads shall be designed and constructed using appropriate techniques used to prevent sedimentation of the water bodies. All techniques used shall comply with Maine Law, 38 M.R.S.A. § 420-C, and regulations promulgated thereunder, as amended, and shall be consistent with measurers identified in the Maine Erosion and Sedimentation Control BMPs Pub. No. DEPLW0588, published by the Maine Department of Environment Protection, Bureau of Lane and Water Quality, (March 2003).
- (7) Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow in the road or ditches gains sufficient volume or head to erode the road or ditch. To accomplish this, the following shall apply:
 - a. Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road at intervals no greater than indicated in the following table:

<i>Road Grade</i> (percent)	<i>Spacing</i> (feet)
0--2	250
3--5	200--135
6-10	100--80
11--15	80--60
16--20	60--45
21 +	40

- b. Drainage dips may be used in place of ditch relief culverts only where the road grade is ten percent or less.
- c. On road sections having slopes greater than ten percent, ditch relief culverts shall be placed across the road at approximately a 30-degree angle downslope from a line perpendicular to the centerline of the road.
- d. Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning, and their inlet and outlet ends shall be stabilized with appropriate materials.
- (8) Ditches, culverts, bridges, dips, water turnouts and other stormwater runoff control installations associated with roads shall be maintained on a regular basis to assure effective functioning.
- (m) *Subsurface sewage disposal.*

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- (1) All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules (hereinafter referred to as "rules"), and the following:
 - (2) The minimum setback for new subsurface sewage disposal systems shall be no less than 100 feet, horizontal distance, from the normal high-water line of No Name Pond, the Androscoggin River, and those "brooks" as listed under subsection (b)(1) of this section; or the upland edge of those wetlands as listed under subsection (b)(2) of this section; and 50 feet, horizontal distance, from other water bodies, tributary streams and wetlands within the Shoreland area. The minimum setback distances for new subsurface sewage disposal systems shall not be reduced by variance, and in no case, shall be any less than 50 feet.
 - (3) All subsurface sewage disposal systems shall be located in areas of suitable soil of at least 1,000 square feet in size.
 - (4) The conversion of cottages or camps from seasonal to year-round use shall comply with the terms of the rules, including article XII, section 2(m), subsections (2) and (3) above, for such conversion.
 - (5) Replacement systems shall be allowed only in conformance with the provisions and procedures of the rules, including article XII, section 2(m), subsections (2), (3) and (4) above, for such systems.
- (n) *Stormwater runoff and water quality.*
- (1) All new construction and development shall be designed to minimize stormwater runoff from the site in excess of the natural predevelopment conditions and shall meet the requirements described in article XIII, section 4.
 - (2) All methods for erosion and sedimentation control shall comply with Maine Law, 38 M.R.S.A. § 420-C, and regulations promulgated thereunder, as amended. In addition, the applicant shall implement specific erosion and sedimentation measures consistent with those identified in the Maine Erosion and Sedimentation Control BMPs Pub. No. DEPLW0588, published by the Maine Department of Environmental Protection, Bureau of Land and Water Quality, (March 2003).
- (o) *Campgrounds and individual private campsites.*
- (1) Campgrounds shall conform to the minimum requirements imposed under state licensing procedures and the following:
 - a. Campgrounds shall contain a minimum of 5,000 square feet of land, not including roads and driveways, for each site. Land supporting wetland vegetations, and land below the normal high-water line of a water body shall not be included in calculating land area per site.
 - b. The areas intended for placement of a recreational vehicle, tent or shelter, and utility and service buildings shall be set back a minimum of 100 feet, horizontal distance, from the normal high-water line of No Name Pond, 75 feet horizontal distance, from the normal high-water line of the Androscoggin River and those "brooks" as listed under subsection (b)(1) of this section, or the upland edge of those wetlands as listed under subsection (b)(2) of this section, and 25 feet horizontal distance, of the high-water line of those "brooks" as listed under subsection (b)(4) of this section.

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- (2) Individual, private campsites not associated with campgrounds are permitted provided the following conditions are met:
- a. One campsite per lot existing on the effective date of this ordinance, or 30,000 square feet of lot area within the Shoreland area, whichever is less, may be permitted.
 - b. Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be set back 100 feet, horizontal distance, from the normal high-water line of No Name Pond, 75 feet, horizontal distance, from the normal high-water line of the Androscoggin River, and those "brooks" as listed under subsection (b)(1) of this section, or the upland edge of those wetlands as listed under subsection (b)(2) of this section, and 25 feet horizontal distance, from the high-water line of those "brooks" as listed under subsection (b)(4) of this section.
 - c. Recreational vehicles shall not be located on any type of permanent foundation except for a gravel road, and no structure(s) except canopies shall be attached to the recreational vehicle.
 - d. The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter in a resource conservation district shall be limited to 1,000 square feet.
 - e. A written sewage disposal plan describing the proposed method and location of sewage disposal shall be required for each campsite and shall be approved by the local plumbing inspector. Where disposal is off-site, written authorization from the receiving facility or land owner is required.
 - f. When a recreational vehicle, tent or similar shelter is placed on-site for more than 120 days per year, all requirements for residential structures shall be met, including the installation of a subsurface sewage disposal system in compliance with the State of Maine Subsurface Wastewater Disposal Rules unless served by public sewage facilities.
 - g. These standards shall not be reduced by variance.
- (p) *Structures related to water bodies.* In addition to state or other permits which may be required for piers, docks, floats, ramps and other structures lying in or projecting into water bodies, such structures shall meet the following standards:
- (1) Access from shore shall be developed on soils appropriate for such use and constructed so as to reasonably control erosion.
 - (2) The location shall not unreasonably interfere with other established uses.
 - (3) The facility shall be located so as to minimize adverse effects on fisheries.
- (q) *Essential services.*
- (1) Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.
 - (2) The installation of essential services is not permitted in a resource conservation (RC) district, except to provide services to a permitted use within said district, or except where the applicant demonstrates that no reasonable alternative exists. Where permitted, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts.
- (r) *Timber harvesting.*

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- (1) Timber harvesting activities in Shoreland areas shall conform with the following provisions:
- a. Timber harvesting, other than for road building and water crossings or in conjunction with approved development activities, shall not remove, in any ten-year period, more than 40 percent of the volume on each acre involved of trees four inches in diameter and larger, measured at four and one-half feet above ground level, applied equally to all size classes (six-inch, eight-inch, ten-inch, etc.) within the area being harvested. Removal of trees less than four inches in diameter, measured as above, is permitted if otherwise in conformance with the standards of this section. For the purpose of these standards, volume may be determined as being equivalent to basal area. A stand means a contiguous group of trees, sufficiently uniform in species, arrangement of classes and condition to be identified as a homogeneous and distinguishable unit.
Timber harvesting operations proposing to exceed the 40 percent limitation must submit a forest management plan signed by a state licensed professional forester and approved by the code enforcement director. The management plan must clearly show that an exception for exceeding the 40 percent rule is necessary for good forest management and will be carried out in accordance with the purposes of this section. The code enforcement director shall notify the commissioner of the department of environmental protection within 14 days of the decision to allow an exception.
 - b. Within 75 feet, horizontal distance, from the normal high-water line of No Name Pond; and 50 feet, horizontal distance, from the Androscoggin River and those "brooks" as listed under subsection (b)(1) of this section or the upland edge of those wetlands as listed under subsection (b)(2) of this section; and 25 feet, horizontal distance from the high-water line of those "brooks" as listed under subsection (b)(4) of this section the land shall be maintained in a natural vegetative state and timber harvesting activities are prohibited.
 - c. Within the area between the required buffer referred to in subsection b., above and 100 feet, horizontal distance, of the normal high-water line of No Name Pond, and 75 feet, horizontal distance of the normal high-water line of the Androscoggin River, and those "brooks" as listed under subsection (b)(1) of this section, or the upland edge of those wetlands as listed under subsection (b)(2) of this section; and 25 feet, horizontal distance from the high-water line of those "brooks" as listed under subsection (b)(4) of this section, no clear cutting shall be allowed, and timber harvesting activities shall be conducted in such a manner that a well-distributed stand of trees is retained so as to maintain the aesthetic and recreational value and water quality of the area, and to reasonably avoid sedimentation of surface waters.
 - d. At distances greater than 100 feet, horizontal distance, from the normal high-water line of No Name Pond, and 75 feet, horizontal distance, of the normal high-water line of the Androscoggin River, and those "brooks" as listed under subsection (b)(1) of this section, or the upland edge of those wetlands as listed under subsection (b)(2) of this section; and 25 feet, horizontal distance from the high-water line of those "brooks" as listed under subsection (b)(4) of this section, timber harvesting activities shall not create single openings greater than 10,000 square feet in the forest canopy. In such areas single canopy openings of more than 5,000 square feet shall be no closer than 100 feet apart. Such clearcut

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openings shall be included in the calculation of total volume removal. For the purposes of these standards, volume may be considered to be equivalent to basal area.

- e. No accumulation of slash shall be left within 50 feet, horizontal distance, of the normal high-water line of No Name Pond, the Androscoggin River, and those "brooks" as listed under subsection (b)(1) of this section. At distances greater than 50 feet, horizontal distance, from the normal high-water line of such waters, and extending to the limits of the shoreland area, all slash shall be disposed of in such a manner that it lies on the ground and no part thereof extends more than four feet above the ground. Any debris or slash that falls below the high-water line of a water body shall be removed.
- f. Skid trails, log yards, and other sites where the operation of logging machinery results in the exposure of substantial areas of mineral soil shall be located such that an unscarified filter strip is retained between the exposed mineral soil and the normal high-water line of No Name Pond, the Androscoggin River, and those "brooks" as listed under subsection (b)(1) of this section, or the upland edge of those wetlands as listed under subsection (b)(2) of this section; and from other water bodies, tributary streams and wetlands within the shoreland area. The width of this strip shall vary according to the average slope of the land as follows:

<i>Average Slope of Land Between Exposed Mineral Soil and Normal High-Water Mark (percent)</i>	<i>Width of Strip Between Exposed Mineral Soil and Normal High-Water Mark (feet along surface of the ground)</i>
0	25
10	45
20	65
30	85
40	105
50	125
60	145
70	165

This standard shall not apply to road building and water crossings.

- g. Timber harvesting equipment shall not use stream channels as travel routes except when:
 - 1. Surface waters are frozen;
 - 2. The activity will not result in any ground disturbance.
- h. All crossings of flowing water shall require a bridge or culvert, except in areas with low banks and channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged.
- i. Skid trail approaches to water crossings shall be located and designed so as to prevent water runoff from directly entering the water body or tributary stream. Upon completion of timber harvesting, temporary bridges and culverts shall be removed and areas of exposed soil revegetated.
- j. Timber harvesting activities conducted within the shoreland area must meet the notification requirements outlined in subsection 3(f) of this article.

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- (2) Clearing of vegetation for development:
- a. Within the shoreland area zoned resource conservation abutting No Name Pond, there shall be no cutting of vegetation with the strip of land extending 75 feet, horizontal distance, inland from the normal high-water line, except to remove safety hazards.

Elsewhere in the resource conservation district the clearing of vegetation shall be limited to that which is necessary for use expressly authorized in that district.

- b. Except in areas as described above in subsection a., within a strip of land extending 100 feet, horizontal distance, from the normal high-water line of No Name Pond, and 75 feet, horizontal distance, of the normal high-water line of the Androscoggin River, and those "brooks" as listed under subsection (b)(1) of this section, or the upland edge of those wetlands as listed under subsection (b)(2) of this section and 25 feet, horizontal distance from the high-water line of those "brooks" as listed under subsection (b)(4) of this section a buffer strip of vegetation shall be preserved as follows:
 1. There shall be no cleared opening greater than 250 square feet in the forest canopy as measured from the outer limits of the tree crown. However, a footpath not to exceed ten feet in width as measured between tree trunks is permitted provided that a cleared line of sight to the water through the buffer strip is not created.
 2. Selective cutting of trees within the buffer strip is permitted provided that a well-distributed stand of trees and other vegetation is maintained. For the purposes of this section, a "well-distributed stand of trees and other vegetation" adjacent to No Name Pond shall be defined as maintaining a rating score of 12 or more in any 25-foot by 25-foot square (625 square feet) area as determined by the following rating system.

<i>Diameter of tree at 4 1/2 feet above ground level (inches)</i>	<i>Points</i>
2--4	1
4--12	2
> 12	4

Within the buffer strip, adjacent to other water bodies, tributary streams, and wetlands, a "well-distributed stand of trees and other vegetation" is defined as maintaining a minimum rating score of eight, per 25-foot square area.

3. In order to protect water quality and wildlife habitat, within the buffer strip, adjacent to No Name Pond and the portion of No Name Brook that flows to No Name Pond, existing vegetation under three feet in height and other ground cover shall not be removed, except to provide for a footpath or other permitted uses as described in subsections (3) and (3)a. of this subsection.
4. Pruning of tree branches, within the buffer strip, on the bottom one-third (1/3) of the tree is permitted.

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5. In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe, or dead trees results in the creation of cleared openings, these openings shall be replaced with native tree species unless existing new tree growth is present.
- c. At distances greater than 100 feet, horizontal distance, from the normal high-water line of No Name Pond, and 75 feet, horizontal distance, of the normal high-water line of the Androscoggin River, and those "brooks" as listed under subsection (b)(1) of this section, or the upland edge of those wetlands as listed under subsection (b)(2) of this section and 25 feet, horizontal distance from the high-water line of those "brooks" as listed under subsection (b)(4) of this section a buffer strip of vegetation shall be preserved as follows, selective tree cutting is permitted provided that not more than 40 percent of the volume of existing trees four inches or more in diameter, measured at four and one-half feet above ground level, applied equally to all size classes (six-inch, eight-inch, ten-inch, etc.) within the area being harvested, are removed from any contiguous stand or grouping of trees in any ten-year period. Tree removal in conjunction with the development of permitted uses shall be included in the 40 percent calculation. For the purpose of these standards, volume may be considered to be equivalent to basal area. In no case shall contiguous cleared openings for development including, but not limited to, principal and accessory structures, driveways, walkways, patios, swimming pools and sewage disposal areas, exceed in the aggregate, 25 percent of the lot area (or 10,000 square feet, whichever is greater), including land previously developed. Cleared openings legally in existence on the effective date of this Code may be maintained, but shall not be enlarged, except as permitted by this Code. Fields which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of this section.

(s) *Exemptions.* In areas where the "brooks" mentioned in subsection (b)(1) of this section have undergone channelization, the planning board (for major projects), development review committee (for minor projects), or code enforcement director (if no review is required) may exempt all, or portions of, the shoreland area standards deemed nonapplicable due to the existing conditions associated with said "brooks."

As each determination of nonapplicability will be done on a case-by-case basis, the burden of proof shall be on the applicant and such burden of proof shall include the production of evidence sufficient to warrant a finding that some or all of the standards are not applicable due to existing manmade straightening, deepening and surfacing of the "brook" (channelization).

(t) *General development areas.*

(1) For land areas located in the highway business, community business, centreville, riverfront, mill, urban enterprise, office service, office residential, and industrial districts, which are also located in the shoreland area, setbacks for new principle and accessory structures and parking areas, shall be no less than 25 feet. In addition, all land area between the high-water line and the setback line shall be maintained in a natural vegetative state.

The maximum impervious surface ratio for all land areas located in the aforementioned zoning districts shall not exceed 70 percent.

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These setback and impervious surface ratio standards shall not be reduced by modification or variance.

(Ord. No. 92-5, 3-5-92; Ord. No. 92-19, 9-10-92; Ord. No. 99-17, 10-12-99; Ord. No. 00-11, 6-15-00; Ord. No. 06-17, 2-8-07; Ord. No. 06-18, 2-8-07; Ord. No. 11-15, 01-19-12)

Sec. 3. Timber harvesting standards.

(a) *In Resource conservation districts.*

(1) Clear-cutting, and timber harvesting, other than for road building and water crossings for which all required city, state or federal permits have been obtained, or in conjunction with approved development activities, pursuant to article XIII of the Code, is prohibited.

(b) *In shoreland areas, as defined in article XII, section 2, not within a resource conservation district.* No clear-cutting is permitted within a shoreland area and timber harvesting activities shall comply with the standard set forth in article XII, section 2, subsection (r), timber harvesting.

(c) *In lake conservation overlay district (LC).* Except for approved construction and landscaping projects, timber harvesting shall not remove, in any ten-year period, more than 40 percent of the volume on each acre involved of trees six inches in diameter and larger, measured at four and one-half feet above ground level, applied equally to all size classes (six-inch, eight-inch, ten-inch, etc.) within the area being harvested. Removal of trees less than six inches in diameter, measured as above, is permitted if otherwise in conformance with the standards of this Code. No clear cutting shall be allowed and harvesting operations shall be conducted in such a manner that a well-distributed stand of trees is retained so as to maintain the aesthetic and recreational value and water quality of the lake conservation overlay district. For the purpose of these standards, volume may be determined as being equivalent to basal area. A stand means a contiguous group of trees, sufficiently uniform in species, arrangement of classes and condition to be identified as a homogeneous and distinguishable unit.

(d) *Within all districts.* Timber harvesting shall comply with the state department of conservation standards for forest regeneration, established pursuant to 12 M.R.S.A., ch. 805, subchapter III-A, as amended. Clear-cutting, except in resource conservation, shoreland areas, and lake conservation overlay districts, is permitted only if an accepted forest management plan is filed with the code enforcement official at least seven days prior to the commencement of clear-cutting activities. Except for approved construction and landscaping projects, for which all required city, state or federal permits have been obtained, timber harvesting operations shall maintain a continuous natural buffer of at least fifty feet from all property lines and streams, except for roads required to gain access to the land to be harvested.

Selective cutting of trees within the buffer strip is permitted provided that a well-distributed stand of trees and other vegetation is maintained. For the purposes of this section, a well-distributed stand of trees and other vegetation shall be defined as maintaining a rating score of six or more in any 25-foot by 25-foot square (625 square feet) area as determined by the following rating system:

<i>Diameter of tree at 4 1/2 feet above ground level (inches)</i>	<i>Points</i>
2--4	1
4--12	2
> 12	4

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Storm damaged, diseased, unsafe or dead trees may be removed at the landowner's discretion. However, when their removal results in the creation of cleared openings, these openings shall be replaced unless existing new tree growth is present, with native species in order to maintain a buffer strip of vegetation.

Pruning of tree branches within the buffer strip, on the bottom one-third of the tree is permitted. However, existing vegetation under three feet in height and other ground cover shall not be removed, except for safety reasons, where the removal of vegetation immediately surrounding a tree to be cut is permitted. Cleared openings legally in existence within the required buffer area, as of the effective date of this Code, may be maintained but not enlarged. There shall be no cutting of trees for any reason within 50 feet of a stream, whether the stream is located within the required 50-foot buffer or anywhere else on the property.

Clear-cutting within the required buffer area is permitted only if the landowner secures a written agreement from the abutting landowner(s) stating that the abutter(s) is(are) aware that the required buffer area is to be clear-cut and has agreed to its elimination. Written notification shall be presented to the code enforcement official at least seven days prior to clear-cutting of the buffer area. The notification shall indicate the proposed location of the buffer area on a map, drawn to scale, of the property under consideration; the names, addresses and telephone numbers of both the landowner and all abutting property owners; and all original, signed agreements from any abutters who have agreed to the elimination of the buffer area.

(e) *Notification requirement.* Except for approved construction and landscaping projects for which all required city, state or federal permits have been obtained, written notification shall be made to the code enforcement official at least seven days prior to the commencement of timber harvesting operations. The notification shall indicate the proposed location, nature, number of acres to be harvested and time period of the operations, and shall contain the names, addresses and telephone numbers of both the land owner(s) and operator(s) and any licensed forester involved. The notification shall also include a map drawn to scale indicating the required buffers and extent of any clear cutting, and to what use, if any, the site will be converted to after completion of harvest activities. For all timber harvesting operations which require notification to the state, a properly completed "Notification of Intent to Harvest Forest Products" may be submitted to meet this requirement.

(Ord. No. 92-5, 3-5-92; Ord. No. 92-18, 9-10-92; Ord. No. 96-11, 9-12-96)

Sec. 4. Community garden standards.

The following standards shall apply to the establishment or creation of any community garden in City of Lewiston:

1. A community garden may be located in any zoning district with the exception of the Resource Conservation district.
2. Unless located in the Rural Agricultural district, a community garden may be no larger than 20,000 square feet.
3. Unless permitted by the underlying zoning district, on-site sale of community garden products shall be prohibited.
4. The site shall be designed and maintained to prevent any chemical pesticide, fertilizer or other garden waste from draining on to streets or adjacent properties.

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5. Accessory structures including buildings or signs shall comply with requirements of the underlying zoning district.
 6. Cultivated areas shall be prevented from encroaching onto adjacent properties.
 7. The property shall be maintained free of high grass, weeds, and debris. Dead garden plants shall be removed by no later than November 30th of each year. This is not intended to prohibit composting or soil enhancing cover crops.
 8. Use of mechanical equipment shall be limited to that customarily identified as household lawn and garden equipment. Use of said equipment shall be restricted to the hours 7:00 a.m. to 7:00 p.m.
 9. The community garden shall be subject to applicable odor provisions contained in Article XII, Section 19(4).
 10. It shall be the responsibility of the property owner that uses a lot or a portion thereof as a community garden meets the above referenced performance standards. If leased or used by other individuals or organizations, it shall be the responsibility of the property owner to ensure the above referenced performance standards are met.
 11. It shall be the responsibility of any person, including, but not limited to, the property owner, their agent, individuals, organizations, or other person having an interest in establishing a community garden on a lot(s) or a portion thereof for a community garden to obtain a Use Permit from the City prior to commencing said use of land.
- (Ord. No. 12-04, 04-05-12)

Sec. 5. Earth material removal standards.

- (a) *Applicability.* The standards and procedures of this section shall apply to the removal of topsoil, sod, loam, peat or other organic materials, clay, sand, gravel, stone or other earth products from a parcel of land for removal from the site except as otherwise provided for in this section. These standards shall apply to:
- (1) The commencement of a new earth material removal activity;
 - (2) The expansion of an existing earth removal activity onto a parcel of land not undergoing removal activities as of the date of adoption of this Code; and
 - (3) The creation of a new removal site on a parcel of land undergoing removal activities as of the date of adoption of this Code.

The standards and procedures of this section shall not apply to the following earth material removal activities:

- (1) Removal incidental to any lawful use of land or of a building or incidental to, and necessitated by, any building construction for which a building permit has lawfully been issued under this Code prior to such earth removal;
- (2) Removal necessitated by the construction or installation of utilities or other engineering works for public service on such lot or in such way, or as may be necessitated in constructing ways;
- (3) Removal, grading or transforming from one part of a lot, tract or parcel of land to another part of the same lot, tract or parcel of land in the same ownership.
- (4) Removal incidental to the construction of driveways or private ways,
- (5) Removal from a site in operation as of the date of adoption of this Code, provided that it does not involve expansion onto another parcel of land or the creation of a new removal site and has been in continuous operation as a removal site.

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(b) *Development approval required.* Any earth removal activity involving more than 1,000 cubic yards of material shall commence only after a development plan has been reviewed and approved according to the standards and procedures of article XIII.

(c) *Additional submission requirements.* In addition to the submission requirements set forth in article XIII, section 3, applications for review for earth removal activities shall contain the following additional information:

- (1) Copies of soils tests, test borings, other field tests, laboratory studies and similar information to identify the type and amount of material available for removal and the depth to the seasonal high-water table over the area proposed for removal activities;
- (2) A management plan setting forth the operating procedures and monitoring protocol for the site including, but not limited to, hours of operation, control of noise, blasting vibration, dust and particulate emissions, site security, limits on work areas, etc.
- (3) A restoration plan setting forth the final grades of the restored site together with provisions for re-establishment of vegetative cover when the site involves overburden extraction.

(d) *Conditions of approval.* In approving development plans for earth removal activities in accordance with the standards and procedures set forth in article XIII, the planning board may impose conditions on the approval including, but not limited to the following if necessary to meet the standards of subsection (e):

- (1) Method of removal;
- (2) Type and location of temporary structures;
- (3) Hours of operation;
- (4) Policing of traffic entering and leaving site;
- (5) Routes of transporting the material through the City of Lewiston;
- (6) Area and depth of excavation;
- (7) Distance of excavation to street and lot lines;
- (8) Steepness of slopes excavated;
- (9) Re-establishment of ground levels and grades;
- (10) Provisions for temporary and permanent drainage;
- (11) Disposition of boulders and tree stumps;
- (12) Replacement of topsoil over the area of removal;
- (13) Planting of the area to suitable cover;
- (14) Buffering and fencing;
- (15) Control of noise, vibration and dust and particulate emissions.

(e) *Standards for removal activities.* All earth removal activities shall conform to the following standards:

- (1) *Traffic.* Provisions for access to and into the site shall conform to the following standards:
 - a. Public roads providing access to the site shall be capable of accommodating the additional traffic without reducing traffic safety or the level of service of roads and intersections within one-quarter mile of the site. If streets functionally classified as

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local streets are used to provide access to the site, the applicant shall demonstrate by a traffic impact study that these streets can safely accommodate the increased use without a reduction in the level of service.

- b. Truck traffic to and from any removal site shall use the most direct travel route between the arterial road system and the site unless an alternative route is approved as part of the development approval process.
- c. The sight distance where the access road(s) to the site intersects with a public street shall meet the minimum sight distance requirements of the Maine Department of Transportation.
- d. All access roads shall have a maximum road slope of three percent for a distance of 100 feet from the intersection with a public street.
- e. The roads providing access to the site shall be capable of supporting the loadings imposed by trucks servicing the removal site. If the roads are not capable of supporting the loads, the planning board may require, as conditions of approval, that gross vehicle weights be limited and/or a financial guarantee posted to provide for the repair of any damage resulting from the site traffic.

(2) *Buffering.* The removal activity shall conform to the following standards:

- a. A natural vegetative strip at least 50 feet in width shall be maintained around the perimeter of the site. This buffer strip shall be treated with a combination of landscaping, fencing or earth berming sufficient to screen the removal operation from view from public streets or abutting properties. The planning board may modify this requirement where the topography of the site makes screening impractical.
- b. If written permission of the abutter is obtained, a buffer strip of no less than 25 feet may be allowed.
- c. The buffer strip may be entirely eliminated between abutting properties when both properties are used in similar excavation activity provided a written agreement between both parties is furnished.

(3) *Excavations.* Any excavation involving the removal of materials to a final elevation which is lower than the surrounding land shall be carried out in accordance with the following standards:

- a. No excavation shall occur within 100 feet of any property line or street line.
 - 1. Overburden extraction. For excavation in excess of 50 feet in depth, this unexcavated area shall be increased one foot in width for each one foot in depth in excess of 50 feet.
 - 2. Bedrock quarries. Bedrock quarry operations will retain a minimum buffer strip of 150 feet from all property lines. The working edge of an extractive activity will be no closer than 150 feet to any public road or way.
- b. No excavation shall extend below the seasonal high-water table for the site unless provisions are made to lower the water table through manmade means.
- c. Except for bedrock quarries, no standing water shall be permitted to accumulate in any site either during or after extraction operations.
- d. Slopes.
 - 1. Overburden extraction. No slopes steeper than two feet horizontal to one foot vertical shall be permitted at any removal site during or after excavation operations except that during active operations, steeper working slopes shall be permitted provided that in any location where the slope exceeds two to one for a height of more than 15 feet, a fence shall be erected to limit access to the site.

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- 2. Bedrock quarry. The applicant shall submit a report by a qualified geotechnical engineer or certified geologist recommending appropriate rock slope and bench configurations. The report should be based on appropriate field and laboratory study and analysis to establish the stability of the cut slopes both during the extraction period and after use of the site has been terminated. Rock quarries must be enclosed by a fence.
- e. No portion of any ground area disturbed by extraction activity on a face sloping toward a body of water shall be closer to the normal high-water mark of the body of water than is indicated by the following table, provided, however, that no portion of such ground area on a back face shall be closer than 50 feet:

<i>Average Slope of Land Between Exposed Mineral Soil and Normal High-Water Mark (percent)</i>	<i>Width of Strip Between Exposed Mineral Soil and Normal High- Water Mark (feet along surface of the ground)</i>
0	50
10	90
20	130
30	170
40	210
50	250
60	290
70	330

- f. Within 250 feet of any water body, the extraction area shall be protected from soil erosion by ditches, sedimentation basins, dikes, dams or such other control devices which are effective in preventing sediments from being eroded or deposited into such water body.
- (4) *Operations.* The operation of any earth removal activity shall conform to the following standards:
- a. The operation shall be conducted in a manner to minimize dust.
 - b. Loaded vehicles shall be suitably covered to prevent dust and contents from spilling or blowing from the load, and all trucking routes and methods shall be subject to approval by the chief of police for minimizing the impact on traffic flow and safety.
 - c. All access roads leading from the extraction site to public ways shall be treated with suitable materials to reduce dust and mud, unless the site is located in a groundwater conservation overlay district.
 - d. No equipment, debris, junk or other materials shall be permitted at an extraction site except those directly relating to active extraction operations, and any temporary shelters or buildings erected for such operations and equipment used in connection therewith shall be removed within 30 days following completion of active extraction operations.

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- e. The pit shall not be used for storage or dumping of any substances that could produce a harmful leachate both during operation of the pit and following its permanent closure.
- f. Storage of hazardous materials and petroleum products in the pit is prohibited.
- g. Any washing and crushing operations shall be conducted in a manner that will minimize runoff.
- h. Noise levels at the property line shall be limited to 75 decibels, as measured on a scale by a sound level meter and frequency weighting network manufactured in accordance with the standards of the American Standards Association.
- i. Any topsoil and subsoil suitable for purposes of revegetation shall, to the extent required for restoration, be stripped from the location of extraction operations and stockpiled for use in restoring the location after extraction operations have ceased.

(5) *Reclamation.* Within two years of the cessation of removal activities for the site or portions of the site for operations exceeding five acres in size, the following standards shall apply:

- a. Following the completion of extraction operations at any extraction site or at any one or more locations within an extraction site, ground levels and grades shall be established in accordance with the approved plans filed with the planning board; all debris, stumps, boulders and similar materials shall be removed and disposed of in an approved location or, in the case of inorganic material, buried and covered with a minimum of two feet of soil.
- b. Retained topsoil and subsoil shall be respread over the disturbed area with any additional loam required to create a minimum seed bed depth of four inches, and the soil shall then be limed, fertilized and seeded with a grass or legume mixture which will meet the minimum standards of the technical guide, as amended from time to time, adopted by the Androscoggin Valley Soil and Water Conservation District; the foregoing restoration measures shall be completed within such period not exceeding eight months following completion of extraction operations as may be determined by the planning board, and the planted area shall be protected from erosion during the establishment period using good conservation practices.
- c. The proposal will adequately control erosion and stormwater runoff, and upon completion of active extraction operations, the land shall be left so that natural storm drainage and water courses leave the location at the original natural drainage points and in a manner such that the amount of drainage at any point is not increased.
- d. A depleted bedrock quarry may be allowed to fill naturally with precipitation and groundwater provided the following conditions are met:
 - 1. Physical access for the general public is to be prevented by continuous fencing of the entire perimeter at least six feet high.
 - 2. Any gates shall be locked at all times when the site is not in operation.
 - 3. Earthen berms shall also be created along all public ways where the natural contours of the land do not impede vehicular traffic.

(6) *Use of explosives.* The use of explosives and blasting agents for earth removal activities, as defined in subsection (a) of this section, shall comply with the following standards:

- a. Prior to the commencement of blasting activity at a permitted site, a preblast survey shall be conducted on all off-site buildings not owned by the applicant within 500 feet of the excavation boundaries to document the existing condition of these buildings.

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Alternative building locations may be chosen when the maximum effects from the blast are expected to occur at those locations. Any structural defects, cracks, displacement, etc. shall be described in written and pictorial form. A copy of the survey shall be provided to the property owner, the code enforcement officer, and kept on file by the applicant throughout the active life of the excavation activity.

- b. Blasting shall be prohibited between the hours of 7:00 p.m. and 7:00 a.m. and all day on Sunday.
- c. The storage, transport and use of explosives shall be conducted in compliance with all applicable state and federal regulations, including, but not limited to those promulgated by the U.S. Mine Safety and Health Administration and the Maine Fire Marshal's Office.
- d. Prior to each blast a blasting plan shall be made showing the drilling pattern and depth; the amount and placement of explosives and blasting agents; and the time delays used, if any, for detonation. Adherence to the plan shall be verified by the on-site person responsible for the safe use of explosives as shown by his or her signature on the plan. The plans shall be kept on file, for inspection by the code enforcement officer, for three years following the blast.
- e. Every blast shall be monitored for ground vibration and airblast overpressure (noise) at the nearest off-site building or at an on-site location along a straight line between the blast and the nearest off-site building. An alternate building may be chosen when the maximum effects from the blast are expected to occur at that location. Instrumentation used for blast monitoring shall be capable of measuring and recording peak particle velocity (in inches/second) and frequency (in cycles/second) along three axes, airblast overpressure (in dBL), and internal calibration checks. Monitoring records shall be kept on file, for inspection by the code enforcement officer, for three years following the blast.
- f. Blasting shall be designed and conducted in a manner to ensure compliance with the following standards:
 - 1. Ground vibrations shall not exceed the frequency dependent peak particle velocities indicated by Figure 1.
 - 2. Airblast overpressure (noise) shall not exceed the levels indicated in the table below depending on the specification of the microphone used:

<i>Microphone Maximum</i>	<i>Overpressure (dBL)</i>
0.1 Hz high-pass system	134
2 Hz high-pass system	133
5-6 Hz high-pass system	129
C-Slow (<2 sec. duration)	105

The ground vibration and noise levels associated with the use of explosives shall be exempt from the standards in article XII, subsection 19(b) and (c).
(Ord. No. 89-16, 11-30-89)

Sec. 6. Swimming pool standards.

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- (a) *Placement requirements.* No swimming pool shall be constructed closer than ten feet from the side or rear lot line to the waterline of said swimming pool. If said swimming pool is located on the street side, it shall not be so located closer than 25 feet from the front lot line to the water's edge of said swimming pool.
- (b) *Enclosures.*
- (1) There shall be erected and maintained around every outdoor swimming pool, a good quality fence or wall, no less than four feet in height and of a character to exclude children. The exterior walls of an aboveground pool may serve as the required fence, if the following conditions are satisfied:
- a. The resulting enclosure shall be of sturdy construction and meet the intent of this section;
 - b. All stairs, ladders and ramps shall be secured, removed, fenced or otherwise made inaccessible when not in actual use; and
 - c. The pool wall shall be free of any construction feature or appurtenance which could be used to facilitate access to the pool.
- Required fencing shall be so constructed as not to have openings, holes or gaps larger than four square inches, except for fences constructed of vertical posts or louvers, in which case, the openings shall not be greater than four inches in width to a height of four feet, with no horizontal members between the top and bottom plates. Doors and gates are excluded from the minimum dimension requirements. A dwelling house or accessory building may be used as part of such enclosure.
- (2) All gates or doors opening through such enclosure shall be equipped with a self-latching device for keeping the gate or door securely locked at all times when not in actual use.
- (3) Any view-obstructing fence shall not be closer than 15 feet from any street lot line.
- (c) *Electrical connections and outlets.* All electrical connections to the swimming pool and to electrical fixtures or outlets within the enclosed area established in subsection (b) shall meet the requirements of the national electrical code, as amended, for use in swimming pools.
- (d) *Pools under construction.* No swimming pool under construction shall be left unattended without a fence or cover.
- (e) *Other pools.* Any other outdoor pool not covered by this section must be fenced, drained or covered when not in use.
- (f) *Construction permit and approval.*
- (1) Before work is commenced on the construction of swimming pools, or on any alteration, addition, remodeling or other improvement to a swimming pool, an application for a permit to construct and the plans and specifications and pertinent explanatory data shall be submitted to the code enforcement official for his approval, and no part of the work shall be commenced until the code enforcement official has granted such approval by a written permit to construct and has further evidenced his approval by a suitable endorsement upon such plans and specifications. No department of the city charged with the duty of issuing permits for plumbing or electrical work, for sewer connections or for other work in connection with the construction of a swimming pool or the construction or

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any alteration, addition, remodeling or other improvement to a swimming pool shall issue a permit for a swimming pool until the plans and specifications therefore have been thus endorsed and approved by the code enforcement official. The code enforcement official shall review such plans and specifications to determine whether they comply with the provisions of this Code and with reasonable standards of swimming pool construction for the protection of the public safety, health and morals.

- (2) The application to the code enforcement official for a permit to construct a swimming pool or to construct any alteration, addition, remodeling or other improvement to a swimming pool shall be submitted in such forms and be supported with such information and data, as well as plans, specifications and pertinent explanatory data, as the code enforcement official may require.

- (g) *Pool occupancy permit.* After construction of a pool, a pool occupancy permit must be obtained from the code enforcement official prior to the use of the pool, and said permit must be displayed near the swimming pool.

Sec. 7. Walls and fences.

- (a) *Maximum height of walls and fences:*
 - (1) Front yards. No wall or fence in a required front yard may exceed three and one-half feet in height, except as provided below.
 - (2) Side and rear yards. No wall or fence in a required side or rear yard may exceed eight feet in height, except as provided below.
 - (3) Corner cutbacks. No wall, fence, building, landscaping or other visual obstruction more than three feet in height is permitted within a corner cutback, except that part of a building more than eight feet in height, which is not otherwise prohibited, and except as provided below.
 - (4) Height measurement. For purposes of this section, the height of walls, fences, buildings, landscaping and other structures shall be measured from the top of the existing curb grade or the crown of the abutting street, whichever is lower.

- (b) *Retaining walls.* Retaining walls may be constructed, altered, added to or changed anywhere on a lot to the lot line provided the following conditions are met:
 - (1) Retaining wall exceeding six feet in height shall be designed by a registered professional engineer in accordance with the requirements of the BOCA code, as amended, and shall be approved by the code enforcement official prior to the start of construction.
 - (2) A wall or fence may be required by the code enforcement official in accordance with subsection (c) if a potential safety hazard will be created by a retaining wall.
 - (3) The retaining wall shall be located and constructed in a manner that will not create a barrier or undue impediment to public safety officers in performing their function in connection with the premises or adjacent properties.
 - (4) Retaining walls may be located in the corner cutback area of any lot provided the height of the wall does not exceed three feet.

- (c) *Hazardous areas.* The code enforcement official may require walls or fences not less than six feet in height along the perimeter of any area that, by reason of the existence on the property

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of physical hazards, such as frequent sudden inundation, erosion, excavation or grade differential, he determines to be dangerous.

(d) *Barbed wire.* No barbed wire fencing is permitted below a height of six feet, except in the rural-agricultural district in conjunction with an agricultural use.

(e) *Other requirements.*

(1) Corner cutbacks. Fences not more than three and one-half feet in height are permitted in a corner cutback, provided the vertical surface is not more than ten percent solid.

(2) Automobile graveyards and junkyards. Walls, fences or other screening surrounding an automobile graveyard or junkyard may exceed the maximum height permitted in front, side or rear yards, but not in corner cutbacks, if necessary to meet the requirements of applicable state law.

(3) Mobile home parks. Walls, fences or other screening surrounding a mobile home park may exceed the maximum height permitted in front, side or rear yards, but not in corner cutbacks, if necessary to meet the requirements of this Code.

(4) Tennis courts. A fence enclosing a tennis court located within the rear half of a lot may exceed the maximum height permitted in side or rear yards, provided the vertical surface of that part of such fence more than eight feet in height is not more than ten percent solid.

(5) Security fencing. Security fencing may exceed the maximum height permitted in front, side or rear yards if required by a governmental agency.

(f) *Modifications.* The code enforcement official may allow a modification in the requirements of this section if he finds, following an on-site inspection of the premises, that the modification will neither create, nor aggravate a safety hazard. The owner(s) of the property(ies) which is(are) directly impacted by the proposed modification and is(are) abutting to the subject property will be notified by the code enforcement official of said determination.

If an abutter feels that the code enforcement official erred in his determination, he may request an administrative appeal in writing within ten days of the mailing date of the notification in accordance with article VIII, section 4(1) of the Revised Code of Ordinances of the City of Lewiston [appendix A].

(Ord. No. 93-15, 8-19-93)

Sec. 8. Wind energy conversion systems.

(a) *Purpose.* The regulation of wind energy conversion systems (WECS) is intended to permit the location of such devices within the community while ensuring that the public health, safety and welfare are not adversely affected.

(b) *Requirements.*

(1) WECS shall be set back from all lot lines a minimum distance equivalent to the distance between the ground level elevation and the highest point on the WECS plus ten feet.

(2) All WECS shall be protected against unauthorized access by one or more of the following:

a. Anti-climbing shroud;

b. Removal of tower climbing apparatus to a height of at least ten feet;

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- c. Fence of at least six feet in height; or
 - d. Other device approved by the code enforcement official to prevent unauthorized access.
- (3) All WECS shall utilize a clutch, feathering device, brake, overspeed control or similar device, either single, or in combination, to automatically shut down the WECS when wind speed exceeds 45 miles per hour.
 - (4) A WECS shall not be installed upon or attached to any building or structure, except a tower integral to the WECS, except when the board of appeals determines under the miscellaneous appeal provisions of this Code, that said building or structure is capable of safely supporting a WECS and that a WECS installed or attached in such a manner shall not present a safety hazard to the neighborhood.
 - (5) One WECS shall be permitted per lot.
 - (6) All plans for the design and installation of a WECS shall be certified by an engineer or architect registered in the State of Maine to perform such analyses as to the safety and integrity of design and installation and compliance with the requirements of this section.
 - (7) A WECS shall be installed only upon issuance of a building permit. The code enforcement official shall perform periodic inspections during the installation of a WECS, which shall include, but not be limited to, inspection of all tower anchorage prior to backfilling, inspection of the tower installation prior to attachment of the energy conversion device, and upon completion of the WECS installation. The applicant shall ensure that each required inspection is completed prior to proceeding with the next stage of installation.
 - (8) Noise created by the action of a WECS shall not exceed the levels set forth in article XII, section 19 of this article.
- (c) *Location.* WECS shall be permitted in all districts except the neighborhood conservation "B" district, centreville district and urban enterprise district.
(Ord. No. 00-19, 10-5-00)

Sec. 9. Adult business establishment, and drinking place standards.

The regulation of the density of adult business establishments, and drinking places is intended to permit the location of such establishments within the community, yet ensure that they will not become overly concentrated in neighborhoods or areas to the detriment of other uses. Therefore, in addition to the regulations of article XI, adult business establishment, and drinking places shall conform to the following standards:

- (1) The minimum distance between an adult business establishment, and/or drinking place and any two other adult business establishments, and/or drinking places in the same or adjoining zoning district shall be 300 feet for businesses located within the Centreville district as measured along the ordinary course of travel between the main entrance of each premises.
 - (a) Drinking places with 5,000 square feet or greater on the first floor are exempt from the above referenced standard. Drinking places of 5,000 square feet or greater shall not be included in the locational criteria determinations for drinking places of less than 5,000 square feet or adult business establishments.
- (2) The minimum distance between an adult business establishment, and/or drinking place and any two other adult business establishments, and/or drinking places in the same or

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adjoining zoning district shall be 500 feet for businesses located in any other district as measured along the ordinary course of travel between the main entrance of each premises.

- (3) An adult business establishment, or drinking place may not be located within 300 feet, as measured along the ordinary course of travel between the main entrance of each premises, of a public or private school, school dormitory, church, chapel or parish house, or legally-established dwelling in a residential zoning district, in existence prior to the establishment of the business.

(Ord. No. 89-3, 4-7-89; Ord. No. 00-19, 10-5-00; Ord. No. 02-21, 1-9-03; Ord. No. 04-10, 5-6-04; Ord. No. 05-07, 3-17-05)

Sec. 10. Frontage right-of-way provisions.

The required frontage for a lot whose sole principal use is a single-family detached dwelling may be the linear distance between the sidelines of the lot, measured along the line that borders upon a right-of-way (R.O.W.) a minimum of 40 feet in width, upon the following criteria being met:

- (1) The R.O.W. must be approved pursuant to the applicable provisions of article XIII;
- (2) The R.O.W. must utilize existing curb cuts to access the property, unless the applicant can demonstrate that doing so unduly impacts the existing or proposed lot;
- (3) No more than two lots gain frontage from the R.O.W.;
- (4) The R.O.W. is the principal means of access to the lot;
- (5) The area within the R.O.W. cannot be used to satisfy the required minimum lot size for the particular district or the required front setbacks and yards for existing buildings on the existing lot or those proposed on the new lot;
- (6) The R.O.W. does not create any nonconformance with respect to lot size or structures; neighboring lots will be required to meet front yard and front setbacks from the R.O.W.;
- (7) The travel surface within the R.O.W. must be twenty feet wide with surface thickness of at least 18 inches.
- (8) The R.O.W. shall include a cul-de-sac, T-shaped or hammerhead turnaround. A cul-de-sac shall have a radius of 50 feet measured from the center line of the travel surface. A t-shaped or hammerhead turnaround shall be 50 feet long measured from the center line of the travel surface.
- (9) Grades, intersections, access and sight distances shall be in accordance with the City of Lewiston's Policy for the Design and Construction of Streets and Sidewalks.
- (10) Only one R.O.W. may be created per lot.
- (11) The driveway within the R.O.W. must be unobstructed and permit vehicle access at all times.
- (12) No part of a proposed street(s) shall be used for the above referenced R.O.W. provisions.
- (13) A paved apron must be constructed a minimum length of 15 feet from the edge of the R.O.W.s intersection with the street.
- (14) Stormwater management standards must be met or waived in accordance with article XIII, Section 4(f) of this Code.
- (15) A note must be added to the plan stating it is the responsibility of the owners of those lots from which frontage is obtained off the R.O.W. to assure the long-term maintenance, repair, and replacement of and improvements within the R.O.W.
- (16) The final approved plan must be recorded in the Androscoggin County Registry of Deeds.

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- (17) The R.O.W. width may be reduced to 30 feet in width, provided that any necessary easements are provided for stormwater, drainage, snow storage, etc.
(Ord. No. 07-01, 3-8-07)

Sec. 11. In-law apartment standards.

An in-law apartment meeting the following standards shall be considered to be part of a single-family detached dwelling and shall not be considered to be a dwelling unit in terms of the space and bulk standards of article XI. In-law apartments shall be permitted only in those districts where they are allowed uses. Apartments not meeting these requirements shall be considered to be separate dwelling units and shall meet the use and space and bulk requirements of article XI:

- (1) The in-law apartment shall be accessory to the use of the premises as a single-family detached dwelling and only one in-law apartment shall be created as part of a single-family dwelling.
- (2) The in-law apartment shall be created within or attached to a single-family detached dwelling.
- (3) The person(s) occupying the in-law apartment must be a first, second, or third degree relation (parent, child, stepchild, sibling, aunt, uncle, niece, nephew, or grandparent) of the principal occupant(s) of the single-family home either by blood or by marriage and the burden of proof of this relationship shall be on the homeowner.
- (4) The creation of the in-law apartment unit shall not alter the single-family character of the property. The following standards shall be met in creating the unit:
 - a. The in-law apartment must share a joint entrance with the single-family home and the in-law apartment shall not have a separate front entrance from the outside. A joint entrance shall consist of an enclosed structure with access to the in-law apartment and the single-family dwelling. Any second-story side entrance must be contained within the building envelope; and
 - b. Provisions for one (1) additional parking space shall be made in conformance with article XII, section 17. However, no additional curb cuts or driveways may be created to facilitate the creation of the in-law apartment and any new or expanded driveway entrance curb cut on the property must not exceed twenty-four (24) feet in width.
 - c. The habitable area of the in-law apartment shall not exceed 900 square feet and shall not contain more than two (2) bedrooms.
- (5) One of the units must be owner-occupied.
- (6) All applicable fire safety and egress laws must be observed in the creation of the in-law apartment.
- (7) There shall not be separately metered electric or water service for the in-law apartment.
- (8) In-law apartments on properties with private sewer shall comply with the State of Maine Subsurface Wastewater Disposal Rules for new or expanded systems, as applicable.
- (9) Evidence of documentation recorded in the Androscoggin Registry of Deeds identifying that the in-law apartment and the use of the in-law apartment must conform to the performance standards of Appendix A, article XII, section 11 of the Zoning and Land Use Code. Said evidence must be provided to the City prior to issuance of an occupancy permit for said in-law apartment.

(Ord. No. 94-15, 11-3-94; Ord. No. 98-7, 9-10-98; Ord. No. 10-11, 11-18-10; Ord. No. 12-03, 04-05-12)

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Sec. 12. Campground standards.

The following standards shall apply to the establishment or expansion of any campground or travel trailer park in the City of Lewiston in addition to any requirements of the State of Maine:

- (1) The plans for the construction or expansion of any facility shall be reviewed and approved by the planning board under the development review provisions of article XIII prior to the start of construction and the occupancy of any site.
- (2) Camping areas located within shoreland areas, as defined in section 2 of this article, shall contain a minimum of 5,000 square feet of suitable land, not including roads and driveways, for each site. Camping areas located outside shoreland areas shall contain a minimum of 2,500 square feet of suitable land, not including roads and driveways, for each site.
- (3) All recreational vehicles, tents, or shelter and utility and service buildings, shall be set back a minimum of 75 feet from the normal high-water mark of any water body or stream.
- (4) All recreational vehicles, tents, utility and service buildings and other structures shall be located at least 75 feet from all property and street lines.
- (5) A buffer area at least 50 feet in width meeting the requirements of article XIII shall be maintained along all property and street lines.
- (6) Sanitary and recreational facilities shall be located to conveniently and safely service the occupants of the facility.

Sec. 13. Standards for the installation of mobile homes on individual lots.

The installation of mobile homes on individual residential lots shall conform to the following standards:

- (1) The installation of a mobile home on an individual lot shall be a permitted use in the district where it is located.
- (2) The unit shall be located on the lot in conformance with the space and bulk requirements of the district in which it is located.
- (3) The unit shall have its wheels, axles and tongue removed and shall be placed on a permanent foundation meeting the requirements of the BOCA Building Code.
- (4) The area under the unit shall be fully enclosed by a wall consisting of one of the following materials:
 - a. Loose laid or mortared masonry blocks;
 - b. A poured concrete wall;
 - c. Approved vinyl or metal mobile home skirting; or
 - d. Painted wood or similar materials.

The area under the unit shall be provided with a suitable accessway and ventilation.

- (5) The unit shall be connected to a public sewer or an approved private sewage disposal system meeting the requirements of the Maine State Plumbing Code, as amended.

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- (6) The mobile home shall be anchored in accordance with the standards of article XII, section 4 if it is located in an area of special flood hazard as identified by the flood insurance rate map of the city.

Sec. 14. Standards for the installation of mobile homes in mobile home parks.

The creation of mobile home lots in mobile home parks and the installation of mobile homes on those lots shall conform to the following standards:

- (1) *Lot development standards.*
- a. *Utilities.* Each lot shall be serviced by public water and sewer and provided with electrical and telephone service, all in accordance with the standards contained in article XIII, section 4(j) of this Code.
 - b. *Stand.* Each lot shall be developed with a suitable stand for the mobile home. This stand may consist of any one of the following systems:
 - 1. A four-inch reinforced concrete slab. This slab shall be located on soils which are not susceptible to frost action or shall be located on a 12-inch gravel base with appropriate underdrains; or
 - 2. A pair of reinforced concrete grade beams designed in accordance with the BOCA Building Code, as amended; or
 - 3. A series of columns and footings in which the footings are a minimum of two feet on a side and extend below the frost line.
 - c. *Off-street parking.* Each site shall contain two off-street parking spaces meeting the requirements of article XII, section 17. This parking shall be surfaced with a minimum of two inches of bituminous paving on a 12-inch gravel base or equivalent as approved by the city engineer.
 - d. *Drainage.* Each site shall be graded to provide positive surface water drainage away from the stand and into the overall stormwater system.
 - e. *Landscaping.* All areas of the lot not covered by buildings, structures, paving or other improvements shall be maintained in a vegetated state.
- (2) *Installation standards.*
- a. *Placement of units.* The mobile home shall be placed on the lot so that it is located no closer than 15 feet to the front lot line and ten feet to the side and rear lot lines.
 - b. *Skirting.* The area between the ground or stand and the bottom of the unit shall be fully enclosed by skirting. This skirting shall provide for access and adequate ventilation of the space under the unit. This skirting may consist of one of the following materials:
 - 1. Approved vinyl or metal mobile home skirting; or
 - 2. A poured concrete wall; or
 - 3. A mortared or loose laid masonry wall.

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- c. *Fuel tanks.* Any fuel tank shall be installed so that it is not visible from the road or an abutting lot. Tanks may be located beneath the steps to the unit if permitted by applicable fire and safety codes. If the tank is located adjacent to the unit, it shall be fenced and landscaped to screen it from view.

- d. *Accessory buildings.* Freestanding buildings such as storage sheds or garages may be located on a mobile home lot provided that all of the following standards are met:
 - 1. The building is not located between the street and a line parallel to the front line of the mobile home; and
 - 2. If located in a side or rear setback area, is at least ten feet from the lot line; and
 - 3. Is installed on a suitable foundation in accordance with the building code.

- e. *Additions to units:* Additions may be made to mobile homes including, but not limited to, porches, decks, attached garages, "bump-outs" and similar attached structure provided that all of the following standards are met:
 - 1. The addition is located at least 15 feet from the front lot line and ten feet from side and rear lot lines; and
 - 2. The architectural style of the addition is similar to the mobile home; and
 - 3. The addition is located on a foundation that is frost protected to the same extent as the mobile home.

- f. All units shall have a pitched, shingled roof and exterior siding that is residential in appearance.

(Ord. No. 90-10, 10-4-90)

Sec. 15. Erosion and sedimentation control.

- (a) *Statement of purpose.* The purpose of this section is to further maintain the safe and healthful conditions of the city and neighboring communities; to prevent and control water pollution, to protect aquatic life, bird and other habitat; to protect buildings and lands from accelerated erosion; to protect historic resources; to protect wetlands; to control building sites; to conserve ground cover; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in the City of Lewiston.

- (b) *Applicability.* The standards of this section shall apply to all activities which involve filling, grading, development, earth-moving, excavation, removal of topsoil, sod, loam, peat or other organic materials, clay, sand, gravel, stone or other earth products or other similar land use activities which result in unstabilized soil conditions. This section shall apply if the activity does or does not require a permit under this Code. Lawfully established agricultural fields shall be exempt from this section.

- (c) *Standards.* Any person, entity or property owner who conducts, causes or allows to be conducted, an activity which results in unstabilized soil conditions shall take measures to prevent unreasonable erosion of sediment or soil beyond the project site or into a protected natural

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resource as defined by M.R.S.A, Title 38 § 480-B. Erosion control measures must be in place before the activity begins and remain in place and be maintained until the site is permanently stabilized. All erosion control and stabilization measures required by this section shall be in accordance with the Maine Erosion and Sedimentation Control BMPs Pub. No. DEPLW0588, published by the Maine Department of Environmental Protection, Bureau of Land and Water Quality, (March 2003), or other measures determined to be appropriate by the Lewiston Director of Planning and Code Enforcement.
(Ord. No. 05-06, 3-17-05; Ord. No. 06-17, 2-8-07)

Sec. 16. Signs.

- (a) *General provisions.*
 - (1) For the purposes of this Code, a sign shall be any structure, device, letter, banner, symbol, or other representation which is used as or is in the nature of an advertisement, announcement, or direction; which is erected, assembled, affixed out of doors, or painted on the exterior of a building or structure and which is visible from a public way. "Visible from a public way" means capable of being seen without visual aid by a person of normal visual acuity, from a way designated for vehicular use and maintained with public funds.
 - (2) The area of a sign shall equal the area of the smallest square, rectangle, triangle, circle, or combination thereof, which encompasses the facing of a sign, including copy, insignia, background and borders, but not including structural supports of the sign. A sign's area is the sum of the areas of each of its sides. A wall sign's area shall be based on the area of a freestanding sign as calculated above that would be required to accommodate the same features, or in the case of individual graphics added to walls, or other architectural features of a building, the sum of the areas of each of the graphic elements displayed.
 - (3) No signs shall be erected or altered unless in conformity with the provisions of these regulations. Signs must be kept clean, legible and free from all hazards, such as, but not limited to, faulty wiring, loose fastenings, or deterioration, and must be maintained at all times in such condition so as not to be detrimental to the public health or safety, detract from the physical appearance and the natural beauty of the community, or constitute a distraction or obstruction that may impair traffic safety.
 - (4) No sign shall be permitted which causes a traffic, health, or safety hazard or creates a nuisance due to its illumination, placement, display, or manner of construction. No sign shall be located so as to obstruct views of traffic.
 - (5) All signs must conform to the building and electrical codes as adopted by the City of Lewiston, except as specifically provided to the contrary herein.
 - (6) Any legally existing nonconforming sign to be relocated or altered shall be brought into conformance with the provisions of this Code except when relocation or alteration is pursuant to a violation order issued by the code enforcement official. Except for prohibited signs as listed in subsection (g), changes in the content of a nonconforming sign including names, words, logos or similar information shall not constitute an alteration requiring conformance with this section, as long as the changes do not make the sign more nonconforming and a permit is obtained for the changes from the code enforcement official.
 - (7) All such signs must be properly maintained by the owner thereof or the owner of the premises on which they are located, and any such sign that becomes a nuisance or a

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hazard to public safety must be promptly removed from the premises if so ordered by the code enforcement official.

(b) *Signs permitted in all districts.*

(1) The following types of signs may be erected in all zoning districts without obtaining a permit from the code enforcement official:

- a. *Public safety signs.* Governmental bodies may erect and maintain signs necessary for the public safety and welfare, or as required by law, ordinance or government regulation.
- b. *Posting private property.* Signs permitted to post private property shall only be for the following or similar conditions: no hunting, no fishing, no snowmobiles, no trespassing. Posted signs shall not exceed two square feet per private property sign.
- c. *Temporary signs.* Temporary signs listed below shall not be placed in a position that will impair vision, obstruct traffic, or in any manner create a hazard or nuisance to the general public.
 1. *Organization signs.* Signs and banners advertising charitable functions, notices of meetings, and similar noncommercial signs. These may be placed for a period not exceeding ten days prior to the event and shall be removed within two days after the event or meeting.
 2. *Real estate signs.* Two temporary real estate signs including temporary open house directional signs and advertising the sale, lease or rental of a parcel or structure may be placed on any property. Within a farming or residential district the maximum sign size shall be six square feet. Within a commercial or industrial district the maximum sign size shall be 32 square feet. Such signs shall be removed by the owner or his agent within ten days of such sale, lease, or rental, or for the open house directional signs within 24 hours after the open house is over. The sign(s) may be attached to a building or be freestanding.
 3. *Construction.* A temporary construction sign, providing a general identification of a project and those responsible therefor, may be erected on the construction site provided it shall not exceed 32 square feet and shall be removed within ten days after project completion.
 4. *Home sales.* A sign advertising a temporary home, yard, garage, barn or basement sale on the premises may be placed for no more than three days prior to said sale and shall be removed within 24 hours of the end of the sale.
 5. *Political signs.* Signs of a temporary nature bearing political messages relating to an election, primary or referendum may be placed within the public right-of-way of any street or highway in accordance with the timelines established in M.R.S.A. Title 23, (1913-A, Section 1(H)). Political signs outside of the public right-of-way are not subject to time limits. Political signs located within or outside the public right-of-way of any street or highway are prohibited on or in front of City owned property including schools, parks, cemeteries and municipally owned buildings.

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Notwithstanding Article V, Sec. 7, the code enforcement official may remove any political signs erected contrary to this section.

6. Temporary signs, banners, decorations. Upon approval of the city council, temporary signs, banners, flags and other decorations may be erected in the public right-of-way when in relation to a special event.

 - d. *Occupant signs.* Any residential property may contain one sign not exceeding two square feet in area and being only property numbers, post box numbers, names of occupants of the premises or other noncommercial identification. These signs may be freestanding or attached to a building or structure.
 - e. *Flags.* Flags or insignia of any government.
 - f. *Public notices.* Legal notices, identification, informational or directional signs erected or required by governmental bodies.
 - g. *Architectural features.* Integral, decorative or architectural features of buildings, except letters, trademarks, moving parts or moving lights.
 - h. *Memorials.* Memorial signs or tablets, names of buildings and date of erection, when cut into masonry, bronze or other noncombustible material.
- (2) The following types of signs may be erected in all zoning districts following the obtaining of a permit from the code enforcement official. The application shall indicate the type, size and location of the sign:
- a. *Identification signs.* A sign identifying a lawfully existing home occupation or family day care homes operated in conjunction with a residential use, is allowed on the premises, providing the sign does not exceed six square feet in display area.
 - b. *Institutional signs.* Signs may be erected for noncommercial purposes in connection with any church, museum, library, school or similar public structure. In residential districts, such signs shall not exceed 32 square feet in display area and not more than one sign shall be permitted per property. In nonresidential districts, notwithstanding the provisions of article XII, subsection 16(c)(2)(a)(1)(iii), permanent or temporary projecting wall banner(s) and associated structural supports may not extend above the level of a flat roof or the eaves of any other type of roof, may not be lower than ten feet above the adjacent grade and may not extend farther than 36 inches beyond the face of the wall to which they are attached, the total sign area shall not exceed ten percent of the gross area of the principal facade of the structure and no part of the sign and/or supports shall encroach into the travel way.
 - c. *Driveway signs.* Entrance and exit signs may be placed at driveways and shall not obstruct view of traffic. Such signs shall not exceed four square feet per side in display area per driveway sign.
 - d. *Farm products.* Not more than two signs advertising the sale of farm or forestry products available on the premises. Each sign may not exceed 16 square feet.
 - e. *Building directory.* A sign may be attached at the entrance to a building to identify the occupants for pedestrians entering the building and shall be in addition to any other signs permitted by this Code. A building directory shall not exceed 16 square feet.

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(3) The following types of signs shall be permitted for any legally existing business subject to issuance of a permit:

- a. *Advertising* and promotional signs. Signs, banners and similar specialty advertising devices used temporarily in conjunction with special events or sales provided they are used for 30 days or less and are located on or attached to the premises where the sale or event is occurring. Such signs shall not be permitted more than four times in any 12-month period.

(4) The following types of signs shall be permitted for any retail grocery store subject to the issuance of a sign permit:

- a. *Beverage signs*. Each establishment may display one illuminated malt beverage display sign in addition to one other illuminated or nonilluminated display sign.

(c) *Permitted signs*. The following standards shall govern the erection of signs throughout the City of Lewiston. Any permitted sign shall be erected, changed or relocated only after a permit is obtained from the code enforcement official in accordance with the provisions of the building code. Permitted signs shall be considered to be accessory to the principal use of the premises and shall pertain only to activities or products available on the premises.

Notwithstanding the above, permits are not required for the placement of temporary day and window signs as identified in article XII, subsection 16(c)(2)a.2. of this Code.

(1) Rural, residential and resource conservation districts.

- a. The following signs shall be permitted in the rural, residential, resource conservation and neighborhood conservation districts:

- 1. A single sign, not over 15 square feet in area, attached to a building or detached and located in the front yard, describing an apartment house, residential development or other legally existing residential use.
- 2. A single sign, not over 32 square feet in area, attached to a building or freestanding and located in the front yard describing a legally existing nonresidential use.

- b. The following standards shall govern the installation of signs in rural, residential and neighborhood conservation districts:

- 1. Any sign attached to a building shall be a wall sign;
- 2. Any freestanding sign shall have a maximum height to the highest point on the sign area of eight feet above adjacent grade.
- 3. Signs may be illuminated by a shielded external light source. Internally illuminated signs and/or changeable message signs shall not be permitted in residential districts.

(2) *Nonresidential districts*. All signs within the riverfront, office residential, downtown residential, institutional office, community business, highway business, centreville, office service, industrial, urban enterprise and mill districts shall conform to the standards of this section.

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- a. Permitted signs. The following types of signs shall be considered necessary to the principal use of the premises on which they are located, provided they are maintained in a safe, neat and clean condition.
1. Permanent signs, including:
 - (i) Awning signs;
 - (ii) Single-faced or multiple-faced ground signs, provided no permanent ground sign shall have less than four-foot clearance above grade and no permanent ground sign or structural support shall extend higher than 25 feet above grade. Ground signs with less than four-foot clearance above grade shall be permitted if it is determined by the code enforcement official, following an on-site inspection of the premises, that the sign and its structural support will not create or aggravate a safety hazard;
 - (iii) Single-face or multiple-faced projecting signs, provided no projecting sign may extend higher than 25 feet above grade, lower than ten feet above grade, and shall not encroach into the right-of-way or nearer than five feet from any other lot line. In the centreville district and in the riverfront district, limited to properties with frontage on Main Street, no sign shall extend farther than six feet beyond a street line (no sign shall encroach into the travel way), or nearer than five feet from any other lot line and signs may extend to a maximum height of 40 feet, but shall not extend above a flat roof or the eaves of any other type of roof;
 - (iv) Wall signs, provided no wall sign or structural support may cover any portion of a visible window or window detail above the first story;
 - (v) Window signs.
 - (vi) Changeable message signs. Changeable message signs are permitted provided that each message remains fixed on the display surface, but "which may be changed at reasonable intervals by electronic process or remote control", and do not "include any flashing, intermittent or moving light or lights". (23 U.S.C. § 131) and in accordance with subsection M.R.S.A. 1914, subsection 11-A., Title 23. For the purposes of this section, signs whose text/numeric messages change by mechanical or electronic means are not prohibited as long as the intermittent lighting is used to change messages and not solely to attract attention. Those provisions of M.R.S.A. 23, § 1914 that are applicable to changeable message signs as they apply to controlled-access highways or ramps remain in effect. A "flashing" sign or messages with graphic, pictorial, animated, or photographic images will continue to be prohibited except as described below:
Changeable message signs shall be permitted only with the approval of the code enforcement officer and the sign shall meet the following requirements in addition to the dimensional requirements set forth in this ordinance.

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Static display with a five-second hold rate of change minimum between changes including the use of subtle transitions such as fade, dissolve, travel and scrolling or similar transitions and with frames that appear to move or change in size, or be revealed sequentially rather than at once including the movement of illumination or the scintillation or varying of light intensity. Time and temperature signs are allowed to change display with a two-second message hold rate.

Changeable message signs shall be limited to either one changeable sign with two sides or two single-sided signs per lot of record where allowed by subsection 16(b)(2)(b) of this ordinance.

2. Temporary day signs:
 - (i) Day signs, such as: sandwich signs, easel signs, and other similar day signs are permitted for the advertisement of specific products, daily specials, or for special events. They shall be made of durable materials (i.e., not of cardboard or paper) and shall not be placed to impede public access nor create a traffic hazard and shall also not exceed eight square feet per side. One sign per 50 linear feet of street frontage is permitted, not to exceed four such signs per property. Such signs can only be placed outside while the business is open.

- b. *Sign area.* The total area of all signs on a parcel shall conform to the following maximum aggregate sign area requirements. For multiple-faced signs, the area of each face shall be included in the computation of the aggregate sign area. Allocation of the maximum allowable sign area is to be determined by the property owner/agent.
 1. *Community business, institutional office, highway business, downtown, centreville, office service, industrial, urban enterprise, mill and riverfront districts.*
 - (i) Each business entity is permitted sign area not to exceed ten percent of the gross wall area of the principal facade of the building or structure or a minimum of 54 square feet, whichever is the greater, in the form of awning, projecting, wall, or window signs attached to the building or structure in which the business is located. Supplemental to the above building signage, a building or structure with frontage on two or more accepted city streets is permitted additional signage not to exceed a total of 54 square feet in area to be attached to a secondary facade of the building or structure.
 - (ii) In addition, each premises shall be permitted one freestanding ground sign up to 168 square feet. Single parcels developed with multiple uses are permitted an additional 32 square feet of sign area per business use, up to an additional maximum of 216 square feet of sign area. Movie theaters where allowed shall be permitted additional sign area up to 36 square feet per cinema screen not to exceed a maximum of 360 square feet in total freestanding ground sign area per premises, notwithstanding article XII, subsection 16(a)(6). All signage permitted under this subsection shall be located at or near the principal vehicular entrance on one freestanding ground sign.

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- (iii) For single parcels developed with multiple uses, an additional freestanding ground sign of up to 168 square feet identifying the development, and an additional 32 square feet of signage per business or use, up to an additional maximum of 216 square feet of sign area, all to be located on the same freestanding ground sign, is permitted at other major vehicular entry points located on arterial streets, provided such signs are not readily concurrently visible with any other freestanding ground signs located on the premises.
 - (iv) For single parcels developed with multiple uses, an additional freestanding ground sign area of a maximum of 168 square feet is permitted at other major vehicular entry points not located on arterial streets, provided such signs are not readily concurrently visible with any other freestanding ground signs located on the premises.
 - (v) Single parcels developed with multiple uses where there are separate principle vehicular entrances for the uses, concurrently visible ground signs not to exceed 40 square feet may be placed at such entrances to direct traffic to specific uses. No more than one freestanding ground sign is allowed at an entrance.
- 2. *Office residential, and downtown residential districts.* The aggregate sign area per premises may not exceed 72 square feet.
 - 3. *Properties with frontage on the interstate system.* One additional one-sided ground sign visible from any portion of the interstate system including ramps and interchange areas, not to exceed 20 feet in length, width, or height or 150 square feet in area, including borders and trim, but excluding supports, may be permitted more than 50 feet from the principal building or structure where the business, facility or point of interest is carried on, provided such signs are not readily concurrently visible with any other freestanding ground signs located on the premises.
- c. *Special requirements.* For the purposes of this section, the following special requirement applies:
- 1. Awnings with graphic displays exceeding ten percent of the awning area (measuring from the outer most points) shall meet the applicable sign standards.
 - 2. Roof signs are not permitted and no part of any wall or projecting sign may extend above the level of a flat roof or the eaves of any other type of roof, with the following exceptions:
 - (i) Wall signs may project no more than five feet above the level of a flat roof or the eaves of any other type of roof as long as that portion of the sign does not exceed 20 percent of that signs total area. Wall signs on mansard roofs, the lower portion of gambrel roofs, false fronts, facades, parapets or other significant architectural features may not exceed the height of the architectural feature.
 - (ii) Roof signs not exceeding 54 square feet and wall and projecting signs may be located on or above the roofs of vestibules, canopies, porticos, loading docks, and similar single-story, attached structures, provided that the proposed sign is in compliance with Article XII, Section 16 (c)(2)(c)(2)(i) of this ordinance with regard to the roof of the principal building.
- d. *Development entrance signs.* Parcels of land subdivided for purposes of nonresidential development, are permitted one development entrance sign at the primary vehicular entry

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point, to identify the development and the business entities therein, provided the following requirements are met:

1. Such signs shall not exceed 168 square feet in total sign area;
 2. Such signs shall be sited on common land within the subdivision and shall not be located within the right-of-way of any public street or highway, nor create or aggravate a traffic hazard;
 3. For a nonresidential subdivision with secondary vehicular entry points, one additional development entrance sign, not to exceed 100 square feet in total sign area, may be sited at each secondary vehicular entry point, provided such signs are not readily concurrently visible with any other development entrance signs located on the same subdivided parcel.
- e. *Campus-type signs.* Parcels of land developed in a campus-type environment, as defined as larger parcels of land with multiple buildings including hospitals, mill complexes or public or private educational facilities, are permitted the following additional signage:
1. **Main entrance signs.** A freestanding ground sign to be located at the main vehicular entrance and unless otherwise permitted, such signs shall be limited to a symbol and/or name identifying the campus; and, if desired, the street address. In addition, the following standards must be met:
 - (i) Such signs shall not exceed 168 square feet in total sign area and exceed a height greater than 25 feet above the immediately adjacent finished grade.
 - (ii) Such signs shall be sited within the private land boundaries of the campus and shall not be located within the right-of-way of any public street or highway nor create or aggravate a traffic hazard.
 - (iii) For a campus-style parcel with secondary vehicular entry points, one additional main entrance sign, not to exceed 168 square feet in total sign area, may be sited at each secondary vehicular entry point, provided such signs are not readily concurrently visible with any other main entrance signs located on the same campus parcel.
 2. **Primary facility/campus directional signs.** Exterior boundary signs providing basic directional information to destinations within the campus boundary.
 - (i) Such signs shall not exceed 75 square feet in total sign area and exceed a height greater than 14 feet above the immediately adjacent finished grade.
 - (ii) Such signs shall be sited within the private land boundaries or the campus, should typically be limited to general destination names rather than specific destinations, and shall not be located within the right-of-way of any public street or highway, nor create or aggravate a traffic hazard.
 - (iii) Whenever possible, such signs should be incorporated onto a main entrance sign which may be located in the immediate vicinity and/or at the same street intersection.
 - (iv) Quantities shall be based on an established overall message sequence and across campus preferred routes; displaying the required information only at the location of decision or identification.
 3. **Secondary campus directional signs.** Interior boundary signs providing more detailed directional and/or informational assistance.

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- (i) Such signs shall not exceed 25 square feet in total sign area and exceed a height greater than eight feet above the immediately adjacent finished grade.
 - (ii) Such signs shall be sited within the private land boundaries of the campus and shall not be located within the right-of-way of any public street or highway, nor create or aggravate a traffic hazard.
 - (iii) Quantities shall be based on an established overall message sequence and across campus preferred routes; displaying the required information only at the location of decision or identification.
4. *Campus directory.* Map directions graphically identifying the various destinations across the campus.
- (i) Such signs shall only be located along private vehicular or pedestrian access ways or parking areas to prevent unsafe conditions along public ways.
 - (ii) Such signs shall not be located within the right-of-way of any public street or highway.
 - (iii) Such signs shall not exceed 50 square feet in total sign area and exceed a height greater than seven feet above the immediately adjacent finished grade.
5. *Site identification signs.* A sign, located as close as practical to the vehicular entrance of a freestanding building within the campus (medical office, clinic, library, etc.). The sign shall display the name of the facility (XYZ Surgery Associates) and include the street address (1234 Main Street).
- (i) Such signs shall not exceed 50 square feet in total sign area and exceed a height greater than eight feet above the immediately adjacent finished grade.
 - (ii) Such signs shall not be located within the right-of-way of any public street or highway, nor create or aggravate a traffic hazard.
6. *Exterior building signs.* Wall, projecting, awning, or window signs, installed upon the exterior portion of a building displaying the functional name of the facility.
- (i) Each building is permitted exterior building sign area not to exceed a total of 54 square feet or ten percent of the gross wall area of the principal facade of the building, whichever is greater.
 - (ii) Supplemental to the above exterior building signage, a building with frontage on two or more accepted city streets is permitted additional signage not to exceed a total of 54 square feet in area to be attached to a secondary facade of the building.
 - (iii) The placement of exterior building signs must comply with subsection (c)(2)a. of this section.
7. *Miscellaneous campus signs.* Signs displaying circulation, directional or regulatory information not exceeding a total sign area of six square feet, are exempt from the requirement of obtaining a sign permit. However, such signs shall be installed in accordance with all applicable requirements of article XII, section 16 and shall not be located within the right-of-way of any public street or highway, nor create or aggravate a traffic hazard.

(d) *Portable signs.*

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- (1) *Defined.* A portable sign is one which is designed for and intended to be moved from place to place and not be permanently affixed to land, buildings or other structures.
 - (2) *Portable signs permitted.* Any use located in a business or industrial district, other than the centreville district, shall be permitted one portable sign of not more than 64 square feet in sign area for a maximum of 60 days in any 12-month period in addition to other signs permitted by this Code.
 - (3) *Permit required.* A sign permit shall be obtained from the code enforcement official prior to installing a portable sign. The application shall specify the location of the sign and time of use, and shall be accompanied by a fee as determined from time to time by the city council.
 - (4) *Location.* A portable sign shall be located outside of the street right-of-way in such a manner that it will not obstruct or impair vision or traffic or in any way create a hazard or nuisance to the public. The electrical service [is] to be approved by the inspector upon installation.
- (e) *Official business directional signs.*
- (1) *Authority.* The provisions of this section shall govern the installation and maintenance of official business directional signs authorized by the Maine Traveler Information Services Act, 23 M.R.S.A. sections 1901 through 1925, as amended.
 - (2) *Qualifying uses.*
 - a. Uses include public accommodations, facilities, commercial services for the traveling public, and points of scenic, historical, cultural, recreational, educational and religious interest.
 - b. Uses with existing, off-premises signs that have been, or will be, removed pursuant to 23 M.R.S.A. sections 1901 through 1925, as amended, provided that such signage is owned and maintained by the affected use for a continuous period of at least 12 months prior to said removal.
 - c. Qualifying uses must be located within the City of Lewiston.
 - (3) *Location.*
 - a. An official business directional sign may be installed in any district except the centreville district (CV).
 - b. In the centreville district (CV), signs located therein on December 31, 1982, may be replaced, but new directional signs shall not be erected.
 - c. Official business directional signs shall only be located in those vicinities where the traveler must change direction from one public way to another to reach the business, facility or point of interest.
 - d. Official business directional signs are not permitted within the right-of-way of the interstate highway or Alfred A Plourde Parkway from Webster Street to Challenger Drive.
 - (4) *Additional requirements.*
 - a. Official business directional signs shall be installed and maintained in accordance with the requirements of the Maine Traveler Information Act, 23 M.R.S.A. §§ 1901--1925, as amended, and any other regulations adopted pursuant to said statutes.
 - b. The following additional requirements shall apply:
 1. The minimum distance between official business directory sign posts shall be at least 300 feet as measured along the shortest straight line;

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2. No official business directory sign shall be placed closer than 200 feet from the property line of a commercial business offering directly competing goods or services;
 3. An official business directory sign shall be located no closer than 200 feet or further than 2,500 feet from an intersection where a change in direction as indicated on said sign is required;
 4. No more than three official business directional signs may be attached to an individual sign post assembly. No new sign post assembly shall be installed until existing sign post assemblies suitable for any newly proposed official business directional sign contain the maximum number of permitted signs.
- (5) *Number of signs.*
- a. Uses as identified in subsection (2)a. shall be limited to a maximum of six official business directional signs.
 - b. Uses as identified in subsection (2)b. shall be limited to the number of sign faces that have been or will be removed pursuant to 23 M.R.S.A., sections 1901 through 1925, as amended.
 - c. Uses as identified in subsection (2)b. shall be limited to the number of sign faces that have been or will be removed pursuant to 23 M.R.S.A. sections 1901 through 1925, as amended.
- (f) *Special intracommunity service signs.* Special service signs for local information within Lewiston may be erected on state or state aid highways provided the following conditions are met:
- (1) *Requests.* Requests for signs must be made by the Municipal Officers of Lewiston.
 - (2) *Eligible facilities.* Signs shall be limited to directing traffic to locations of special interest which include the following:
 - (a) Hospitals which provide emergency service 24 hours a day.
 - (b) Public transportation facilities including airports, railroad stations, bus terminals and ferries.
 - (c) Public recreational facilities such as beaches, parks, sport arenas, scenic areas and historical areas.
 - (d) Municipal subdivisions such as central business districts and villages within municipal boundaries.
 - (e) Governmental buildings or agencies such as city halls, county buildings, schools, armories and fire or police stations. Signs for specific commercial establishments shall not be permitted.
 - (3) *Designs of signs.* Signs shall be rectangular in shape with a white legend on a blue background. The maximum length shall be 48 inches and the maximum letter size shall be four inches. No more than three lines or copy shall be permitted on one sign.
 - (4) *Installation of signs.* Signs shall be provided and installed by the local municipal officials. The vertical and lateral clearances of such signs shall conform with Sections 1A-22 and 1A-23 of the "Manual on Uniform Traffic Control Devices for Streets and Highways". The signs shall not be erected in conjunction with, nor be in conflict with, nor interfere with official highway signs.
 - (5) *Restrictions.* Special intracommunity service signing shall not be permitted on interstate highways or on expressway systems.

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(g) *Prohibited signs.* The following signs are prohibited in all areas of the city, except as otherwise provided in these regulations:

- (1) *Off-premises signs.* An outdoor sign bearing a commercial or business name, symbol, logo or message, located on any premises other than where the project, service or activity is located, except publicly erected information kiosks, special intra-community services signs, official business directory signs in accordance with subsection (e), above, and as provided in subsection (a), below.
 - (a) In the event an existing nonresidential use does not have frontage and the principal vehicular access is by easement, a single off-premises ground sign is permitted within said easement, pursuant to the standards contained in subsections (c)(2)(b)(1)(ii) through (v).
- (2) *Moving or flashing signs.* Signs, other than barber poles, time and weather devices, changeable message signs and similar public service signs, that have visible moving parts or blinking illumination.
- (3) *Signs in street right-of-way.* No sign except political signs, traffic and similar public safety signs, erected in accordance with the Code of Ordinances, official business directional signs erected in accordance with subsection (e) of these regulations, and publicly erected information kiosks, special intracommunity service signs, or sign boards and signs approved by the city council advertising civic events and function shall be located in the public right-of-way of any street or highway.
- (4) *Terminated businesses.* Signs relating to any business which has been out of business for more than 180 days. The owner of the property or his agent shall be responsible for removing all mountings, brackets, poles, sign faces and other sign material.
- (5) *Signs on natural features.* No signs shall be permitted which are erected, painted or maintained upon trees, rocks and other natural features.

(Ord. No. 89-3, 4-7-89; Ord. No. 92-16, 8-13-92; Ord. No. 93-5, 3-18-93; Ord. No. 93-6, 5-6-93; Ord. No. 94-4, 7-7-94; Ord. No. 95-7, 6-1-95; Ord. No. 95-9, 7-20-95; Ord. No. 95-10, 9-14-95; Ord. No. 95-11, 9-14-95; Ord. No. 97-8, 10-16-97; Ord. No. 99-3, 3-4-99; Ord. No. 00-1, 2-17-00; Ord. No. 00-19, 10-5-00; Ord. No. 01-1, 2-15-01; Ord. No. 03-02, 3-20-03; Ord. No. 04-08, 4-15-04; Ord. No. 05-15, 9-8-05; Ord. No. 05-16, 11-3-05; Ord. No. 05-20, 1-19-06; Ord. No. 08-04, 5-15-08; Ord. No. 12-01, 3-5-12; Ord. No. 12-05, 5-3-12; Ord. No. 12-14, 1-03-13)

Cross references: Advertising, ch. 6.

Sec. 17. Off-street parking and loading.

(a) *Applicability.* The following minimum off-street parking and loading requirements except as provided for in subsections (e)(3) and (e)(4) shall be met for:

- (1) The use of any parcel of land;
- (2) The construction of any building or structure;
- (3) The conversion of an existing building, structure or portion thereof to a new use;
- (4) The enlargement of an existing building or structure; or
- (5) The modification of an existing building or structure to create additional floor area, dwelling units, seats or similar measures of parking demand set out in the standards of subsection (d).

Modifications, enlargements or conversions of buildings or structures or the change in or intensification of use shall not be permitted unless off-street parking and loading is provided for

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an additional number of spaces representing the difference between what this Code requires for the existing building or structure and what this Code requires for the proposed building or structure.

(b) *Classification of use.* Off-street parking or loading which is provided to serve an allowed use or legally existing nonconforming use shall be considered to be an accessory use if it is provided on the same lot or on another lot in the same zoning district in accordance with the standards of this section.

Off-street parking provided in one zoning district to serve a use in another zoning district or off-street parking not associated with a particular use shall not be considered to be an accessory use and shall be permitted only in those zoning districts where commercial parking facilities are allowed as a principal use.

(c) *Parking facilities.* Parking required by this section may be provided in open air parking spaces or by spaces located in a garage. Parking spaces shall be so arranged so that each space can be used without another vehicle having to be moved except for single-family detached and two-family detached dwellings and for assigned parking for an individual dwelling unit in an attached single-family or multifamily dwelling, or assigned employee parking in nonresidential projects that are classified as minor developments under this code when reviewed in connection with development review pursuant to article XIII hereof.

(d) *Off-street parking required.* The following minimum off-street parking shall be provided and maintained for each situation identified in subsection (a). In computing the number of spaces required, lots with two or more uses shall meet the combined requirement for all of the uses. In calculating the parking requirement, major fractional spaces (0.5 or greater) shall be rounded up to the next whole space. Employee parking is based on the largest shift.

Single-family detached dwellings	two spaces per dwelling unit
Two-family dwellings	two spaces per dwelling unit
Single-family attached or multifamily dwellings with	two spaces per dwelling unit with three or more bedrooms, one and one-half spaces per dwelling unit with one or two bedrooms, one space per efficiency dwelling unit; plus 0.2 spaces per dwelling unit for visitor parking for all single-family attached or multi-family dwellings
Housing for the elderly	one-half space per dwelling unit
Types "A" and "B" group care facilities	one space per three bedrooms, plus one space per employee
Tourist homes	two spaces plus one space per lodging unit
Motels, hotels and inns	three spaces plus one space per sleeping room (accessory eating and drinking establishments or other facilities shall provide additional parking as required).
Rooming houses, boarding houses, lodging houses	one space per three bedrooms
Bed and breakfast establishments	one space per guest sleeping room and two spaces per dwelling unit plus one space per every two employees on the largest shift; establishments approved by development

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	review pursuant to article XIII for meeting facilities for non-guests or for special outdoor functions shall provide one space per two seats in any meeting facilities and one space per two special outdoor function guests based on the approved capacity; if such additional off-street parking is provided off the site, it shall comply with the requirements of article XII section 17.e except that, notwithstanding the provisions of subsection e, the planning board shall have the authority to approve such off-site parking.
Hospitals	one space per patient bed plus one space per three employees
Medical clinics	two spaces per treatment room or patient bed, whichever is greater
Nursing or convalescent homes	one parking space per five resident beds and one space per employee
Schools	
Elementary schools	one and a half spaces per classroom
Secondary schools	five spaces per classroom
Residential colleges, universities and institutions of higher education, including accessory facilities athletic and assembly facilities designed primarily for student use	one space per 7 seats in classroom facilities
Business colleges and schools	one space per 4 seats in classroom facilities
Retail and personal service establishments	one space per two hundred fifty square feet of gross floor area. For retail stores which are part of a gasoline service station complex, one-half of the service spaces at the pump islands may be applied to meet not more than one-half of the required parking demand
Eating and drinking establishments	one space per three seats
Drive-in restaurants	ten spaces plus one additional space per one hundred feet of gross floor area
Professional and business offices	one space per 300 square feet of gross floor area
Construction contractors, tradesman, offices, laboratories and similar uses	one space per 500 square feet of gross floor area
Adult business establishments, drinking place	one space per 3 seats or 200 square feet of gross floor area, whichever is greater
New and used car dealers	five spaces plus one space per 3,000 square feet of display area (indoor and outdoor)
Auto repair garages and gasoline service stations	two spaces per service bay plus one space per employee
Light industrial uses, industrial uses, wholesale, storage and distribution facilities	one space per 500 square feet of gross floor area up to 3,000 sq. ft. plus one space for each 1,000 sq. ft. of gross floor area in excess of

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Community centers, libraries, museums, civic clubs, theatres, places of indoor assembly, amusement or culture, religious facilities, and similar uses	3,000 square feet one space per 4 seats where fixed seating is provided plus 1 space per 200 square feet of area otherwise available for assembly
Auditoriums, stadiums, sport arenas, race tracks, skating rinks, gymnasiums, convention halls or similar uses	one space per each 4 seats; where individual seats are not provided, each 24 inches of bench or other similar seating, or eight sq. ft. of seating or standing space shall be considered as one seat for the purpose of determining requirements thereof
Self storage facilities	five spaces
Uses not specifically listed or able to be placed into one of the above categories, or listed uses which can be clearly shown to have a differing parking need (either fewer or greater) than otherwise required	Sufficient spaces to accommodate the normal parking demand of the use without requiring on-street parking. The number of required spaces shall be determined by the planning board for major project development review or by the staff review committee for minor project development review or by the planning director if no review is required in accordance with accepted standards.

(e) *Location of off-street parking facilities.* Required or provided off-street parking in all districts shall be located on the same lot as the principal building or use, except as may be allowed by the board of appeals on the basis of an appeal as provided below:

- (1) In residential districts, the board of appeals may authorize required or provided off-street parking, serving permitted or conditional uses, to be located off the site, provided it is located within 500 feet of the principal building or use and cannot reasonably be provided on the same lot. Such off-street parking shall be held in fee simple by the owner of the principal use served, or in such other tenure as assures continued availability for parking as long as the particular land will be needed for such use, provided that if tenure is other than ownership in fee simple, the form of tenure shall be approved by the planning director before the request is considered by the board of appeals. Evidence of fee simple ownership or approved tenure shall be required.
- (2) In all zones other than residential, required or provided off-street parking shall be located on the same lot with the principal building or use, or within 500 feet measured along lines of public access, except that where off-street parking cannot be provided within these limits, the board of appeals may permit such off-street parking to be located a reasonable distance from the principal buildings or use, measured along lines of access if such off-lot parking areas shall be held in fee simple by the owner of the use served, or in such other tenure as assures continued availability for parking as long as the particular land will be needed for such use, provided that if tenure is other than ownership in fee simple, the form of tenure shall be approved by the planning director before the request is considered by the board of appeals. Evidence of fee simple ownership or approved tenure shall be required, and such lots shall be located within nonresidential districts.

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- (3) Required off-street parking in all districts other than residential may be substituted by parking facilities which, in the public's interest, may be provided by the municipality. Such substitution shall be shown to be representative of the off-street parking turnover or requirements of the particular use in question and shall take into consideration the needs of other uses with similar demands upon such public space. No such public off-street parking spaces shall be considered as a substitute unless located within 500 feet of the principal building or use measured along lines of public access.
- (4) No additional parking spaces shall be required for any structure that has been designated as significant for historic preservation under article XV, section 3 of this Code that is proposed for reuse. Any expansion to the building will need to provide the required additional parking. All modifications to the building must be done in accordance with the criteria established under article XV, section 5 of this Code.

(f) *Design of off-street parking facilities.*

(1) Parking space dimensions.

- a. Except as provided below, each parking space shall contain a rectangular area at least 18 feet long and nine feet wide. Lines demarcating parking spaces may be drawn at various angles in relation to curbs or aisles, so long as the parking spaces so created contain within them the rectangular area required by this section.
- b. Up to 40 percent of required parking spaces need contain a rectangular area of only eight feet in width by 15 feet in length. If such spaces are provided, they shall be conspicuously designated as reserved for small or compact cars only.
- c. Wherever parking areas consist of spaces set aside for parallel parking, the dimensions of such parking spaces shall be not less than 22 feet by nine feet.

(2) *Parking aisle and driveway dimensions.*

- a. Parking area aisle widths shall conform to the following table, which varies the width requirement according to the angle of parking.

	<i>Parking Angle (in degrees)</i>				
Aisle Width	0	30	45	60	90
One-Way Traffic	12	10	12	16	22
Two-Way Traffic	18	19	20	22	22

- b. Driveways providing access to parking aisles shall be not less than ten feet in width for one-way traffic and 18 feet in width for two-way traffic, except that ten-foot-wide driveways are permissible for two-way traffic when; (i) the driveway is not longer than 50 feet; (ii) it provides access to not more than six spaces; and (iii) sufficient turning space is provided so that vehicles need not back into a public street.

(3) *Design requirements.*

- a. Unless no other practicable alternative is available, parking areas shall be designed so that, without resorting to extraordinary movements, vehicles may exit such areas without backing onto a public street. This requirement does not apply to parking areas consisting of driveways that serve one- or two-family dwellings, although backing onto arterial streets is discouraged.
- b. Parking areas of all developments shall be designed so that sanitation, emergency, and other public service vehicles can serve such developments without the

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- necessity of backing unreasonable distances or making other dangerous or hazardous turning movements.
- c. Every parking area shall be designed so that vehicles cannot extend beyond the perimeter of such area onto adjacent properties or public rights-of-way. Such areas shall also be designed so that vehicles do not extend over sidewalks or tend to bump against or damage any wall, vegetation or other obstruction.
 - d. Circulation areas shall be designed so that vehicles can proceed safely without posing a danger to pedestrians or other vehicles and without interfering with parking areas.
 - e. The standards of the City of Lewiston's Site Plan Review and Design Guidelines shall apply to design and layout of parking areas.
 - f. Parking space and aisle and driveway dimensions for nonresidential projects that are classified as minor developments under this Code may be modified in connection with development review pursuant to article XIII hereof if no practicable alternative is available and all other provisions of this subsection are met.
- (g) *Construction of off-street parking facilities.*
- (1) Parking areas that; (a) include lanes for drive-in windows; or (b) are required to have more than six parking spaces and that are used regularly at least five days per week shall be graded and surfaced with asphalt, concrete or other material that will provide equivalent protection against potholes, erosion and dust. The base of parking areas and driveways shall consist of a minimum of 12 inches of gravel. If bituminous surfacing is used, it shall consist of one and one-half inches of B mix and one inch of C mix laid in two courses or equivalent as approved by the city engineer.
 - (2) Parking areas that are not provided with the type of surface specified in subsection (g)(1) shall be graded and surfaced with crushed stone, gravel, or other suitable material to provide a surface that is stable and will help to reduce dust and erosion. The perimeter of such parking areas shall be defined by bricks, stones, railroad ties, or other similar devices. In addition, whenever such a parking area abuts a paved street, the driveway leading from such street to such area shall be paved as provided in subsection (1) for a distance of 15 feet back from the edge of the paved street. This subsection shall not apply to single-family or two-family dwellings or other uses that are required to have only one or two parking spaces.
 - (3) Parking spaces in areas surfaced in accordance with subsection (g)(1) shall be appropriately demarcated with painted lines or other markings. Parking spaces in areas surfaced in accordance with subsection (g)(2) shall be demarcated whenever practicable.
 - (4) Parking areas shall be properly maintained in all respects. In particular, and without limiting the foregoing, parking area surfaces shall be kept in good condition (free from potholes, etc.) and parking space lines or markings shall be kept clearly visible and distinct.
 - (5) When it has been determined under article XII, section 17(d) that a specific use requires less parking spaces than otherwise required, the additional parking spaces based on the listed use may be just shown as reserved on the plans. In addition, a developer may implement transportation demand management programs to reduce the need for off-street parking. The programs could involve strategies to involve more interurban transit use, car and van pooling, employee pick-up plans, flexible workhour schedules, subscription bus

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service and other similar incentives. These programs must be approved by the reviewing body prior to implementation and may not reduce the number of required spaces by more than 25 percent.

For projects classified as major under this Code utilizing the transportation demand management program provisions, or projects classified as minor under this Code that are proposing expansion, the reduced number of spaces must also be shown as reserved on the plans. Reserved parking spaces for all projects shall not be used for any purpose other than open space, and the reserved area may not be used to meet the minimum open space ratio. If the use changes with respect to the need for the additional spaces, or if the transportation demand management program is not successfully implemented, the additional number of spaces shall be constructed in accordance with the applicable design standards within 60 days of the change of use or determination that the transportation demand management program has not been successfully implemented.

For projects classified as minor under this Code utilizing the transportation demand management program, but not proposing any expansion, the occupancy permit shall be contingent on the satisfactory implementation of program. The required additional spaces shall be provided within 60 days of a determination that the program has not been successfully implemented. Otherwise, the use must cease or be converted to one that meets the required parking standards.

(h) *Joint use of parking facilities.*

- (1) One parking area may contain required spaces for several different uses, but except as otherwise provided in this section, the required space assigned to one use may not be credited to any other use.
- (2) To the extent that developments that wish to make joint use of the same parking spaces operate at different times, the same spaces may be credited to both uses. For example, if a parking lot is used in connection with an office building on Monday through Friday but is generally 90 percent vacant on weekends, another development that operates only on weekends could be credited with 90 percent of the spaces on that lot. Or, if a church parking lot is generally occupied only to 50 percent of capacity on days other than Sunday, another development could make use of 50 percent of the church lot's spaces on those other days.

(i) *Other use of parking facilities.* Parking areas shall be used for automobile parking only, with no sales, dead storage, repair work, dismantling or servicing of any kind. The required parking areas shall be permanently available for use by patrons and employees of establishments providing such space.

(j) *Off-street loading.*

- (1) Subject to subsection (5), whenever the normal operation of any development requires that goods, merchandise or equipment be routinely delivered to or shipped from that development, a sufficient off-street loading and unloading area must be provided in accordance with this section to accommodate the delivery or shipment operations in a safe and convenient manner.
- (2) The loading and unloading area must be of sufficient size to accommodate the numbers and types of vehicles that are likely to use this area, given the nature of the development

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in question. The following table indicates the number and size of spaces that, presumptively, satisfy the standard set forth in this subsection. However, the planning board may require more or less loading and unloading area if reasonably necessary to satisfy the foregoing standard.

<i>Gross Leasable Area of Building</i>	<i>Number of spaces*</i>
5,000-- 79,999	1
80,000--127,999	2
128,000--191,999	3
192,000--255,999	4
256,000--319,999	5
320,000--391,999	6

Plus one space for each additional 72,000 square feet or fraction thereof.

*Minimum distance of 12 feet times 55 feet and overhead clearance of 14 feet from street grade required.

- (3) Loading and unloading areas shall be so located and designed that the vehicles intended to use them can; (a) maneuver safely and conveniently to and from a public right-of-way; and (b) complete the loading and unloading operations without obstruction or interfering with any public right-of-way or any parking space or parking lot aisle.
- (4) No area allocated to loading and unloading facilities may be used to satisfy the area requirements for off-street parking, nor shall any portion of any off-street parking area be used to satisfy the area requirements for loading and unloading facilities.
- (5) Whenever; (a) there exists a lot with one or more structures on it constructed before the effective date of this Code; and (b) a change in use that does not involve any enlargement of a structure is proposed for such lot; and (c) the loading area requirements of this section cannot be satisfied because there is not sufficient area available on the lot that can practicably be used for loading and unloading, then the developer need only comply with this section to the extent reasonably possible, except as provided for in the district regulations of the urban enterprise district.

(Ord. No. 89-3, 4-7-89; Ord. No. 91-8, 10-3-91; Ord. No. 05-07, 3-17-05; Ord. No. 06-04, 4-20-06; Ord. No. 10-03, 03-04-10)

Sec. 18. Improvement standards.

The following standards shall apply to the design and construction of public and private improvements as part of any project requiring development review:

- (1) *Public streets.* Any street, governed by this Code, which is proposed to be dedicated to the city as a public street shall be designed and constructed in accordance with the City of Lewiston's Policy for the Design and Construction of Streets and Sidewalks, adopted by the city council pursuant to chapter 66, article IV, section 66-96 of this Code.
- (2) *Private/mobile home park roads.* Private roads may be constructed as part of a residential, commercial, or industrial development, and mobile home park roads may be constructed as part of a mobile home park upon approval of the planning board. The planning board shall approve a private/mobile home park road only if it finds that all of the following have been met:

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- a. The development served by the private/mobile home park road has direct access onto a public street;
 - b. The private/mobile home park road will not serve property outside of the development and it is unnecessary to provide for the extension of the street system to provide access to unsubdivided or undeveloped property;
 - c. The developer demonstrates to the satisfaction of the planning board that satisfactory legal arrangements exist to assure the long-term maintenance, repair and replacement of the private infrastructure, including roads, sanitary and storm sewer systems, and water supply systems;
 - d. The private/mobile home park road is constructed in accordance with the standards of the City of Lewiston's Policy for the Design and Construction of Streets and Sidewalks and;
 - e. All approved plans contain a note that reads "the roads shown on this plan as private/mobile home park roads shall not be maintained by the City of Lewiston".
- (3) *Sanitary sewers.* Any sanitary sewer constructed as part of a project requiring development approval shall conform to the following standards:
- a. The design and construction shall conform to the City of Lewiston's Department of Public Services Policy for the Design and Construction of Streets and Sidewalks.
- (4) *Water supply system.* Any water supply system constructed as part of a project requiring development approval shall conform to the following standards:
- a. The design and construction shall conform to the City of Lewiston's Department of Public Services Policy for the Design and Construction of Streets and Sidewalks.
- (5) *Stormwater system.* Each stormwater system constructed as part of a project requiring development approval shall conform to the City of Lewiston's Department of Public Services Policy for the Design and Construction of Streets and Sidewalks.
- (Ord. No. 89-3, 4-7-89; Ord. No. 92-12, 6-4-92; Ord. No. 01-23, 2-7-02; Ord. No. 07-02, 3-22-07)

Sec. 19. Environmental performance standards.

The following standards shall apply to all nonresidential uses in the city:

- (1) *Smoke.*
- a. For the purposes of determining the density of equivalent opacity of smoke, the Ringlemann Chart, as adopted and published by the United States Department of Interior, Bureau of Mines Information Circular 8333, May 1967, shall be used. The Ringlemann number referred to in this section refers to the number of the area of the Ringlemann Chart that coincides most nearly with the visual density of equivalent opacity of the emission of smoke observed. For example, a reading of Ringlemann No. 1 indicates a 20 percent density of the smoke observed.
 - b. All measurements shall be taken at the point of emission of the smoke.
 - c. In all residential districts and the OR district, no nonresidential use may emit from a vent, stack, chimney, or combustion process any smoke that is visible to the naked eye.
 - d. In the IO, CB, HB, D, OS and UE districts, no nonresidential use may emit from a vent, stack, chimney, or combustion process any smoke that exceeds a density or equivalent capacity of Ringlemann No. 1, except that an emission that does not exceed a density or equivalent capacity of Ringlemann No. 2 is permissible for a

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duration of not more than four minutes during any eight-hour period if the source of such emission is not located within 250 feet of a residential district.

- e. In the I District, no nonresidential use may emit from a vent, stack, chimney, or combustion process any smoke that exceeds a density or equivalent capacity of Ringlemann No. 2, except that an emission that does not exceed a density or equivalent capacity of Ringlemann No. 3 is permissible for a duration not more than four minutes during any eight-hour period if the source of emission is not located within 500 feet of a residential district.

(2) *Noise.*

- a. A decibel is a measure of a unit of sound pressure. Since sound waves having the same decibel level "sound" louder or softer to the human ear depending upon the frequency of the sound wave in cycles-per-second (i.e., whether the pitch of the sound is high or low) an A-weighted filter constructed in accordance with the specifications of the American National Standards Institute, which automatically takes account of the varying effect on the human ear of different pitches, shall be used on any sound level meter taking measurements required by this section. And accordingly, all measurements are expressed in dB(A) to reflect the use of this A-weighted filter.
- b. The standards established in the table set forth below are expressed in terms of the Equivalent Sound Level (Leq), which must be calculated by taking 100 instantaneous A-weighted sound levels at ten-second intervals and computing the Leq.
- c. Except as provided in subsections d. and e., the following table establishes the maximum permissible noise levels for nonresidential uses. Measurements shall be taken at the boundary line of the lot where the nonresidential use is located, and, as indicated, the maximum permissible noise levels vary according to the zoning of the lot adjacent to the lot on which the use is located.

Table of Maximum Permitted
Sound Levels, dB(A)

Zoning of Adjacent Lot

	<i>Residential and OR</i>	<i>Business IO, OS and UE</i>	<i>I</i>
Maximum sound level	50	60	70

- d. In cases where measurements taken in accordance with subsections a. and b. demonstrate that the existing Leq exceeds the maximum permissible sound levels established in subsection c., then the nonresidential use may not generate sound levels greater than the measured existing sound levels.
- e. Impact noises are sounds that occur intermittently rather than continuously. Impact noises generated by sources that do not operate more than one minute in any one-hour period are permissible up to a level of ten dB(A) in excess of the figures listed in the table, except that this higher level of permissible noise shall not apply from 7:00 p.m. to 7:00 a.m. when the adjacent lot is zoned residential. The impact noise shall be measured using the fast response of the sound level meter.

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f. Noise resulting from temporary construction activity that occurs between 7:00 a.m. and 7:00 p.m. shall be exempt from the requirements of this section.

(3) *Vibration.*

- a. No nonresidential use in any residential, business, OR or IO district may generate any ground-transmitted vibration that is perceptible to the human sense of touch measured at; (a) the outside boundary of the immediate space occupied by the enterprise generating the vibration if the enterprise is one of several located on a lot; or (b) the lot line if the enterprise generating the vibration is the only enterprise located on a lot.
- b. No nonresidential use in an OS, UE or I district may generate any ground-transmitted vibration in excess of the limits set forth in subsection (3)e. Vibration shall be measured at any adjacent lot line or residential district line as indicated in the table set forth in subsection (3)e.
- c. The instrument used to measure vibrations shall be a three-component measuring system capable of simultaneous measurement of vibration in three mutually perpendicular directions.
- d. The vibration maximums set forth in subsection (3)e. are stated in terms of particle velocity, which may be measured directly with suitable instrumentation or computed on the basis of displacement and frequency. When computed, the following formula shall be used:

$$PV = 6.28 F \times D$$

Where:

PV = Particle velocity, inches-per-second

F = Vibration frequency, cycles-per-second

D = Single amplitude displacement of the vibration, inches.

The maximum velocity shall be the vector sum of the three (3) components recorded.

e. Table of maximum ground-transmitted vibration.

<i>Particle Velocity,</i>	
<i>Inches-Per-Second</i>	
<i>Adjacent Lot</i>	
<i>Line</i>	<i>Residential District</i>
0.20	0.02

- f. The values stated in subsection e. may be multiplied by two for impact vibrations, i.e., discrete vibration pulsations not exceeding one second in duration and having a pause of at least one second between pulses.
- g. Vibrations resulting from temporary construction activity that occurs between 7 a.m. and 7 p.m. shall be exempt from the requirements of this section.

(4) *Odors.*

- a. For purposes of this section, the "odor threshold" is defined as the minimum concentration in air of a gas, vapor, or particulate matter than can be detected by the olfactory systems of a panel of healthy observers.
- b. No nonresidential use in any district may generate any odor that reaches the odor threshold, measured at the lot line of the enterprise generating the odor.

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- (5) *Air pollution.*
- a. Any nonresidential use that emits any "air contaminant" as defined by the Maine Department of Environmental Protection shall comply with applicable state standards concerning air pollution.
 - b. No zoning or conditional use permit may be issued with respect to any development covered by subsection a. until the Maine Department of Environmental Protection has certified to the city that the appropriate state permits have been received by the developer, or that the developer will be eligible to receive such permits and that the development is otherwise in compliance with applicable air pollution laws.
- (6) *Electrical disturbance or interference.* No use may:
- a. Create any electrical disturbance that adversely affects any operations or equipment other than those of the creator of such disturbance; or
 - b. Otherwise cause, create, or contribute to the interference with electronic signals (including television and radio broadcasting transmissions) to the extent that the operation of any equipment not owned by the creator of such disturbance is adversely affected.

(Ord. No. 89-16, 11-30-89)

Sec. 20. Child care facility standards.

The following standards shall apply to the establishment and operation of all child care facilities in the City of Lewiston in addition to any Maine Department of Human Services licensing requirements.

- (a) *Statement of purpose.* The purpose of this section is to ensure that all child care facilities operate in a safe and convenient manner; to maintain adequate care and protection for those children who attend these facilities; to minimize the potential impact of these facilities upon the value and quiet possession of surrounding properties; and to maintain the general health, safety and welfare of the city. For the purposes of this section, a child care facility shall be defined as a house, dwelling unit, building, structure or other place in which a person, or combination of persons provides child care for three or more children under 13 years of age.
- (b) *Standards for establishing a child care facility.* The code enforcement official shall grant all necessary permits for the establishment of a child care facility provided that the following standards for operating a child care facility have been met:
- (1) *Buffering.* All day care centers that abut a residential zoning district or a property in residential use shall provide buffering in accordance with the site plan review and design guidelines, as amended.
 - (2) *Vehicular and pedestrian access.* All proposed child care facilities shall provide safe and convenient access to, into and within the site. Existing driveways shall be enlarged and/or relocated when the code enforcement official determines that the existing driveway does not provide safe and convenient access into the site. Pedestrian walkways and child drop-off and pick-up areas shall be separated from vehicular access ways whenever possible to minimize potential conflicts. Vehicles backing into a city street shall be discouraged whenever possible. In those instances where additional maneuvering room is not available on site, and vehicles must back into a city street, the code enforcement official may grant a waiver to this requirement provided that there is adequate sight distance available

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for exiting the site. However, for all proposed child care facilities located along the following streets, vehicles shall be prohibited from backing into these streets:

Central Avenue (from Sabattus Street to Montello Street);
College Street;
East Avenue;
Lisbon Street;
Main Street;
Montello Street;
Old Greene Road;
Pleasant Street;
Pond Road;
Russel Street;
Sabattus Street;
Webster Street.

The code enforcement official may grant a waiver to this prohibition if the applicant submits a report from a traffic engineer stating that backing into the aforementioned streets, from the property under consideration, shall not create any unsafe conditions.

- (3) *Off-street parking/drop-off and pick-up areas.* All proposed child care facilities shall provide adequate off-street parking for all full and/or part time employees. For family day care homes, parking spaces may be arranged in a stacked manner where one vehicle is parked behind the other as long as the maneuvering on-site is safe and convenient. For small day care facilities and day care centers, parking spaces shall not be arranged in a stacked manner. The required front, side and rear yards for the zoning district in which the child care facility is proposed must be maintained, unless modified pursuant to article IX. If the child care facility will operate with more than one shift, the number of parking stalls shall reflect the greatest number of employees in any one shift. The parking requirements for all child care facilities shall be as follows:

Family day care homes: In addition to the existing on-site parking required for the residential use, one additional on-site parking stall shall be required for each staff person.

Small day care facilities: One on-site parking stall for each staff person.

Day care centers: One on-site parking stall for each staff person.

All proposed child care facilities shall also provide adequate drop-off and pick-up areas. These areas shall be safe and convenient, and shall not conflict with on-site pedestrian and vehicular movements. All drop-off and pick-up shall occur on-site. The following standards shall be used to determine the number of drop-off and pick-up areas required for each type of child care facility.

One parking space shall be provided for drop-off and pick-up purposes based on a ratio of one space per six children, if staggered drop-off and pick-up times are implemented, or one space per three children if there are no staggered times. However, these spaces shall not be arranged in a stacked manner.

In the event that the code enforcement official determines that a proposed child care facility has less demand for drop-off, pick-up and parking due to interurban transit use, car and van pooling, bus service, foot traffic, etc. the above requirements may be reduced to reflect the anticipated demand.

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Notwithstanding the above, there are no parking requirements for drop-off, pick-up and staff parking for family day care homes located on streets other than those identified in the above subsection.

- (4) *Licensing requirements.* All child care facilities shall be licensed by the department of human services.
 - (5) *Outdoor play area requirements.* Child care facilities shall meet satisfy the requirements for outdoor play area as prescribed by the department of human services.
- (Ord. No. 97-7, 9-11-97; Ord. No. 03-18, 1-1-04; Ord. No. 06-12, 8-24-06)

Sec. 21. Reserved.

Editor's note: Ord. No. 06-17, effective Feb. 8, 2007, repealed art. XII, § 21, in its entirety. Formerly, said section pertained to additional standards for stormwater management and erosion and sedimentation control.

Sec. 22. Residential design standards for the downtown residential and riverfront districts.

(a) New residential development in the downtown residential (DR) and riverfront (RF) districts shall be reviewed for compliance with the following development standards. The general intent of these standards is to achieve an attractive city neighborhood environment, fostering a sense of community and place. Varied and human-scaled building facades are key to making a place "pedestrian-oriented", as well as friendlier and safer. Building designs should provide a high level of visual interest and include design elements that enhance the streetscape.

- (1) Porches and bays should face the street;
- (2) Primary ground floor residential entries to multifamily building must orient to streets, not to interior blocks or parking lots. Secondary and upper-floor entries from the interior of a block are acceptable. The front door to single-family homes, duplexes and townhouses must be visible from the street;
- (3) The design approach shall provide an architecture that will be a visible and permanent expression of the character of the neighborhood through appropriately scaled entries, porches, fenestration, landscaping and architectural details;
- (4) The facade shall be varied and articulated to provide visual interest to pedestrians;
- (5) Each project must provide visual and acoustical privacy between units and shall maximize natural light and ventilation within units.

(Ord. No. 00-19, 10-5-00; Ord. No. 09-08, 12-31-09)

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Sec. 1. Purpose.

The purpose of development review is to provide for the review and approval of development plans for nonresidential and residential developments including, but not limited to, subdivisions and mobile home parks to insure that the development of both private and public land occurs in a manner which minimizes the adverse impact on public facilities, the natural environment and neighboring uses, and to otherwise protect the health, safety and general welfare of the people. (Ord. No. 99-11, 5-20-99; Ord. No. 99-15, 8-12-99)

Sec. 2. Applicability.

- (a) The requirements of this article shall apply to the following:
- (1) The creation of a subdivision as defined under 30-A M.R.S.A., § 4401, as amended;
 - (2) The construction of any new, nonresidential building or structure;
 - (3) The expansion of an existing nonresidential building or structure provided such expansion involves at least 1,000 square feet of total floor area. However, expansions of buildings or structures reviewed and approved under development review, may be determined by the planning director or designee to be of a de minimis nature and can be processed in accordance with the procedures under subsection 3(k) below;
 - (4) The conversion of an existing building from residential to nonresidential uses unless the planning director or designee determines the conversion does not constitute an intensification and/or will have minimal impacts on adjacent residential properties;
 - (5) The construction of any new residential structure, conversion of an existing building into a residential use, the creation of a bed and breakfast establishment with five or six rooms, or the modification of an existing residential structure that results in the net creation of three or more dwelling units;
 - (6) Earth moving, removal, grading, or filling activities which involve more than 5,000 cubic yards of material which is not associated with a building construction project and for which no permit is required pursuant to chapter 66 or 74 of the Code of Ordinances;
 - (7) The development or expansion of a mobile home park;
 - (8) The change of an existing nonresidential building or structure from one use to another use where the proposed use is more intensive than the existing use; or the intensification of any use;
 - (9) The establishment of a new nonresidential use even if no buildings or structures are proposed;
 - (10) The amendment or reconfiguration of an approved subdivision as defined by 30-A M.R.S.A. § 4401, as amended or the amendment of any other development, as defined herein, for which development approval was previously obtained under this article or the amendment to any plan approved by the planning board under the Code of Ordinances in effect prior to January 9, 1988, unless determined by the planning director or designee to be a de minimis change and therefore can be processed in accordance with the procedures under subsection 3(k) below;
 - (11) The creation of a right-of-way for the purpose of allowing a residential lot to gain required frontage pursuant to article XII, section 10; or
 - (12) The modernization modifications of existing gasoline service stations that involve existing nonconforming pump island replacement.

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- (13) The City of Lewiston has also been granted the authority to substitute their review and approval for the following kinds of projects that require a permit from the Maine Department of Environmental Protection (DEP):
- a. Subdivisions as described in 38 M.R.S.A. Section 482, subsection 5, as amended, of more than 20 acres but less than 100 acres;
 - b. Structures as described in 38 M.R.S.A. Section 482, subsection 6, Paragraph B, as amended, in excess of three acres, but less than seven acres of nonrevegetated ground area;
 - c. Projects requiring a permit under the State Stormwater Management Law, as described in 24 M.R.S.A. Section 420-D.
- (14) The City of Lewiston has also been granted the authority to substitute their review and approval for the following kinds of projects that require a permit from the Maine Department of Transportation (MDOT):
- a. A project generating 100 to 200 passenger car equivalents at peak hour as described in 23 M.R.S.A., Section 704-A subsection 2 and 4. [For the purposes of this article, passenger car equivalents at peak hour means the number of passenger cars, or, in the case of nonpassenger vehicles, the number of passenger cars that would be displaced by nonpassenger vehicles, that pass through an intersection or on a roadway under prevailing roadway and traffic conditions at that hour of the day during which the traffic volume generated by the development is higher than the volume during any other hour of the day. A one tractor-trailer combination is the equivalent of two passenger cars. (See 23 M.R.S.A. Section 704-A subsection 1-B.)]
 - b. A project generating 200 or more passenger car equivalents at peak hour (provided there is no impact in any other municipality other than Lewiston as described in 23 M.R.S.A., Section 704, subsections A(2) and (4)).
- (b) This section does not apply to the construction of single-family homes or two-family homes, the placement of manufactured housing or mobile homes on individual lots, agricultural buildings or structures, agriculture and forest management and timber harvesting activities.
- (c) No building permit, plumbing permit or certificate of occupancy shall be issued for a development within the scope of this article unless and until a final plan of the development has been approved in accordance with the procedures set forth in article XIII, section 3.
- (d) The city council may from time to time establish reasonable application fees to defray the costs of reviewing major and minor site plans.
(Ord. No. 89-3, 4-7-89; Ord. No. 90-4, 5-17-90; Ord. No. 91-1, 3-19-91; Ord. No. 99-15, 8-12-99; Ord. No. 03-09, 7-17-03; Ord. No. 06-04, 4-20-06; Ord. No. 06-17, 2-8-07; Ord. No. 07-01, 3-8-07; Ord. No. 08-08, 10-2-08)

Sec. 3. Procedure.

- (a) Classification of project. Projects subject to development review shall be divided into two classes, minor developments and major developments:
- (1) *Minor development.*
 - a. A minor development shall be those projects involving the construction or addition of less than 5,000 square feet of nonresidential floor area, the conversion of a residential structure with less than 5,000 square feet of total floor area to a nonresidential use, the change of use of an existing nonresidential building or structure, the separate conveyance of attached and detached principal residential

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structures, the construction or alteration of a multifamily residential structure, or a conversion of a nonresidential building which involves the creation of 12 or less additional dwelling units, (unless required to be reviewed under state subdivision law), earth moving, removal, filling or grading activities involving greater than 5,000 cubic yards of material, the creation of a right-of-way for the purpose of allowing a residential lot to gain required frontage, the establishment of a new nonresidential use when no buildings or structures are proposed; and the modernization modifications of existing gasoline service stations that involve existing nonconforming pump island replacement.

- b. Projects otherwise meeting the minor development classification, but requiring issuance of a conditional use permit, shall be classified as a major project.
 - c. The planning director or designee may also determine that projects otherwise meeting the minor development classification be classified as major projects due to such issues as expected significant public input, impacts to neighborhoods, natural resources or government services, or other significant potential effects to public health, welfare or safety.
- (2) *Major development.* Major developments include the following:
- a. Projects requiring development review and not classified as minor developments including those projects that are determined to be applicable under subsections 3(a)(1)(b) and (c) above;
 - b. Projects which generate 100 or more passenger car equivalents at peak hour; or
 - c. Projects that require a permit under the State Site Location of Development Act and/or Stormwater Management Laws.
- (b) *Review authority.* The responsibility for reviewing and approving developments shall rest with the planning board or the staff review committee depending on the classification of the project.
- (1) *Planning board authority.* The planning board is authorized to review and act on all development plans for major developments.
 - (2) *Staff review committee authority.* The staff review committee is authorized to review and act on all development plans for minor developments.
- (c) *Planning board actions.* In considering development plans under this section, the planning board may act to approve, approve with conditions, or disapprove development applications based on the applicable criteria set forth in this article.

The board shall hear and decide requests for the reduction of the provisions under article XI, sections 1 through 14, district regulations, with respect to space and bulk standards for setbacks, yards, maximum lot coverage ratios, maximum impervious surface ratios, minimum open space ratios, and maximum building height, where the development is a major development as defined in article XIII, subsection 3(a)(2) of this Code. In order for the board to grant the aforementioned relief, it must find that the standards contained in article IX, sections (3) (9),(10) and (11), as applicable, are met.

- (d) *Staff review committee actions.* In considering development plans under this section, the staff review committee may act to approve, approve with conditions, or deny site plan applications based on the applicable criteria set forth in this article.

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The staff review committee shall consist of the planning director, or designee, who shall serve as chairman and a representative from the following departments; public services, planning and code enforcement, police and fire.

Actions by the staff review committee to approve an application or approve an application with conditions shall require the unanimous consent of the members of the committee. The disapproval of two or more members of the committee shall constitute denial of the application.

The staff review committee shall hear and decide requests for the reduction of the provisions under article XI, sections 1 through 14, district regulations, with respect to space and bulk standards for setbacks, yards, maximum lot coverage ratios, maximum impervious surface ratios, minimum open space ratios, and maximum building height, where the development is a minor development as defined in article XIII, subsection 3(a)(1) of this Code. In order for the committee to grant the aforementioned relief, it must find that the standards contained in article IX, section 3(9), (10) and (11), as applicable, are met.

The staff review committee shall hear and decide requests for the separate conveyance of attached and detached principal residential structures. In order for the committee to grant such requests, it must find that the standards contained in article V (3)(w) are met.

- (e) *Pre-application procedures.* The applicant for any development approval shall meet with the planning director or designee prior to the submission of a development plan to generally discuss the proposal and to obtain guidance in the development of the plan.

The planning director or designee, shall review materials in terms of the requirements of this Code and shall provide direction to the applicant on the overall suitability of the proposal, questions or issues to be addressed in the development plan and act on any modifications or waivers requested by the applicant pursuant to subsection 3(h)(5) of this article. Modifications or waivers will be granted when the size of the project or circumstances of the site are such that the requirements would not be applicable or would be an unnecessary burden upon the applicant and that such modification or waiver would not adversely affect the abutting landowners or the general health, safety and welfare of the city, and must be confirmed by the reviewing authority at the meeting.

- (f) *Application procedures.* Applications for development review shall be submitted on application forms provided by the city. The completed application form, appropriate fee and the required copies of a complete site plan for the proposed development and any related information shall be submitted to the office of the planning director.

- (g) *Application requirements.* The application for development review, the site plan and related submissions shall contain at least the following exhibits and information:

- (1) A fully executed and signed copy of the application for development review.
- (2) One original of all maps and drawings on durable, permanent transparency material.
- (3) Fifteen copies (seven for minor developments) of written materials plus 15 sets (seven for minor developments) of maps or drawings containing the information listed below. The written materials shall be contained in a bound report. The maps or drawings shall be at a scale sufficient to allow review of the items listed under approval criteria, but in no case

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shall be more than 50 feet to the inch for that portion of the tract of land being proposed for development:

a. *General information.*

1. Record owner's name and address and applicant's name and address if different.
2. The name of the proposed development.
3. Sketch map showing general location of the site within the city.
4. Boundaries of all contiguous property under the control of the owner or applicant regardless of whether all or part is being developed at this time.
5. The tax map number and street or parcel number of the parcel or parcels.
6. A copy of the deed to the property, option to purchase the property or other documentation to demonstrate right, title or interest in the property on the part of the applicant.
7. The name, registration number and seal of the land surveyor, architect, engineer and/or similar professional who prepared the plan.

b. *Existing conditions.*

1. Zoning classification(s) of the property and the location of zoning district boundaries if the property is located in two or more zoning districts or abuts a different district.
2. The bearings and distances of all property lines of the property to be developed and the source of this information.
3. Location and size of any existing sewer and water mains, culverts and drains on the property to be developed and of any that will serve the development from abutting streets or land.
4. Location, names, and present widths of existing streets and rights-of-way within or adjacent to the proposed development.
5. The location, dimensions and ground floor elevations of all existing buildings on the site.
6. The location and dimensions of existing driveways, streets, parking and loading areas and walkways on the site.
7. Location of intersecting roads or driveways within 200 feet of the site.
8. The location of open drainage courses, wetlands, stands of trees and other important natural features, with a description of such features to be retained.
9. The direction of existing surface water drainage across the site.
10. The location, front view and dimensions of existing signs.
11. Location and dimensions of any existing easements and copies of existing covenants or deed restrictions.

c. *Proposed development activity.*

1. The location of all building setbacks, yards and buffers required by this Code.

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2. The location, dimensions, and ground floor elevations of all proposed buildings on the site.
3. The location and dimensions of proposed driveways, parking and loading areas, and walkways.
4. The location and dimensions of all provisions for water supply and wastewater disposal.
5. The direction of proposed surface water drainage across the site.
6. Location of all proposed signs.
7. Location and type of exterior lighting.
8. Proposed landscaping and buffering.
9. Copies of applicable state approvals and permits, provided, however, that the board or staff review committee may approve development plans subject to the issuance of specified state approvals and permits where it determines that it is not feasible for the applicant to obtain them at the time of development review.
10. A schedule of construction, including anticipated beginning and completion dates.

Space shall be provided on the plan for the signature of the chair of the reviewing body and dates of the meeting and the signature together with the following words, "Approved: City of Lewiston".

- (4) Additional information that may be required due to the nature of the project:
 - a. Existing and proposed topography of the site at two-foot contour intervals.
 - b. A stormwater drainage and erosion control plan showing:
 1. The existing and proposed method of handling stormwater runoff.
 2. The direction of flow of the runoff through the use of arrows.
 3. The location, elevation, and size of all catch basins, dry wells, drainage ditches, swales, retention basins and storm sewers, and all other stormwater management structures.
 4. Engineering calculations used to determine drainage requirements as specified by subsection 4(f) of this article.
 5. Methods of controlling erosion and sedimentation during and after construction.
 - c. A groundwater impact analysis prepared by a groundwater hydrologist for projects involving common on-site water supply or sewage disposal facilities with a capacity of 2,000 gallons per day or greater or for projects located within the groundwater conservation overlay district.
 - d. A utility plan showing, in addition to provisions for water supply and wastewater disposal, the location and nature of electrical, telephone and any other utility services to be installed on the site.
 - e. A planting schedule keyed to the site plan and indicating the general varieties and sizes of trees, shrubs and other plants to be planted on the site.
 - f. A traffic impact analysis demonstrating the impact of the proposed project on the capacity, level of service and safety of adjacent streets.
 - g. A written statement as to the adequacy of the water supply in terms of quantity and pressure for both domestic and fire flows.

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- h. The location, width, typical cross-section, grades and profiles of all proposed streets and sidewalks.
- i. Construction drawings for streets, sanitary sewers, water and storm drainage and management systems, designed and prepared by a professional engineer registered in the State of Maine.
- j. Proposed lot lines with their dimensions and the location of required setbacks. If the development involves a subdivision consisting of principal buildings on the same lot, the locations, building outlines, and dimensions of all buildings, with setback dimensions, shall be shown.
- k. Lots and blocks within a subdivision numbered in accordance with local practice.
- l. The location of any pedestrian ways, lots, easements, open spaces and other areas to be reserved for or dedicated to public use and/or ownership. For any proposed easement, the developer shall submit the proposed easement language with a signed statement certifying that the easement will be executed upon approval of the development. In the case of any streets or other ways dedicated to public ownership, the developer shall submit a signed statement that he will maintain such streets or ways year-round until they are accepted by the city.
- m. Sufficient data acceptable to the city engineer to determine readily the location, bearing, and length of every street line, lot line, easement, and boundary line and to reproduce such lines upon the ground. Where practical, these should be tied to reference points previously established and the data transferred in an appropriate electronic file format.
- n. A copy of such covenants or deed restrictions, if any, as are intended to cover all or part of the tract. Such covenants or deed restrictions shall be referenced on the plan.
- o. Written offers of dedication or conveyance to the municipality, in a form satisfactory to the city attorney, of all land included in the streets, highways, easements, parks, or other open space dedicated for public use, and copies of agreements or other documents showing the manner in which spaces, title to which is reserved by the developer, are to be maintained.
- p. If the development is a condominium or a clustered development, evidence that all requirements relative to establishment of a homeowners' association or condominium owners' association have been met. If the development is a clustered development, evidence shall be presented that all other requirements of this Code pertaining to clustered development have been met. The submission shall include copies of the by-laws of any homeowners' or condominium association charged with maintaining common spaces and lands. Homeowners' association or condominium documents shall clearly state that the association or condominium shall properly maintain private roadways and stormwater management systems serving the development after the developer has legally relinquished that responsibility and until such time as the city may accept them as public ways.
- q. A performance guarantee in a form and amount meeting the requirements of article XIII, section 12 to secure the completion of all public improvements required by the planning board in a form acceptable to the city. The guarantee need not be submitted as part of the application, but must be submitted before the plan is signed. The plan shall not be deemed approved until the performance guarantee has been filed. Cost estimates of the proposed public improvements

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obtained by the applicant from a licensed professional engineer who, in the planning board's judgment, is qualified to make such estimates, shall be submitted as part of the final plan application. If a conditional agreement is to be filed in lieu of the performance guarantee, it must be endorsed by the planning board on the plan and meet the requirements under article XIII, section 12.

- r. Cost of the proposed development and evidence of financial capacity to complete it. This evidence should be in the form of a commitment letter from a bank or other source of financing indicating the name of the project and amount of financing proposed.

(5) The planning board or staff review committee shall confirm the modification or waiver of any of the submission requirements in article XIII, subsection 3(g) recommended by the planning director or designee, when it determines that because of the size of the project or circumstances of the site such requirements would not be applicable or would be an unnecessary burden upon the applicant and that such modification or waiver would not adversely affect the abutting landowners or the general health, safety and welfare of the city.

(h) *Review procedures.* The following procedures shall be used for the review of development applications:

- (1) *Minor developments.* Upon receipt of an application for a minor development, the planning director shall, within five working days, determine substantial completeness of the application and, if so determined, notify the applicant in writing that the application is substantially complete, additional information necessary to complete the application the date, time and place on which the staff review committee will consider the application. Staff shall notify all abutting property owners and the appropriate municipality when a development review project abuts or is in close proximity to an adjacent municipality's border, by mail sent no less than seven days prior to the meeting, of: the pending application, the opportunity to submit written comments on the application to the office of the planning director, and the date, time and place of the staff review committee meeting at which the application will be considered. If the application is not substantially complete, the planning director shall notify the applicant of the additional information necessary to complete the application. Upon determination of substantial completeness, the planning director shall also transmit copies of the plans and related information to the following departments; public services, planning and code enforcement, police and fire. The staff review committee shall meet to review the application and the committee shall approve, approve with conditions or deny the application. A written record of the staff review committee's meeting shall be maintained and shall be available for public inspection. The committee shall act on each application within 30 days of the date on which said application was determined by the planning director to be complete so long as the required notice to abutters has been given, or at its next regularly scheduled meeting after said required notice has been given, whichever occurs later. Within five working days of the date of the committee's action, the office of the planning director shall notify the applicant in writing thereof.
- (2) *Major developments.* Upon receipt of an application for a major development, the planning director shall review said application for substantial completeness and if so determined, schedule a review of said application before the planning board and notify the applicant and all abutting property owners, by mail, sent no less than seven days prior

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to the meeting, of the pending application, the opportunity to submit written comments on the application to the planning board on or before the date of said review and the date, time and place of the planning board meeting at which the application will be considered. All reviews of applications for development review shall be public hearings, and shall be held within 30 days of the date the planning director determined the application to be substantially complete and shall advertise said public hearing in a newspaper of general circulation in the city at least two times, the date of the first publication to be at least six days prior to the date of the hearing.

The planning board shall take final action on said application within 30 days of the public hearing.

Except for developments which involve the creation of a subdivision as defined by 30-A M.R.S.A. Section 4401 as amended, the limits provided for in this subsection may be extended by mutual agreement between the planning director and the applicant. For those developments which involve the creation of a subdivision as defined by 30-A M.R.S.A. Section 4401 as amended, the limits provided in this subsection may be extended only by mutual agreement between the planning board and the applicant.

- (i) *Building permit.* One copy of the notice of approval of the application shall be included in the application for a building permit and shall become part of the permit.

- (j) *Appeals of staff decisions.* The applicant or any participating abutter may appeal the action of the staff review committee to the board of appeals within 15 days of the committee action.

- (k) *De minimis changes to development plans.* The planning director or designee may determine amendments to a development plan are "de minimis," that is of a minor nature, and do not require a formal review process. Accordingly, the amended plan can be signed directly by the planning director or designee. However, amendments to developments which involve the creation of a subdivision as defined by 30-A M.R.S.A. Section 4401, as amended, will require signature of the amended plan by the planning board chair, who may request that the de minimis change be brought before the board for their review and approval prior to the signing of the permanent copy of the plan (mylar.) A report of all approved de minimis changes will be submitted to the planning board or staff review committee as appropriate at their next available meeting.
(Ord. No. 89-3, 4-7-89; Ord. No. 90-4, 5-17-90; Ord. No. 94-18, 12-1-94; Ord. No. 95-10, 9-14-95; Ord. No. 98-6, 7-2-98; Ord. No. 98-12, 11-19-98; Ord. No. 99-15, 8-12-99; Ord. No. 03-09, 7-17-03; Ord. No. 03-17, 1-1-04; Ord. No. 06-17, 2-8-07)

Sec. 4. Approval criteria.

The following criteria are to be used by the staff review committee and the planning board in judging applications for development review and shall serve as minimum requirements for approval of the application. The application shall be approved unless the staff review committee or the planning board determines that the applicant has failed to meet one or more of these standards. In all instances, the burden of proof shall be on the applicant and such burden of proof shall include the production of evidence sufficient to warrant a finding that all applicable criteria have been met.

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(a) *Utilization of the site.* The plan for the development will reflect the natural capabilities of the site to support development. Buildings, lots and support facilities will be clustered in those portions of the site that have the most suitable conditions for development. Environmentally sensitive areas such as wetlands, steep slopes, floodplains and unique natural features will be maintained and preserved to the maximum extent. Natural drainage areas will be preserved to the maximum extent.

(b) *Traffic movement into and out of the development area.* The developer has made adequate provision for traffic movement of all types into and out of the development area. Vehicular access to the site will be on roads which have adequate capacity to accommodate the additional traffic generated by the development. Intersections on major access routes to the site within one-half mile of any entrance road which are functioning at a level of service of C or better prior to the development will function at a minimum at level of service C after development. If any intersection is functioning at a level of service D or lower prior to the development, the project will not reduce the current level of service. If a development is located in the highway business (HB), community business (CB), centreville (CV), mill (M), riverfront (RF), urban enterprise (UE), office service (OS), office residential (OR), and industrial (I) districts, which are designated as growth areas within the comprehensive plan, and the plan has been found by the state to be consistent with the growth management program under Title 30-A, Chapter 187, the planning board or staff review committee shall require improvements to the level of traffic service only if the level of service adjacent to or in the vicinity of the development is or would be level of service E or F, as determined by the City of Lewiston's Engineering Department and/or LACTS. In these cases, improvements shall be required so as to bring the traffic service to, at minimum, level of service D. All level of service determinations shall be made in accordance with the "Highway Capacity Manual" (3rd Ed. 1994), and as described in the site plan review and design guidelines.

Before granting approval for any development, the planning board or staff review committee shall determine that any traffic increase attributable to the proposed development will not result in unreasonable congestions or unsafe conditions on a road in the vicinity of the proposed development. The applicant shall provide to the City of Lewiston with an analysis of traffic movement of all types into and out of the development area and with a statement of recommended findings on traffic issues, after consulting, as necessary, with the Maine Department of Transportation (MDOT), the City of Lewiston Engineering Department, and the Lewiston-Auburn Comprehensive Traffic Study (LACTS). The reviewing body may require this analysis to be done by a registered professional engineer. In all cases where the passenger car equivalents at peak hour is 100 or greater, the project must be reviewed by the planning board and a registered professional engineer shall prepare the analysis and recommendations. In all instances, the city shall discuss with the applicant and their representatives the scope of impact evaluation required for the proposed development to be studied, what other agencies need to be consulted, and what other information is required. In making its determination under this subsection, the planning board or staff review committee shall consider the analysis and recommendations provided by the applicant as well as those submitted by the Maine Department of Transportation (MDOT), the City of Lewiston Engineering Department, and the Lewiston-Auburn Comprehensive Traffic Study (LACTS), as applicable. Where required by state law, the applicant shall provide notice to affected abutting municipalities.

The planning board or staff review committee may approve a development not meeting this requirement if the applicant demonstrates that:

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- (1) A public agency has committed funds to construct the improvements necessary to bring the level of access to this standard; or
 - (2) The applicant will assume financial responsibility for the improvements necessary to bring the level of service to this standard and will guarantee the completion of the improvements within one year of approval of the project.
- (c) *Access into the site.* Vehicular access into the development will provide for safe and convenient access.
- (1) Grades, intersections, access and sight distances shall be in accordance with the City of Lewiston's Policy for the Design and Construction of Streets and Sidewalks.
- (d) *Internal vehicular circulation.* The layout of the site will provide for the safe movement of passenger, service and emergency vehicles through the site.
- (1) Nonresidential projects will provide a clear route for delivery vehicles with appropriate geometric design to allow turning and backing for WB-40 vehicles.
 - (2) Clear routes of access will be provided and maintained for emergency vehicles to all portions of the site and will be posted with appropriate signage.
 - (3) The layout and design of parking areas will provide for safe and convenient circulation of vehicles throughout the lot and will prohibit vehicles from backing out onto a street.
 - (4) All streets will be designed to harmonize with the topographic and natural features of the site. The road network will provide for vehicular and pedestrian safety, all season emergency access, snow storage and delivery and collection services.
 - a. Residential streets will be curved whenever practicable to the extent necessary to avoid conformity of lot appearance.
 - b. Culs-de-sac and loop streets are encouraged so that through traffic on residential streets is minimized. Similarly, to the extent practicable, driveway access to collector or arterial streets will be minimized to facilitate the free flow of traffic and avoid traffic hazards.
 - c. Streets will be designed to provide for proper continuation of streets from adjacent development and for proper projection of streets into adjacent unsubdivided and open land. Where the developer owns substantial contiguous land that is not part of the proposed development, the planning board may require a conceptual layout of streets to serve the contiguous land. This layout will not be binding, but shall provide an indication of how the contiguous area can be served in relation to the proposed development.
 - d. Wherever existing or planned streets, topographical features, and public safety permit, streets will run in east-west directions, and lots on a north-south axis, to maximize access to direct sunlight for solar energy systems. The character, extent, width, and grade of all streets will be considered in their relation to existing or planned streets.
 - (5) Where a development borders an existing narrow road (below standards set in this Code for public streets) or when the comprehensive plan indicates plans for realignment or widening of a road that would require use of some of the land in the development, the applicant shall be required to show areas for widening or realigning such roads on the plan, marked "Reserved for Road Realignment (or Widening) Purposes." It shall be

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mandatory to indicate such reservation on the plan when a proposed widening or realignment is shown on the official map. Land reserved for such purposes may not be counted in satisfying setback or yard or area requirements of the zoning districts.

- (6) Where a development abuts or contains an existing or proposed arterial street, the board may require marginal access streets (street parallel to arterial street providing access to adjacent lots), reverse frontage lots (that is, frontage on a street other than the existing or proposed arterial street) with screen planting contained in a nonaccess reservation along the rear property line, or such other treatment(s) as may be necessary for adequate protection of residential properties and to afford separation of through and local traffic.
- (e) *Pedestrian circulation.* The development plan will provide for a system of pedestrian circulation within the development. This system will connect with existing sidewalks if they exist in the vicinity of the project. The pedestrian network may be located either in the street right-of-way or outside of the right-of-way in open space or recreation areas. The system will be designed to link residential units with recreational and commercial facilities, other common facilities, school bus stops and existing sidewalks in the neighborhood. Sidewalks shall meet the standards identified in the City of Lewiston's Policy for the Design and Construction of Streets and Sidewalks.
- (f) Stormwater management. Adequate provisions shall be made for the disposal of all stormwater collected on streets, parking areas, roofs or other impervious surfaces through a stormwater drainage system which will not have adverse impacts on abutting or downstream properties. All projects disturbing less than one acre shall be designed to meet the requirements of this subsection 4(f). All projects including one acre or more of disturbed land shall meet the requirements of this subsection 4(f) and the requirements of the Site Location of Development Law, 38 MRSA, 481--490, the Maine Stormwater Management Law, 38 M.R.S.A. Section 420-D, and regulations promulgated there under, specifically Rules 500 and 502, having an effective date of December 31, 1997, repealed and replaced on November 16, 2005, and further amended on December 21, 2006.
- (1) To the extent possible, the plan will dispose of stormwater on the land at the site of development, and do so through the wise use of the natural features of the site. Stormwater runoff systems will infiltrate, detain or retain water falling on the site such that the rate of flow from the site does not exceed that which would occur in the undeveloped state for a storm of intensity equal to at least a 25-year storm, with a duration equal to the time of concentration. The stormwater quantity calculations must be in accordance with acceptable engineering practice. Acceptable stormwater methodologies and models include but are not limited to TR-20-Computer Program for Project Formulation--Hydrology, Second Edition, U.S. Department of Agriculture, Soil Conservation Service (May 1983); TR-55-Urban Hydrology for Small Watersheds, Second Edition, U.S. Department of Agriculture, Soil Conservation Service (June 1986); TR-55 Microcomputer Program, Version 2.0, (January 15, 1990); and HEC-1 Flood Hydrology Package, U.S. Army Corps of Engineers. Any methodology other than those listed must have prior approval from the city. Use of the 25-year, 24-hour storm as a design standard in this chapter is not intended to prohibit appropriate use of the rational method. The outlet structures of each detention basin must be designed to control 24-hour storms of 2-, 10-, and 25-year frequencies. Each detention basin must be constructed with

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an emergency spillway designed to independently convey the unrouted runoff from a 25-year, 24-hour storm event.

At his discretion, the director of public services may waive the above requirements, based on a finding that a particular site will have no significant runoff. Additionally, a waiver from these standards may be granted by the City of Lewiston in the cases specifically identified below:

- a. *Discharge to the Androscoggin River.* A project conveys stormwater exclusively in a manmade piped or open drainage system directly into the Androscoggin River. Areas of the project or adjoining properties to be flooded during the 2-, 10-, and 25-year, 24-hour storms must be identified and easements secured, if necessary. A project that changes the flow-type (example: sheet to shallow concentrated), changes the flow channel, or increases the stormwater discharge must secure easements on the intervening property that meet the easement and covenant requirements following in this section. The discharge may not result in erosion of any upland or freshwater wetlands. The City of Lewiston may allow a waiver if they determine that the increase in peak flow from the site will not significantly affect the peak flow of the receiving waters or result in unreasonable adverse impact on the river.
 - b. Public stormwater system. A project discharges its stormwater flow into the City of Lewiston Stormwater System, when the applicant has adequately demonstrated to the public services department of the city that it has the capacity to accommodate increases in flow. The city may allow an insignificant increase in the peak flow from the site or in the peak flow of the receiving waters, if they determine that the increase cannot be avoided by reasonable changes in project design or density and does not significantly impact abutters or city property.
- (2) If the outflow volume is greater than that for the undeveloped site, the developer will demonstrate that downstream channel or system capacity is sufficient to carry the flow without adverse effects, or will be responsible for the improvements to provide the required increase in capacity.
 - (3) All natural drainage ways will be preserved at their natural gradients and will not be filled or converted to a closed system except as approved by the planning board and appropriate state agencies.
 - (4) The design of stormwater drainage systems will insure the acceptance and disposal of stormwater runoff based on quantities calculated per subsection 4(f)(1) above, without damage to streets, adjacent properties or downstream properties.
 - (5) The design of the storm drainage systems will be fully cognizant of upstream runoff which must pass over or through the site to be developed. The system will be designed to pass upstream flows, based on quantities calculated per [subsection] 4(f)(1) above, from the land, as fully developed, without surcharging the system.
 - (6) The maximum length for carrying open stormwater in a street gutter prior to intake at a catch basin will be three hundred feet. No stormwater will be permitted to drain on the surface across a street or across an intersection.
 - (7) The storm drainage system to serve a proposed development will be designed and installed in accordance with the plans and specifications prepared by a professional engineer.
 - (8) The developer will maintain and inspect all components of the stormwater runoff system unless the system is formally accepted by the city, or is placed under the jurisdiction of a

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legally created property owners association whose charter and powers require maintenance of the system, with adequate financing to carry out this responsibility. Any approved plans must include a statement as to who will be responsible for said maintenance and inspections. The components of the stormwater run-off system shall include, but not be limited to, detention ponds, level spreaders, inlet and outlet protection and the piping unless the piping is under an accepted city street. For piping under accepted city streets, at the time of street acceptance, the piping shall become the property and maintenance responsibility of the city. An easement shall be provided to the city for the maintenance of this piping. In addition, a separate access easement for all other stormwater runoff components shall be provided to the city for emergency purposes.

- (9) The biological and chemical properties of the receiving waters will not be degraded by the stormwater runoff from the development site. The use of oil and grease traps in manholes, the use of on-site vegetated waterways, and the reduction in use of deicing salts and fertilizers may be required, especially where the development stormwater discharges into a gravel aquifer area or other water supply source.
- (10) The filling of wetlands on-site will be conducted only in accordance with applicable federal and state law and regulations, including the Natural Resources Protection Act.

(g) *Erosion control.* For all projects, building and site designs and street layouts will fit and utilize existing topography and desirable natural surroundings to the fullest extent possible. Filling, excavation and earth moving activity will be kept to a minimum. Parking lots on sloped areas will be terraced to avoid undue cuts and fills, and the need for retaining walls. Natural vegetation will be preserved and protected wherever possible. Erosion and sedimentation control measures shall comply with the Maine Erosion and Sedimentation Law, 38 M.R.S.A. § 420-C, and regulations promulgated thereunder, as amended, both during construction and continuously after construction is complete. In addition, erosion and sedimentation measures consistent with the Maine Erosion and Sedimentation Control BMPs, Pub. No. DEPLW0588, published by the Maine Department of Environmental Protection (March 2003) shall be implemented.

- (1) Storage of fill materials within 50 feet of the banks of any stream, intermittent or perennial or water body will not be allowed.
- (2) The top of a cut or the bottom of a fill will not be closer than ten feet from a property line.
- (3) Removal of topsoil from any lot will not be allowed, except for that removed from areas to be occupied by buildings, paving or other surfaces that will not be revegetated, or unless in conformance with the performance standards for earth material removal set forth in article XII of this Code.

(h) *Water supply.* The development will be provided with a system of water supply that provides each use with an adequate supply of water meeting the standards of the State of Maine for drinking water. A water system shall be designed and constructed in accordance with the City of Lewiston's Policy for the Design and Construction of Streets and Sidewalks. Developments and projects that will be provided by private water supplies shall demonstrate sufficient water is available for the reasonably foreseeable needs of the development or project.

(i) *Sewage disposal.* A sanitary sewer system will be installed at the expense of the developer, or, if in the opinion of the planning board, service by a sanitary sewer system is not

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feasible, the board may allow individual underground waste disposal systems to be used. A sewer system shall be designed and constructed in accordance with the City of Lewiston's Policy for the Design and Construction of Streets and Sidewalks.

- (j) *Utilities.* The development will be provided with electrical and telephone service adequate to meet the anticipated use of the project.
- (1) Each utility system has adequate capacity to service the proposed development.
 - (2) All overhead utility poles and lines will be located to minimize potential safety hazards and visual impact to the public. Similarly, transformer boxes, meters, pumping stations and other components of the utility system located above ground will be located so as not to be unsightly or hazardous to the public and will be landscaped or otherwise buffered so as to screen the components from public view.
- (k) *Natural features.* The landscape will be preserved in its natural state insofar as practical by minimizing tree removal, disturbance and compaction of soil and by retaining existing vegetation insofar as practical during construction.
- (1) Extensive grading and filling will be avoided as far as possible.
 - (2) Cutting of trees on the northerly borders of the development will be avoided to the extent possible to retain a natural wind buffer.
 - (3) The planning board or staff review committee may require a shadow study if it believes the proposed development may interfere with the solar access of adjacent properties.
 - (4) If there has been excessive natural vegetation removal from the site since the adoption of the current zoning and land use code prior to the submittal of an application for development review, the planning board or staff review committee may require a regeneration plan to be submitted by a registered forester and to be implemented to revegetate that portion of the site not directly impacted by the proposed development. For the purposes of this section, excessive is defined as the removal of more than 60 percent of trees from a property, either in number of stems or area of tree cover, in any ten-year period.
- (l) *Groundwater protection.* The proposed site development and use will not adversely impact either the quality or quantity of groundwater available to abutting properties or public water supply systems. Projects involving common on-site water supply or sewage disposal systems with a capacity of 2,000 gallons per day or greater have demonstrated that the groundwater at the property line will comply, following development, with the standards for safe drinking water as established by the State of Maine.
- (m) *Water and air pollution.* The proposed development will not result in undue water or air pollution.
- (n) *Exterior lighting.* The proposed development will provide for adequate exterior lighting to provide for the safe use of the development in nighttime hours.
- (1) All exterior lighting will be designed and shielded to avoid undue adverse impact on neighboring properties and rights-of-way.
 - (2) Lighting will be provided, at a minimum, in the following areas:

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- a. Entrances to facilities and recreation areas;
 - b. Street intersections;
 - c. Pedestrian crossings; and
 - d. Entrance roads.
- (o) Waste disposal. The proposed development will provide for adequate disposal of solid wastes and hazardous wastes.
- (1) All solid waste will be disposed of at a licensed disposal facility having adequate capacity to accept the project's wastes.
 - (2) All hazardous wastes will be disposed of at a licensed hazardous waste disposal facility and evidence of a contractual arrangement with the facility has been submitted.
- (p) Lot layout.
- (q) Landscaping. The development plan will provide for landscaping to define street edges, break up parking areas, soften the appearance of the development and protect abutting properties from adverse impacts of the development.
- (1) The landscaping plan will comply with the guidelines contained in the City of Lewiston's Site Plan Review and Design Guidelines as amended.
- (r) Shoreland relationship. The development will not adversely affect the water quality or shoreline of any adjacent water body. The development plan will provide for access to abutting navigable water bodies for the use of residents of the development.
- (s) Open space. The development plan will provide for recreation areas and open space to meet the needs of residents and users of the development.
- (1) For projects involving the construction of ten or more new residential dwelling units, a portion of the site shall be set aside as permanent open space or recreational land.
 - (2) The size of the area to be set aside for open space shall be based upon the following:
 - a. Dwelling units exclusively for occupancy by persons 55 years or older--None.
 - b. Dwelling units with less than two rooms designed or used for sleeping--Three hundred fifty square feet per dwelling unit.
 - c. Dwelling units with two rooms designed or used for sleeping--Seven hundred square feet per dwelling unit.
 - d. Dwelling units with three or more rooms designed or used for sleeping--One thousand square feet per dwelling unit.
 - e. For mobile home parks, the size of the area to be set aside shall be no less than ten percent of the combined area of the individual lots within the mobile home park.
 - (3) No portion of the site used to meet the minimum lot size or minimum lot area per dwelling unit requirements shall be used toward meeting this requirement. This shall include the required open space in a clustered residential development.
 - (4) The area to be set aside for open space shall be shown on the development plan and marked "Reserved for Recreation and/or Conservation Purposes".
 - (5) The open space provided to meet this requirement shall be owned and managed by one of the following methods:

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- a. Continued ownership by the project owner for developments involving rental housing, mobile home parks and similar situations where the development remains under single ownership; or
 - b. Ownership by a condominium or lot owners association for developments involving the creation of separate lots, condominiums or other situations where the development is owned by a number of entities; or
 - c. Dedication of the land to the City of Lewiston as public park land; or
 - d. Transfer, with permanent restrictions, to a land trust or other recognized conservation organization.
- (6) The planning board shall approve the arrangements for the ownership, control and maintenance of the open space as part of the approval of the final plan. No changes in the ownership or management of the open space shall be made without planning board approval. The arrangements for the ownership and management, if the open space is not to be dedicated to the city, shall provide for at least the following:
- a. That the area shall be permanently maintained as open space.
 - b. That there shall be no transfer of the open space separately from the remainder of the development without approval of the planning board.
 - c. That there shall be no division of the property.
 - d. That no structures or buildings other than those shown on the approved plan shall be erected in the open space.
 - e. That any agricultural or forestry activity be carried out in accordance with an approved plan of action.
- (7) The land designated as open space shall meet the following requirements:
- a. The site shall have pedestrian access from a public street or private road and shall be of such size, shape, and topography as to be usable for open space or recreation purposes, with at least 50 percent of the land to be suitable to be used for active recreation, including, but not limited to, softball fields, swimming pools, tennis courts, bicycle paths, tot lots and hard surface court games.
 - b. Parcels which can be combined with existing city-owned property, dedicated open space on adjacent parcels, or with possible future land dedications shall be given priority.
 - c. The land will be maintained in a usable condition and retained in a natural state to the maximum extent practicable. All clearing, grading and material placement or removal shall be carried out in accordance with the approved landscape plan and under the supervision of the city engineer and code enforcement officials.
- (t) Technical and financial capacity. The applicant has demonstrated that he has the financial and technical capacity to carry out the project in accordance with this Code and the approved plan.
- (1) The applicant has submitted evidence from a financial institution or other source of project funding that demonstrates that adequate resources are available to complete the project in accordance with the approved plans.
- (u) Buffering. The development will provide for the buffering of adjacent uses where there is a transition from one type of use to another use and to screen service and storage areas. The buffer areas required by the district regulations will be improved and maintained in accordance with the standards set forth in the City of Lewiston's Site Plan Review and Design Guidelines.

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(v) Compliance with district regulations. The applicant has established that the development will be consistent with the district regulations of article XI.

(w) Design consistent with performance standards. The applicant has so designed the development as to make it probable that the development and its use will comply with performance standards of article XII, insofar as they maybe applicable.

(Ord. No. 89-3, 4-7-89; Ord. No. 90-10, 10-4-90; Ord. No. 92-12, 6-4-92; Ord. No. 92-18, 9-10-92; Ord. No. 99-11, 5-20-99; Ord. No. 99-15, 8-12-99; Ord. No. 00-5, 5-4-00; Ord. No. 01-23, 2-7-02; Ord. No. 05-21, 1-19-06; Ord. No. 06-17, 2-8-07; Ord. No. 07-02, 3-22-07; Ord. No. 08-08, 10-2-08)

Sec. 5. Coordination with state subdivision law.

To the extent that the following standards are not contained in article XIII, section 4, said standards shall be applicable to the review and approval of subdivisions:

- (1) Will not result in undue water or air pollution. In making this determination, it shall at least consider: the elevation of land above sea level and its relation to the floodplains; the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for disposal of effluents; and the applicable state and local health and water resources regulations.
- (2) Has sufficient water available for the reasonably foreseeable needs of the subdivision.
- (3) Will not cause an unreasonable burden on an existing water supply, if one is to be utilized.
- (4) Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.
- (5) Will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highways or public roads, existing or proposed.
- (6) Will provide for adequate sewage waste disposal.
- (7) Will not cause an unreasonable burden on the ability of a municipality to dispose of solid waste and sewage, if municipal services are to be utilized.
- (8) Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.
- (9) Is in conformance with this Code and the city's comprehensive plan.
- (10) The subdivider has adequate financial and technical capacity to meet the above stated standards.
- (11) Whenever situated, in whole or in part, within 250 feet of any pond, lake, river or tidal waters, will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.
- (12) Will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.
- (13) The subdivider will determine, based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area the subdivider will determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision plan shall include a condition of plat approval requiring that principal structures on lots in the subdivision shall be constructed

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with their lowest floor, including the basement, at least one foot above the 100-year flood elevation.

- (14) Will not interfere unreasonably with the solar access of existing buildings or adjacent parcels.

Sec. 6. Design guidelines.

The planning board shall adopt, on the recommendation of the planning director, site plan review and design guidelines. Said guidelines shall be advisory in nature. Applicants for development review are encouraged to consider and incorporate said guidelines in the preparation of applications. The planning board and staff review committee shall consider said guidelines in evaluating appropriate design solutions to specific situations.

Sec. 7. Additional standards for single-family cluster developments.

(a) Single-family clustered development is a form of housing development which allows a developer to create smaller lots than would otherwise be required by the applicable zoning district regulations in return for setting aside the balance of the tract as permanent open space. The density of the development shall remain the same as if the site were developed as a conventional subdivision in full compliance with the zoning district standard which would otherwise be applicable.

(b) Notwithstanding other provisions of this Code, the planning board in reviewing and approving proposed single-family clustered developments may modify provisions relating to space and bulk to permit innovative approaches to housing and environmental design in accordance with the following standards. The purpose of this section shall be to encourage housing development that will result in:

- (1) Open space and recreation areas;
- (2) Variety and choice of housing;
- (3) A pattern of development in harmony with the natural features of the land;
- (4) Efficient use of the land, with small networks of utilities and streets.

(c) In addition to the criteria set forth in article XIII, section 4, applications for single-family clustered developments shall meet the following standards:

- (1) Each lot will be an element of an overall creative plan for site development. The road and lot layout shall discourage through traffic and provide for pedestrian access to the common open space.
- (2) No single-family clustered development will exceed the allowable residential density (minimum net lot area per dwelling unit) otherwise permitted in the district in which it is located.
- (3) The development will contain a minimum of five lots.
- (4) Individual lot sizes may be reduced to 50 percent of that required by the district requirements, but no lot may be reduced below 5,000 square feet.
- (5) Each individual lot will have at least 50 feet of frontage on a road approved by the planning board.

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- (6) Front yard and front setbacks for individual lots will not be reduced to less than 50 percent; parking for not more than one vehicle may take place in the area between the front wall of the building or structure closest to the street, and running the full width of the building, and the reduced front yard area.
- (7) Side yard and side setbacks on one side of an individual lot may be reduced to five feet provided that the minimum fire separation distance required by the International Building Code, as amended, is maintained between adjacent structures;
- (8) The common open space will meet the following requirements:
 - a. To the extent that any proposed lots in a cluster development have a lot area less than would otherwise be required for other than a cluster development, the difference between the aggregate lot area of said proposed lots and the aggregate required lot area of said lots for other than a cluster development shall be added to the minimum size requirements otherwise imposed for common open space and the total shall constitute the minimum area required for common open space in a single-family cluster development. Said common open space shall be used to preserve natural features, protect wildlife cover and to provide outdoor recreation areas. The open space shall be located to be easily accessible to all lots in the development and the shape and location of the open space will be such that it is readily usable for its intended purpose and enhances the overall quality of the development.
 - b. The common open space will be accessible to the residents of the development, and will be used to preserve natural features, protect wildlife cover, outdoor recreation and for outdoor living purposes.
 - c. The formation and incorporation by the developer of a homeowner's association will be a condition of the approval, with evidence of its accomplishment submitted to the planning board prior to final plan approval. Covenants for mandatory membership in the association will be included in the deed for each lot or unit. The association will have the responsibility of maintaining private roads and utilities, the common open space and other private facilities dedicated to the use in common by the development's residents. Cluster developments utilizing side and front setback reduction provisions must incorporate into their covenants the areas where reductions may take place.
 - d. The open space will be distributed to be easily accessible to all lots in the development.
 - e. The shape and location of the open space will be such that it is easily used for its intended purpose and enhances the overall quality of the development.
- (9) Where possible, building sites will be oriented with consideration for scenic vistas, natural landscape features, topography and potential solar access.
- (10) Development proposals will include a landscape plan encompassing the treatment of roads, paths, service and parking areas, open space, buffers from surrounding uses, areas where side and front setback reductions may take place, and shall detail the way in which important natural features are to be preserved and any alterations to, or improvements to be located in, the common open space.
- (11) Lots within cluster developments that gain their frontage along extensions of existing streets may only have their frontage, front setbacks and individual lot size reduced by a maximum of 25 percent of that required by the district, and only if the planning board

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finds that the proposed street extension utilizes appropriate design techniques, as set forth in the city's site plan review and design guidelines, that provide an orderly transition from established single-family neighborhoods into the cluster development. Lots proposed along existing, accepted city streets cannot utilize cluster provisions to modify space and bulk standards required by the district.

- (12) Roads that are to remain private within the development must meet the standards contained in the City of Lewiston's Policy for the Design and Construction of Streets and Sidewalks.

(Ord. No. 90-10, 10-4-90; Ord. No. 06-17, 2-8-07; Ord. No. 07-02, 3-22-07)

Sec. 8. Additional standards for multi-unit residential development.

In addition to the criteria set forth in article XIII, section 4, applications for:

- (1) Mixed single-family residential developments;
- (2) Mixed residential developments;
- (3) Planned residential developments; or
- (4) Developments in which two or more principal residential structures are placed on one lot.

shall meet the following additional standards:

- (1) *Relationship of residences and open spaces.* The dwelling units and other improvements will be located so that each unit has access to the open space and/or recreational facilities. The open space should be located to enhance the living environment of each unit in the development.
- (2) *Buffering.* The plan for development will provide for the buffering of adjacent properties. To this end, no building, structure or other facility shall be located within any required yard area. Within this yard area, a combination of landscaping, natural vegetation, fencing and grading shall be used to minimize the impact on abutting property owners. No parking, roads or service facilities will be located in this buffer strip.
- (3) *Recreation facilities.* An area equal to 500 square feet per dwelling unit will be set aside as recreation areas and will be developed with recreational facilities suitable for the anticipated occupants of the development.
- (4) *Private outdoor space.* The design of the development will provide each dwelling unit with a private, outdoor space immediately adjacent to the unit where the architectural style of the buildings makes this possible.
- (5) *Storage.* Each dwelling unit will have access to and use of a minimum of 400 cubic feet of private, lockable storage space either within the individual dwelling unit or in common storage facilities.
The development plan will also make provisions for the safe storage of such items as recreational vehicles and boats for dwellings other than detached single-family homes. These storage areas will be screened and landscaped.
- (6) *Open space.* At least 25 percent of the total lot area will be set aside as open space. Areas of the site with significant development constraints or outstanding natural features will be included in the open space. If the site contains soils which are identified as prime farmland soils, consideration should be given to including these areas in the open space. This land, in whole or in part, may be controlled by one or more of the following methods:

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- a. Ownership by the owner of the development;
- b. Joint ownership by the owners of units within the project;
- c. Joint ownership by the owners of the units within the project with a conservation easement granted to the city or recognized conservation organization;
- d. Dedication to the city as public open space land;
- e. Transfer, with permanent restrictions, to a land trust or other recognized conservation organization;
- f. Transfer, with permanent restrictions, to a farmer for use as agricultural land.

The planning board shall approve the arrangements for the ownership, control and maintenance of the open space as part of the approval of the final plan. No changes in the management of the open space shall be made without planning board approval.

The arrangements for the ownership and management of the open space will provide for, at least the following:

- a. That the area shall be permanently maintained as open space.
- b. That there shall be no transfer of the open space separately from the remainder of the development without approval of the planning board.
- c. That there shall be no division of the property.
- d. That no structures or buildings other than those shown on the approved plan shall be erected in the open space.
- e. That any agricultural or forestry activity be carried out in accordance with an approved plan of action.

Sec. 9. Additional standards for mobile home parks.

In addition to the standards set forth in article XIII, section 4, applications for mobile home parks shall meet the following additional standards.

- (1) *Road and lot layout.*
 - a. The mobile home park will be designed so that each mobile home is placed on a defined lot having access from a road within the mobile home park. The roads and lots will be laid out to provide safe and convenient access to every mobile home lot. The lot layout will be designed so that the vehicular access to each lot is from the internal road system of the mobile home park and not from existing public streets.
 - b. Roads within a park shall be designed and constructed in accordance with the City of Lewiston's Policy for the Design and Construction of Streets and Sidewalks.
- (2) *Mobile home lot standards.* Each mobile home lot will have a minimum lot size of 5,000 square feet which will be arranged so that any unit placed on the lot shall be able to be located so that it is at least 15 feet from the front lot line and at least ten feet from each side or rear lot line. Each lot will have a minimum of 45 feet of frontage on the roadway.
- (3) *Trash facilities.* If house-to-house trash pickup is not provided within the park, suitable trash disposal facilities will be provided. These facilities shall be completely fenced and landscaped.
- (4) *Mobile home park cluster developments.*

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- a. Notwithstanding other provisions of the Code, the planning board in reviewing and approving mobile home parks, may modify provisions relating to space and bulk to permit innovative approaches to park design which are sensitive to the natural opportunities and constraints of the site, and that will result in:
 - 1. Open space and recreation areas;
 - 2. A pattern of development in harmony with the natural features of the land;
 - 3. Efficient use of the land, with small network of utilities and streets;
 - 4. Siting of units on lots to avoid monotony and sameness.
- b. In addition to the criteria set forth in article XIII, section 4 of this Code, applications for mobile home park cluster developments shall meet the following standards:
 - 1. Each lot will be an element of an overall creative plan for site development. The road and lot layout shall discourage through traffic and provide for pedestrian access to the common open space;
 - 2. No mobile home park development will exceed the allowable residential density based on a net lot area of 6,500 square feet per unit;
 - 3. Individual lot sizes will not be reduced to less than 4,000 square feet;
 - 4. Each lot will have at least 25 feet of frontage on a road approved by the planning board;
 - 5. Individual lot front setbacks will not be reduced to less than ten feet; parking in the front yard is permitted; carports of noncombustible materials are not subject to side setback requirements;
 - 6. Individual lot side setbacks on one side of the lot may be reduced to five feet provided that the minimum fire separation distance required by the International Residential Code, as amended, is maintained between adjacent structures; rear setbacks may be reduced to zero along rear lot lines adjacent to required buffers;
 - 7. To the extent that any proposed lots in a cluster development have a lot area less than would otherwise be required for other than a cluster development, the difference between the aggregate lot area of said proposed lots and the aggregate required lot area of said lots for other than a cluster development shall be added to the minimum size requirements otherwise imposed for common open space and the total shall constitute the minimum area required for common open space in a mobile home park cluster development. Said common open space shall be used to preserve natural features, protect wildlife cover and to provide outdoor recreation areas. The open space shall be located to be easily accessible to all lots in the development and the shape and location of the open space will be such that it is readily usable for its intended purpose and enhances the overall quality of the development;
 - 8. Where practicable, building sites will be oriented with consideration for scenic vistas, natural landscape features, topography and potential solar access;
 - 9. Development proposals will include a landscape plan encompassing the treatment of roads, paths, service and parking areas, open space, buffers from surrounding uses, and areas where side and front setback reductions may take place, and shall detail the way in which important natural

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features are to be preserved and any alterations to, or improvements to be located in, the common open space;

10. For mobile home parks utilizing side and front setback reduction provisions, the developer must submit park rules which specify that these reductions may take place and how maintenance of structures on lots where reductions take place shall be accomplished including necessary access easements on required buffer or other areas.

(Ord. No. 90-10, 10-4-90; Ord. No. 07-02, 3-22-07)

Sec. 10. Additional standards for private commercial or industrial subdivisions.

Lots within a private commercial or industrial development may gain their required frontage on private roads. In addition to the criteria set forth in Article XII, section 18 and Article XIII, section 4, applications for these developments shall meet the following additional standards:

- (1) The development will have a minimum lot size of five acres with a minimum of 200 feet of frontage upon an accepted public street.
- (2) Existing development patterns or existing natural features in the development area would reasonably preclude the construction of a road to public standards.
- (3) The formation and incorporation by the developer of a lot owners' association with evidence of its accomplishment submitted to the planning board prior to final plan approval. Covenants for mandatory membership in the association will be included in the deed for each lot. The association will have the responsibility of maintaining private infrastructure, including roads, sanitary and storm systems and water supply systems.
- (4) Existing buildings on proposed private roads may have their required front yard and setbacks from the private road reduced by the planning board to an extent necessary to accommodate the road within the development. The reductions, however, must not interfere with the convenient and safe use of the road right-of-way for all vehicles and pedestrians, and must be noted on the plans and be incorporated into the covenants of the development. Unless the necessary modifications or variances are obtained from the board of appeals, all other space and bulk standards required for the respective zoning district must be met by the existing structures, proposed lot and any proposed building or structure.

(Ord. No. 92-12, 6-4-92)

Sec. 11. Expiration of approval.

(a) Initiation of development within two years.

- (1) If development has not occurred as defined within the scope of this Code within two years, development review approval shall expire. The applicant may not begin construction or operation of the development until a new approval is granted. A statement to this effect must appear on all approved plans.
- (2) An extension of development review approval must be made within two years of the initial granting of approval. The applicant must state the reasons why the development was not begun within two years from the granting of the initial approval and the reasons why the applicant will be able to begin the activity

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within two years from the granting of an extension, if granted. Extensions of approval may include information submitted in the initial application by reference. Only one extension of the initial approval shall be allowed under these provisions.

(b) Reexamination after five years.

- (1) If the approved development is not completed within five years from the date of the granting of approval or extension of approval, said approval shall expire and the applicant shall reapply for a new approval. A statement to this effect must appear on all approved plans. The appropriate reviewing authority must reexamine its initial approval and may impose additional terms or conditions or prescribe other necessary corrective action to respond to significant changes in circumstances which may have occurred between the date of original approval and the date of expiration of that approval, including any extension thereto. Within the scope of this Code, these changes may include, but not be limited to zoning, stormwater, environment, and traffic regulations. The appropriate reviewing authority may waive requiring any additional terms or conditions or other necessary corrective actions for a particular development for which it is determined the changes to be insignificant.

(Ord. No. 90-5, 5-17-90; Ord. No. 93-3, 6-17-93; Ord. No. 10-12, 12-23-10)

Sec. 12. Performance guarantee.

(a) *Performance guarantee required.*

- (1) Prior to the release of the approved plan, the developer shall file a performance guarantee or conditional agreement with the director of planning covering the following improvements:
 - a. The construction of any streets which are eligible to be accepted by the city as public ways; and
 - b. The construction of any water supply or sewerage system other than individual on-site facilities; and
 - c. The construction of any drainage systems; and
 - d. The construction of erosion and sedimentation control measures or landscaping required to meet the standards of this Code; and
 - e. The construction of traffic improvements on or off the site necessary to meet the criteria of this article; and
 - f. The maintenance of the improvements listed above until the street and related improvements are accepted by the city.
- (2) The performance guarantee may be tendered in one of the following terms:
 - a. A certified check payable to the City of Lewiston;
 - b. A savings account passbook issued in the name of the City of Lewiston;
 - c. An irrevocable letter of credit from a financial institution acceptable to the planning board; or
 - d. A faithful performance bond running to the City of Lewiston and issued by a surety company licensed to do business in the State of Maine.

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- (3) The amount of the performance guarantee shall be 125 percent of the cost of furnishing, installing, connecting and completing in good working condition all of the street grading, paving, storm drainage, utilities, and other similar improvements, including maintenance until accepted by the city, as specified above. All guarantees shall be conditioned upon the completion of all such improvements within two years from the date of the approval of the plan, as recorded on the plan, with extensions to this deadline only as permitted by this Code. If a performance guarantee as described in subsection (1) above has been satisfactorily filed with the city, building permits may be issued for construction within the development prior to completion of required improvements, but prior to occupancy of a building or dwelling unit, the improvements serving that building or dwelling unit shall be in place and serviceable.

For all developments as to which a performance guarantee is required, the following statements shall appear on the approved plan:

- a. Although there is a performance guarantee as to public improvements, it may be inadequate, and there is no obligation on the city to complete the improvements;
 - b. There is no performance guarantee as to private improvements.
- (4) The conditional agreement shall be endorsed by the planning board on the plan, and shall provide that no lot or parcel of land may be conveyed, and that no permit may be issued by the division of code enforcement for any building or other permanent structure within the development until the completion of the street grading, paving, storm drainage, utilities and other similar improvements as specified in the plan; and the acceptance of any public improvements by the city. The agreement shall be conditioned upon the completion of all such improvements within two years from the date of the approval of the plan, as recorded on the plan, with extensions of this deadline only as permitted below.
- (5) An extension of the deadline in a performance guarantee or conditional agreement may only be granted by the body which approved the plan for good cause shown and the extension request must be made at least 60 days prior to the time of expiration.
- (b) *Inspection of required improvements.*
- (1) Completion of required improvements shall be determined by the planning board to its satisfaction, which shall receive written and signed certifications by the city engineer that all improvements assured by the performance guarantee or conditional agreement have been constructed in accordance with the plan and all applicable codes and ordinances. Before construction of the required improvements begins, the developer shall provide the city engineer with adequate written notice and a proposed schedule of construction.
- (c) *Release of guarantee.* The performance guarantee shall be released by the planning board upon the request of the developer only after:
- (1) The board receives the certifications of completion required in subsection (b)(1) above.
 - (2) The developer has furnished the city with an accurate record plan and profile (which may be the original reproducible drawing with corrections, provided the city has been provided with a print of the unaltered original as approved by the planning board) of all

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streets, including drainage lines and appurtenances, sanitary sewerage lines and appurtenances, water mains and appurtenances and all other utilities as actually installed, with sufficient ties for proper identification.

- (3) The developer has presented to the city council a petition for the laying out and acceptance as a city street, of the dedicated public streets in the development or portion thereof for which release of the performance guarantee is sought, together with a warranty deed for the street right-of-way, free and clear of all encumbrances and providing marketable title in accordance with the Maine Title Standards.

(Ord. No. 90-5, 5-17-90)

Sec. 13. Independent professional review.

The planning board may require the owner or his authorized agent to carry out an independent professional review of the development for a major development or any aspect thereof which, due to the size or nature of the project, the board determines is necessary to generate facts sufficient to warrant a finding that certain applicable criteria have been met.

(Ord. No. 92-12, 6-4-92)

Sec. 14. Reserved.

Sec. 15. Post-construction stormwater management standards

In addition to the criteria set forth in article XIII, section 4, applications for new development and redevelopment as defined below, shall meet the following additional standards of this section.

(a) *Purpose.* The purpose of the Post-construction stormwater management standards is to provide for the health, safety, and general welfare of the citizens of the City of Lewiston through monitoring and enforcement of with post-construction stormwater management plans in order to comply with minimum control measure requirements of the federal Clean Water Act, of federal regulations, and of Maine’s General Permit for Small Municipal Separate Storm Sewer Systems.

(b) *Objectives.* These standards seek to ensure that post-construction stormwater management plans are followed, and stormwater management facilities are properly maintained and pose no threat to public safety.

(c) *Definitions.*

For the purposes of this section, the terms listed below are defined as follows:

- (1) *Applicant* means a Person with requisite right, title or interest or an agent for such Person who has filed an application for New Development or Redevelopment that requires a Post-Construction Stormwater Management Plan under this Ordinance.
- (2) *Best Management Practices (“BMP”)* means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

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- (3) *Clean Water Act* means the federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*, also known as the “Clean Water Act”), and any subsequent amendments thereto.
- (4) *Construction Activity* means construction activity including one acre or more of Disturbed Area, or activity with less than one acre of total land area that is part of a subdivision, if the subdivision will ultimately disturb equal to or greater than one acre.
- (5) *Discharge* means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of Pollutants to “waters of the State.” “Direct discharge” or “point source” means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which Pollutants are or may be discharged.
- (6) *Disturbed Area* is surface area proposed for clearing, grading and excavation. Mere 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. “Routine maintenance” is maintenance performed to maintain the original line and grade, hydraulic capacity, and original purpose of land or improvements thereon.
- (7) *Enforcement Authority* means the Codes Enforcement Official, with the support of the City Engineer, who are both authorized by the Municipality to administer and enforce this Ordinance.
- (8) *Impervious Area* means the total area of the Premises that consists of buildings and associated constructed facilities or areas that will be covered with a low-permeability material, such as asphalt or concrete, and areas such as gravel roads and unpaved areas that will be compacted through design or use to reduce their permeability.
- (9) *Municipality* means the City of Lewiston.
- (10) *Municipal Permitting Authority* means the municipal official or body that has jurisdiction over the land use approval or permit required for a New Development or Redevelopment.
- (11) *Municipal Separate Storm Sewer System* or *MS4* means conveyances for storm water, including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains (other than publicly owned treatment works) owned or operated by any municipality, sewer or sewage district, fire district, State agency or Federal agency or other public entity that discharges directly to surface waters of the State.
- (12) *National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit* means a permit issued by the U.S. Environmental Protection Agency (“EPA”) or by the Maine Department of Environmental Protection (“DEP”) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.
- (13) *New Development* means any Construction Activity on unimproved Premises.
- (14) *Person* means any individual, firm, corporation, municipality, quasi-municipal corporation, State agency or Federal agency or other legal entity.

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- (15) *Pollutant* means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.
- (16) *Post-Construction Stormwater Management Plan* means BMPs and associated inspection and maintenance procedures for the Stormwater Management Facilities employed by a New Development or Redevelopment to meet the stormwater standards of the Municipality’s subdivision, site plan, or other zoning, planning or other land use ordinances, and approved by the Municipal Permitting Authority.
- (17) *Premises* means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within the Urbanized Area in Lewiston.
- (18) *Qualified Post Construction Third-Party Inspector* means a person who conducts post-construction Stormwater Management Facilities inspections and meets the following qualifications:
- a. Have a practical knowledge of stormwater hydrology and stormwater management techniques, including the maintenance requirements for Stormwater Management Facilities, and
 - b. Have the ability to determine if stormwater facilities are performing as intended.
 - c. Have had training and / or is certified in the inspection of Stormwater Management Facilities.
- (19) *Redevelopment* means Construction Activity on Premises already improved with buildings, structures or activities or uses, but does not include such activities as exterior remodeling.
- (20) *Regulated Small MS4* means any Small MS4 regulated by the State of Maine “General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems” effective July 1, 2008 (“General Permit”), including all those located partially or entirely within an Urbanized Area (UA) and those additional Small MS4s located outside a UA that as of the issuance of the General Permit have been designated by the DEP as Regulated Small MS4s.
- (21) *Small Municipal Separate Storm Sewer System, or Small MS4*, means any MS4 that is not already covered by the Phase I MS4 stormwater program including municipally owned or operated storm sewer systems, State or federally-owned systems, such as colleges, universities, prisons, Maine Department of Transportation and Maine Turnpike Authority road systems and facilities, and military bases and facilities.
- (22) *Storm Drainage System* means the Municipality’s Regulated Small MS4.

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- (23) *Stormwater* means any Stormwater runoff, snowmelt runoff, and surface runoff and drainage; “Stormwater” has the same meaning as “Storm Water.”
- (24) *Stormwater Management Facilities* means any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures that are part of the Post-Construction Stormwater Management Plan for a New Development or Redevelopment.
- (25) *Urbanized Area (“UA”)*. “Urbanized Area” or “UA” means the areas of the State of Maine so defined by the latest decennial census by the U.S. Bureau of the Census.

(d) *Applicability.*

- (1) *In General.* This Ordinance applies to all New Development and Redevelopment within the Municipality and to associated Stormwater Management Facilities located within the Urbanized Area.
- (2) *Exception.* This Ordinance does not apply to New Development or Redevelopment on a lot, tract or parcel where that lot, tract or parcel is part of a subdivision that is approved under this Ordinance; said lot, tract or parcel shall not require additional review under this Ordinance, but shall comply with the Post-Construction Stormwater Management Plan requirements for that approved subdivision.

(e) *Post-Construction Stormwater Management Plan Approval*

- (1) *General Requirement.* Notwithstanding any ordinance provision to the contrary, and except as provided in Section d(2) above, no Applicant for a building permit, subdivision approval, site plan approval or other zoning, planning or other land use approval for New Development or Redevelopment to which this Ordinance is applicable shall receive such permit or approval for that New Development or Redevelopment unless the Applicant also receives approval under the Municipality’s subdivision, site plan or other zoning, planning or other land use ordinances for its Post-Construction Stormwater Management Plan and Stormwater Management Facilities for that New Development or Redevelopment, even if the Municipality’s subdivision, site plan or other zoning, planning or other land use ordinances would not otherwise apply.
- (2) *Notice of BMP Discharge to Municipality’s MS4.* At the time of application for a building permit, subdivision approval, site plan approval or other zoning, planning or other land use approval for New Development or Redevelopment to which this Ordinance is applicable, the Applicant shall notify the Municipal Permitting Authority if its Post-Construction Stormwater Management Plan includes any BMP(s) that will discharge to the Municipality’s MS4 and shall include in this notification a listing of which BMP(s) will so discharge.
- (3) *Performance guarantee.*
 - a. No applicant for a building permit, subdivision approval, site plan approval or other zoning, planning or other land use approval for New Development or Redevelopment to which this Ordinance is applicable shall receive such permit or approval for that New Development or Redevelopment unless the Applicant

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provides a performance guarantee to the city’s satisfaction in accordance with one of following options:

Option 1: Documentation submitted by the Applicant to the Municipality that shall:

1. Reference the Applicant, its successors, heirs and assigns;
2. Note their legal obligation to operate, repair, maintain, and replace the Stormwater Management Facilities;
3. Acknowledge that the City of Lewiston shall have the ability to establish a special assessment, district, or other means upon the Applicant, its successors, heirs and assigns to ensure said resources are available;
4. Clearly state that the Applicant, its successors, heirs and assigns, or other responsible party shall properly maintain, repair, or replace Stormwater Management Facilities serving the development after the developer has legally relinquished that responsibility;
5. Provide an estimated cost of repair or replacing the Stormwater Management Facilities that are part of the Post-Construction Stormwater Management Plan for a New Development or Redevelopment;
6. Be recorded in the Androscoggin Registry of Deeds and be included in the deed for each lot.

Option 2: A certified check payable to the City of Lewiston;

Option 3: A savings account passbook issued in the name of the City of Lewiston;

Option 4: An irrevocable letter of credit from a financial institution; or

Option 5: A faithful performance bond running to the City of Lewiston and issued by a surety company licensed to do business in the State of Maine.

- b. Should a guarantee be submitted in accordance with Option 2, 3, 4 or 5 as noted in subsection above, the following additional criteria must be met:
 - i. Compliance with all the criteria referenced in Option 1.
 - ii. The guarantee must be for an amount not less than the estimated cost of replacing the Stormwater Management Facilities that are part of the Post-Construction Stormwater Management Plan for a New Development or Redevelopment.
 - iii. In event a bond or irrevocable letter of credit is provided, either must be renewed annually for an amount not less than the estimated cost of repair or replacing the Stormwater Management Facilities that are part of the Post-Construction Stormwater Management Plan for a New Development or Redevelopment.
 - iv. Evidence of said bond or irrevocable letter of credit must be provided in a manner acceptable to the City by May 31 of each year.

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- (1) *General Requirements.* Any Person owning, operating, leasing or having control over Stormwater Management Facilities required by a Post-Construction Stormwater Management Plan approved under the Municipality's subdivision, site plan or other zoning, planning or other land use ordinances shall demonstrate compliance with that Plan as follows.
 - a. A Qualified Post Construction Third-Party Inspector shall, at least annually, inspect the Stormwater Management Facilities, including but not limited to any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures, in accordance with all municipal and state inspection, cleaning and maintenance requirements of the approved Post-Construction Stormwater Management Plan.
 - b. If the Stormwater Management Facilities require maintenance to function as intended by the approved Post-Construction Stormwater Management Plan, that Person shall take corrective action(s) to address the deficiency or deficiencies.
 - c. A Qualified Post Construction Third-Party Inspector shall provide, on or by May 31 of each year, a completed and signed certification to the Enforcement Authority in a form identical to the City of Lewiston's Annual Stormwater Management Facilities Certification form, certifying that the Stormwater Management Facilities have been inspected, and that they are adequately maintained and functioning as intended by the approved Post-Construction Stormwater Management Plan, or that they require maintenance or repair, describing any required maintenance and any deficiencies found during inspection of the Stormwater Management Facilities and, if the Stormwater Management Facilities require maintenance or repair of deficiencies in order to function as intended by the approved Post-Construction Stormwater Management Plan, the Person shall provide a record of the required maintenance or deficiency and corrective action(s) taken.
- (2) *Right of Entry.* In order to determine compliance with this Ordinance and with the Post-Construction Stormwater Management Plan, the Enforcement Authority may enter upon property at reasonable hours to inspect the Stormwater Management Facilities.
- (3) *Annual Report.* Beginning July 1, 2009 and each year thereafter, the Municipality shall include the following in its Annual Report to the Maine Department of Environmental Protection:
 - a. The cumulative number of sites that have Stormwater Management Facilities discharging into their MS4;
 - b. A summary of the number of sites that have Stormwater Management Facilities discharging into their MS4 that were reported to the Municipality;
 - c. The number of sites with documented functioning Stormwater Management Facilities; and
 - d. The number of sites that required routine maintenance or remedial action to ensure that Stormwater Management Facilities are functioning as intended.

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(g) Enforcement.

It shall be unlawful for any Person to violate any provision of or to fail to comply with any of the requirements of this Ordinance or of the Post-Construction Stormwater Management Plan. Whenever the Enforcement Authority believes that a Person has violated this Ordinance or the Post-Construction Stormwater Management Plan, the Enforcement Authority may enforce this Ordinance in accordance with 30-A M.R.S.A. § 4452.

(1) *Notice of Violation.* In addition to the provisions contained in Appendix A, Article V of this Code, whenever the Enforcement Authority believes that a Person has violated this Ordinance or the Post-Construction Stormwater Management Plan, the Enforcement Authority may order compliance with this Ordinance or with the Post-Construction Stormwater Management Plan by written notice of violation to that Person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:

- a. The abatement of violations, and the cessation of practices, or operations in violation of this Ordinance or of the Post-Construction Stormwater Management Plan;
- b. At the Person's expense, compliance with BMPs is required as a condition of approval of the New Development or Redevelopment, including the repair of Stormwater Management Facilities and/or the restoration of any affected property; and/or
- c. The payment of fines, of the Municipality's remediation costs and of the Municipality's reasonable administrative costs and attorneys' fees and costs.

If abatement of a violation, compliance with BMPs, repair of Stormwater Management Facilities and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement, compliance, repair and/or restoration must be completed.

(h) Severability.

The provisions of this Ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this Ordinance.

(Ord. No. 09-07, 12-31-09)

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE XIV. FLOODPLAIN ADMINISTRATION AND MANAGEMENT*

*Editor's note: Retitled

Sec. 1. Applicability.

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

The City of Lewiston, Maine is a participating community in the National Flood Insurance Program, and agrees to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as delineated in this Floodplain Management Ordinance. It is the intent of the City of Lewiston, Maine to require the recognition and evaluation of flood hazards in all official actions relating to land use in the floodplain areas having special flood hazards.

The City of Lewiston has the legal authority to adopt land use and control measures to reduce future flood losses pursuant to Title 30-A M.R.S.A., §§ 3001--3007, 4352 and 4401--4407. The National Flood Insurance Program, established in the aforesaid Act, provides that areas of the City of Lewiston having a special flood hazard be identified by the Federal Emergency Management Agency and that floodplain management measures be applied in such flood hazard areas. This Ordinance establishes a flood hazard development permit system and review procedure for development activities in the designated flood hazard areas of the City of Lewiston, Maine.

The areas of special flood hazard, Zones A and A1-30, are identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study--City of Lewiston, Maine, Androscoggin County," dated March 1979 with accompanying "Flood Insurance Rate Map" dated September 28, 1979 and "Flood Boundary and Floodway Map" dated September 28, 1979, which are hereby adopted by reference and declared to be a part of this Article.
(Ord. No. 06-05, 4-20-06)

Sec. 2. Permit required.

Before any construction or other development, including the placement of manufactured homes, begins within any areas of special flood hazard established in Article XIV, Section 1, a flood hazard development permit shall be obtained from the code enforcement official. This permit shall be in addition to any other permits which may be required pursuant to the Code of Ordinances of the City of Lewiston, Maine.
(Ord. No. 06-05, 4-20-06)

Sec. 3. Application for permit.

The application for a flood hazard development permit shall be submitted to the planning and code enforcement office and shall include:

- (1) The name, address and phone number of the applicant, owner, and contractor;
- (2) An address and a map indicating the location of the construction site;

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- (3) A site plan showing location of existing and/or proposed development, including but not limited to structures, sewage disposal facilities, water supply facilities, areas to be cut and filled, and lot dimensions;
- (4) A statement of the intended use of the structure and/or development;
- (5) A statement of the cost of the development including all materials and labor;
- (6) A statement as to the type of sewage system proposed;
- (7) Specification of dimensions of the proposed structure and/or development;
- [Items (8)--(11)b. apply only to new construction and substantial improvements.]
- (8) The elevation in relation to the National Geodetic Vertical Datum (NGVD), or to a locally established datum in Zone A only, of the:
 - a. Base flood at the proposed site of all new or substantially improved structures, which is determined:
 1. In Zones A1-30, from data contained in the "Flood Insurance Study--City of Lewiston, Maine," as identified in Section 1; or
 2. In Zone A:
 - (a) From any base flood elevation data from federal, state, or other technical sources (such as FEMA's Quick-2 model, FEMA 265/July 1995), including information obtained pursuant to Section 6(k). and Section 8(d);
 - (b) From the contour elevation extrapolated from a best fit analysis of the floodplain boundary when overlaid onto a USGS quadrangle map or other topographic map prepared by a professional land surveyor or registered professional engineer, if the floodplain boundary has a significant correlation to the elevation contour line(s); or, in the absence of all other data,
 - (c) To be the elevation of the ground at the intersection of the floodplain boundary and a line perpendicular to the shoreline which passes along the ground through the site of the proposed building.
 - b. Highest and lowest grades at the site adjacent to the walls of the proposed building;
 - c. Lowest floor, including basement; and whether or not such structures contain a basement; and
 - d. Level, in the case of non-residential structures only, to which the structure will be floodproofed;
- (9) A description of an elevation reference point established on the site of all developments for which elevation standards apply as required in Section 6;
- (10) A written certification by a professional land surveyor, registered professional engineer or architect, that the base flood elevation and grade elevations shown on the application are accurate;
- (11) The following certifications as required in Section 6 by a registered professional engineer or architect:
 - a. A floodproofing certificate (FEMA Form 81-65, 08/99, as amended), to verify that the floodproofing methods for any non-residential structures will meet the

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- floodproofing criteria of Section 3(8)d; Section 6(g); and other applicable standards in Section 6;
- b. A hydraulic openings certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of Section 6(l)2;
 - c. A certified statement that bridges will meet the standards of Section 6(m);
 - d. A certified statement that containment walls will meet the standards of Section 6(n);
- (12) A description of the extent to which any water course will be altered or relocated as a result of the proposed development; and
- (13) A statement of construction plans describing in detail how each applicable development standard in Section 6 will be met.
- (Ord. No. 06-05, 4-20-06)

Sec. 4. Application fee and experts fees.

A fee may be charged if the code enforcement official and/or reviewing board needs the assistance of a professional engineer or other expert. The expert's fee shall be paid in full by the applicant within ten (10) days after the City of Lewiston submits a bill to the applicant. Failure to pay the bill shall constitute a violation of the ordinance and be grounds for the issuance of a stop work order. An expert shall not be hired by the city at the expense of an applicant until the applicant has either consented to such hiring in writing or been given an opportunity to be heard on the subject. An applicant who is dissatisfied with a decision to hire expert assistance may appeal that decision to the board of appeals.

(Ord. No. 06-05, 4-20-06)

Sec. 5. Review standards for flood hazard development permit applications.

The code enforcement official shall:

- (1) Review all applications for the flood hazard development permit to assure that proposed developments are reasonably safe from flooding and to determine that all pertinent requirements of Article XIV, Section 6, have been, or will be met;
- (2) Utilize, in the review of all flood hazard development permit applications:
 - a. The base flood data contained in the "Flood Insurance Study--City of Lewiston, Maine," as described in Article XIV, Section 1;
 - b. In special flood hazard areas where base flood elevation data are not provided, the code enforcement official shall obtain, review and reasonably utilize any base flood elevation and floodway data from federal, state, or other technical sources, including information obtained pursuant to Section 3(8)a.2.; Section 6(k); and Section 8(d), in order to administer Section 6 of this Article; and
 - c. When the community establishes a base flood elevation in a Zone A by methods outlined in Section 3(8)a.2, the community shall submit that data to the Maine Floodplain Management Program in the state planning office.
- (3) Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in Section 1 of this Article;
- (4) In the review of flood hazard development permit applications, determine that all necessary permits have been obtained from those federal, state, and local government agencies from which prior approval is required by federal or state law, including but not

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limited to Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1344;

- (5) Notify adjacent municipalities, the department of environmental protection, and the Maine Floodplain Management Program in the state planning office prior to any alteration or relocation of a water course and submit copies of such notifications to the Federal Emergency Management Agency;
- (6) If the application satisfies the requirements of this Article, approve the issuance of one (1) of the following flood hazard development permits based on the type of development:
 - a. A two-part flood hazard development permit for elevated structures. Part I shall authorize the applicant to build a structure to and including the first horizontal floor only above the base flood level. At that time the applicant shall provide the code enforcement official with an elevation certificate completed by a professional land surveyor, registered professional engineer or architect based on the Part I permit construction, "as built", for verifying compliance with the elevation requirements of Section 6(f), (g), or (h). Following review of the elevation certificate data, which shall take place within seven (7) days of receipt of the application, the code enforcement official shall issue Part II of the flood hazard development permit. Part II shall authorize the applicant to complete the construction project; or
 - b. A flood hazard development permit for floodproofing of non-residential structures that are new construction or substantially improved non-residential structures that are not being elevated but that meet the floodproofing standards of Section 6(g)1.a., b. and c. The application for this permit shall include a floodproofing certificate signed by a registered professional engineer or architect; or
 - c. A flood hazard development permit for minor improvement for all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than fifty (50) percent of the market value of the structure. Minor improvement also includes, but is not limited to: accessory structures as provided for in Section 6(j), mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves and piers.
- (7) Maintain, as a permanent record, copies of all flood hazard development permit applications, corresponding permits issued, and data relevant thereto, including reports of the board of appeals on variances granted under the provisions of Article IX, Section 3 of this Article, and copies of elevation certificates, floodproofing certificates, certificates of compliance and certifications of design standards required under the provisions of Section 3, 6 and 7 of this Article.

(Ord. No. 06-05, 4-20-06)

Sec. 6. Development standards.

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

- (a) *All development--All development shall:*

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- (1) Be designed or modified and adequately anchored to prevent flotation (excluding piers and docks), collapse or lateral movement of the development resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
 - (2) Use construction materials that are resistant to flood damage;
 - (3) Use construction methods and practices that will minimize flood damage; and
 - (4) Use electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during flooding conditions.
- (b) *Water supply.* All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.
- (c) *Sanitary sewage systems.* All new and replacement sanitary sewage systems shall be designed and located to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood waters.
- (d) *On-site waste disposal systems.* On site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during floods.
- (e) *Watercourse carrying capacity.* All development associated with altered or relocated portions of a watercourse shall be constructed and maintained in such a manner that no reduction occurs in the flood carrying capacity of the watercourse.
- (f) *Residential.* New construction or substantial improvement of any residential structure located within:
- (1) Zone A1-30 shall have the lowest floor (including basement) elevated to at least one (1) foot above the base flood elevation.
 - (2) Zone A shall have the lowest floor (including basement) elevated to at least one (1) foot above the base flood elevation utilizing information obtained pursuant to Section 3(8)a.2; Section 5.2; or Section 8(d).
- (g) *Non-residential.* New construction or substantial improvement of any non-residential structure located within:
- (1) Zone A1-30 shall have the lowest floor (including basement) elevated to at least one (1) foot above the base flood elevation, or together with attendant utility and sanitary facilities shall:
 - a. Be floodproofed to at least one (1) foot above the base flood elevation so that below that elevation the structure is watertight with walls substantially impermeable to the passage of water;
 - b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
 - c. Be certified by a registered professional engineer or architect that the floodproofing design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a flood hazard development permit, as required by Section 3(11) and shall include a record of the elevation above mean sea level to which the structure is floodproofed.
 - (2) Zone A shall have the lowest floor (including basement) elevated to at least one (1) foot above the base flood elevation utilizing information obtained pursuant to Section 3(8)a.2; Section 5.2; or Section 8(d)., or
 - a. Together with attendant utility and sanitary facilities meet the floodproofing standards of Section 6(g)1.

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- (h) *Manufactured homes.* New or substantially improved manufactured homes located within:
 - (1) Zone A1-30 shall:
 - a. Be elevated such that the lowest floor (including basement) of the manufactured home is at least one (1) foot above the base flood elevation;
 - b. Be on a permanent foundation, which may be poured masonry slab or foundation walls, with hydraulic openings, or may be reinforced piers or block supports, any of which support the manufactured home so that no weight is supported by its wheels and axles; and
 - c. Be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to:
 - 1. Over-the-top ties anchored to the ground at the four (4) corners of the manufactured home, plus two (2) additional ties per side at intermediate points (manufactured homes less than fifty (50) feet long require one (1) additional tie per side); or by
 - 2. Frame ties at each corner of the home, plus five (5) additional ties along each side at intermediate points (manufactured homes less than fifty (50) feet long require four (4) additional ties per side.
 - 3. All components of the anchoring system described in Section 6(h)1.c.(1) and (2) shall be capable of carrying a force of four thousand eight hundred (4,800) pounds.
 - (2) Zone A shall:
 - a. Be elevated on a permanent foundation, as described in Section 6(h).1.b., such that the lowest floor (including basement) of the manufactured home is at least one (1) foot above the base flood elevation utilizing information obtained pursuant to Section 3(h).1.b; Section 5.2; or Section 8.d; and
 - b. Meet the anchoring requirements of Section 6(h)1.c.
- (i) *Recreational vehicles.* Recreational vehicles located within:
 - (1) Zone A1-30 shall either:
 - a. Be on the site for fewer than one hundred eighty (180) consecutive days,
 - b. Be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
 - c. Be permitted in accordance with the elevation and anchoring requirements for "manufactured homes" in Section 6(h)1.
- (j) *Accessory structures.* Accessory structures, as defined in Article II, Section 2 of this Article, located within Zones A1-30 and A, shall be exempt from the elevation criteria required in Section 6(f) and (g). above, if all other requirements of Section 6 and all the following requirements are met. Accessory structures shall:
 - (1) Be five hundred (500) square feet or less and have a value less than three thousand dollars (\$3,000.00);
 - (2) Have unfinished interiors and not be used for human habitation;
 - (3) Have hydraulic openings, as specified in Section 6(1)2., in at least two (2) different walls of the accessory structure;
 - (4) Be located outside the floodway;

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- (5) When possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than is the primary structure; and
 - (6) Have only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and when possible outside the special flood hazard area.
- (k) *Floodways.*
- (1) In Zones A1-30 riverine areas, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted within a regulatory floodway which is designated on the community's "Flood Boundary and Floodway Map," unless a technical evaluation certified by a registered professional engineer is provided demonstrating that such encroachments will not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
 - (2) In Zones A1-30 and A riverine areas for which no regulatory floodway is designated, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted in the floodway as determined in Section 6(k)3. unless a technical evaluation certified by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development:
 - a. Will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community; and
 - b. Is consistent with the technical criteria contained in Chapter 5 entitled "Hydraulic Analyses," Flood Insurance Study--Guidelines and Specifications for Study Contractors, (FEMA 37, January 1995, as amended).
 - (3) In Zones A1-30 and A riverine areas for which no regulatory floodway is designated, the regulatory floodway is determined to be the channel of the river or other water course and the adjacent land areas to a distance of one-half (1/2) the width of the floodplain as measured from the normal high water mark to the upland limit of the floodplain.
- (l) *Enclosed areas below the lowest floor.* New construction or substantial improvement of any structure in Zones A1-30 and A that meets the development standards of Section 6, including the elevation requirements of Section 6(f), (g), or (h) and is elevated on posts, columns, piers, piles, "stilts," or crawlspaces may be enclosed below the base flood elevation requirements provided all the following criteria are met or exceeded:
- (1) Enclosed areas are not "basements" as defined in Section 8;
 - (2) Enclosed areas shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood water. Designs for meeting this requirement must either:
 - a. Be engineered and certified by a registered professional engineer or architect; or
 - b. Meet or exceed the following minimum criteria:
 - 1. A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of the enclosed area;
 - 2. The bottom of all openings shall be below the base flood elevation and no higher than one (1) foot above the lowest grade; and

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3. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the entry and exit of flood waters automatically without any external influence or control such as human intervention, including the use of electrical and other non-automatic mechanical means;
 - (3) The enclosed area shall not be used for human habitation; and
 - (4) The enclosed areas are usable solely for building access, parking of vehicles, or storage.
- (m) *Bridges.* New construction or substantial improvement of any bridge in Zones A1-30 and A shall be designed such that:
- (1) When possible, the lowest horizontal member (excluding the pilings, or columns) is elevated to at least one (1) foot above the base flood elevation; and
 - (2) A registered professional engineer shall certify that:
 - a. The structural design and methods of construction shall meet the elevation requirements of this section and the floodway standards of Section 6(k); and
 - b. The foundation and superstructure attached thereto are designed to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all structural components. Water loading values used shall be those associated with the base flood.
- (n) *Containment walls.* New construction or substantial improvement of any containment wall located within:
- (1) Zones A1-30 and A shall:
 - a. Have the containment wall elevated to at least one (1) foot above the base flood elevation;
 - b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
 - c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a flood hazard development permit, as required by Section 3(8).
- (o) *Wharves, piers and docks.* New construction or substantial improvement of wharves, piers, and docks are permitted in Zones A1-30 and A, in and over water and seaward of the mean high tide if the following requirements are met:
- (1) Wharves, piers, and docks shall comply with all applicable local, state, and federal regulations; and
 - (2) For commercial wharves, piers, and docks, a registered professional engineer shall develop or review the structural design, specifications, and plans for the construction.

(Ord. No. 06-05, 4-20-06)

Sec. 7. Certificate of compliance.

No land in a special flood hazard area shall be occupied or used and no structure which is constructed or substantially improved shall be occupied until a certificate of compliance is issued by the code enforcement official subject to the following provisions:

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- a. For New construction or substantial improvement of any elevated structure the applicant shall submit to the code enforcement official, an elevation certificate completed by a professional land surveyor, registered professional engineer, or architect, for compliance with Section 6(f), (g), or (h).
- b. The applicant shall submit written notification to the code enforcement official that the development is complete and complies with the provisions of this ordinance.
- c. Within ten (10) working days, the code enforcement official shall:
 1. Review the elevation certificate and the applicant's written notification; and
 2. Upon determination that the development conforms with the provisions of this ordinance, shall issue a certificate of compliance.

(Ord. No. 06-05, 4-20-06)

Sec. 8. Review of subdivisions and development proposals

The planning board shall, when reviewing subdivisions and other proposed developments that require review under other federal law, state law or local ordinances or regulations and all projects on five (5) or more disturbed acres, or in the case of manufactured home parks divided into two (2) or more lots, assure that:

- (a) All such proposals are consistent with the need to minimize flood damage.
- (b) All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damages.
- (c) Adequate drainage is provided so as to reduce exposure to flood hazards.
- (d) All proposals include base flood elevations, flood boundaries, and, in a riverine floodplain, floodway data. These determinations shall be based on engineering practices recognized by the Federal Emergency Management Agency.
- (e) Any proposed development plan must include a condition of plan approval requiring that structures on any lot in the development having any portion of its land within a special flood hazard area, are to be constructed in accordance with Section 6 of this Article. Such requirement will be included in any deed, lease, purchase and sale agreement, or document transferring or expressing an intent to transfer any interest in real estate or structure, including but not limited to a time-share interest. The condition shall clearly articulate that the municipality may enforce any violation of the construction requirement and that fact shall also be included in the deed or any other document previously described. The construction requirement shall also be clearly stated on any map, plat, or plan to be signed by the planning board or local reviewing authority as part of the approval process.

(Ord. No. 06-05, 4-20-06)

Sec. 9. Enforcement and penalties

- (a) It shall be the duty of the code enforcement official to enforce the provisions of this Article pursuant to Title 30-A M.R.S.A. § 4452.
- (b) The penalties contained in Title 30-A M.R.S.A. § 4452 shall apply to any violation of this Article.
- (c) In addition to any other actions, the code enforcement official, upon determination that a violation exists, shall submit a declaration to the Administrator of the Federal Insurance

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Administration requesting a denial of flood insurance. The valid declaration shall consist of:

- (1) The name of the property owner and address or legal description of the property sufficient to confirm its identity or location;
- (2) A clear and unequivocal declaration that the property is in violation of a cited state or local law, regulation, or ordinance;
- (3) A clear statement that the public body making the declaration has authority to do so and a citation to that authority;
- (4) Evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and
- (5) A clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

(Ord. No. 06-05, 4-20-06)

Sec. 10. Validity and severability.

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

(Ord. No. 06-05, 4-20-06)

Sec. 11. Conflict with other ordinances.

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

(Ord. No. 06-05, 4-20-06)

Sec. 12. Abrogation.

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

(Ord. No. 06-05, 4-20-06)

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Sec. 1. Statement of purpose and definitions.

- (a) The purpose of the article is to preserve, protect and enhance buildings and areas which represent or reflect distinctive and important elements of the city's architectural, archaeological, cultural, social, economic, ethnic and political history; to safeguard the city's historic and cultural heritage; to provide procedures for local review of changes to significant structures and for new construction, reconstruction, building alteration, and demolition within designated historic districts; and to provide demolition delay provisions for designated historic, contributing and other important buildings and structures. The appropriate sections of this article shall apply to all properties, both municipally-owned or acquired properties, as well as privately-owned properties, as listed under Sections 6, 7, 8, 9 and 10 of this article.

- (b) Definitions. As used in this article:

Altered means changed, modified, rebuilt, removed, demolished, restored, razed, moved, or reconstructed.

Appropriate means not incongruous with those aspects of a building or place within a district which the Board determines to be of historical value.

Archeological resource means any remains of the prior presence of humans including (without limitation) structures, artifacts, terrain features, graphics (such as paintings or drawings), or remains of plants or animals associated with human habitation.

Archeological site means the geographical location of any archaeological resource.

Board means the Historic Preservation Review Board as enabled by and described in this article and any amendments and/or additions thereto.

Building means anything that is the result of having been built by humans including (without limitation) any combination of materials forming a shelter for animals or persons and/or their activities or property, fences, signs, walks, terraces, landscaping, walls, driveways, and parking yards, and anything comprehended by the word "structure."

Built means any activity wherein the results of the combining and/or manipulation of materials are positioned or repositioned on the land, and includes (without limitation) the words altered, erected, constructed, installed, moved, and enlarged.

Certificate of appropriateness means a written certification, pursuant to a duly passed resolution of the Board, that a proposed activity within a district involving a building being built or altered or a place being altered or built upon is appropriate, and may include conditions, qualifications, and/or provisos specified by the Board to be adhered to in order for the certificate to be valid.

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Contributing structure means a building or structure within a designated historic district that contributes to the historic significance of the district. Designated contributing structures are listed in Section 6 of this article.

Exterior architectural features means that portion of the exterior of a building that is visible from a public street, place or way or would be so visible but for the interpositioning of flora and/or other buildings, including (without limitation) the architectural style and general arrangement and setting thereof, the kind, finish and/or texture of exterior building materials, whether installed originally or as a replacement for or as a change in or substitution for existing materials (as by replacing a clear finish with a colored finish, or replacing a stained or natural finish with paint, or replacing wood with brick, or sandblasting or otherwise re-facing an existing material), the visible inherent and substantially permanent color of materials used (e.g., brick, mortar, roofing, flashing, etc.), and the type and style of windows, doors, lights, signs and other appurtenant exterior fixtures. Specifically excluded from this definition is the color of any substantially nonpermanent exterior finish, such as paint, that is applied to some underlying, substantially permanent material.

Historic district or district means a delineated geographical area that includes one (1) or more buildings and/or places of historical value, and may include other buildings, structures and/or places that, though not of historical value themselves, may be or become the site of anything being built that may be deemed not to be appropriate with regard to any of the rest of the district.

Historic landmark means any building of historic value.

Historic site means any parcel of land which is of historic value, or upon which is positioned any historic landmark.

Historic value (as to a building or place) means any building or place that is associated with, that is the situs of, that is indicative of, or that leads to an understanding of, the history of or a period or style of architecture of, the municipality, the state, or the nation, or their lands or inhabitants, or events concerning them, including (without limitation) cultural, political, economic, military, social, sociological, or other significant events, historical personages, a great idea or ideal, archeological resources, architectural types or specimens, including (without limitation) vernacular structures that are valuable for the study of a period, style, or method of building construction, of community organization and living, or of landscaping, or with a notable structure or site representing the work of an outstanding builder, designer, architect, or landscaper, or any site listed or eligible for listing in the National Register of Historic Places or as a National Historic Landmark.

Incongruous means incompatible with, at variance with, lacking propriety or suitability or having inconsistent or inharmonious aspects with respect to, or resulting in the destruction or modification of anything that the Board has determined to be of historic value to an extent that is material.

To "issue" (e.g., a decision or an order) means to hand deliver, or to post by first class mail, postage prepaid.

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Other important buildings and structures means those buildings and structures that have been designated as contributing structures or complexes within the Lewiston Mill System District as developed by Christopher Closs; and those "buildings of major importance" and "buildings of importance", as designated in the Lewiston Historic Preservation Plan's "Preservation Index" (1995) as developed by Russell Wright, and adopted as part of the Comprehensive Plan of the City of Lewiston (1997).

Place means any geographical location that is of historical value, and includes (without limitation) any historic site or archaeological site.

Public street, place or way means any portion of any building, structure, street, place, way, park, or body of water that is legally accessible by any member of the general public at will.

Significant structures and districts means structures and districts that have been designated by the City of Lewiston as significant with respect to historic preservation.

Designated historic structures and districts are listed in Section 6 of this article.

(Ord. No. 90-16, 1-11-91; Ord. No. 00-21, 10-19-00; Ord. No. 05-05, 3-17-05; Ord. No. 10-05, 04-15-10)

Sec. 2. Historic Preservation Review Board.

- (a) *Creation.* There shall be a Historic Preservation Review Board consisting of seven (7) members, each of whom shall be a qualified voter of the city and who shall be appointed by the mayor. All members should have knowledge and experience in the architectural, archaeological, cultural, social, economic, ethnic or political history of Lewiston. The terms of office of members of the Board shall be for three (3) years. There shall be, in addition to the seven (7) members of the Board, two (2) associate members of the Board, each of whom shall be a qualified voter of the City of Lewiston, appointed by the mayor. The term of office of associate members shall be for three (3) years. When designated by the chairman to do so, an associate member shall serve in the place of a member who is absent, disqualified or otherwise unable to participate.
- (b) *Compensation.* Each member of the Board shall serve without compensation.
- (c) *Duties.* The Board shall carry out those duties assigned to it by this article.
- (d) *Organization and rules.*
 - (1) A quorum necessary to conduct an official meeting of the Board shall consist of at least four (4) members.
 - (2) The Board shall annually elect a chairman and other officers deemed necessary from its membership, and a secretary, who need not be a member. All seven (7) members enjoy the same rights and privileges, regardless of any office that they may hold.
 - (3) 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 a majority of the members, the mayor or the City Council.
 - (4) 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 that are required as part of the various proceedings that may be brought before the Board. All records maintained or prepared by the secretary are deemed public and may be inspected at reasonable times.

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- (5) The concurring vote of at least four (4) members is required to constitute an action on any matter.
 - (6) Any member of the Historic Preservation Review Board of the city who is deemed to have a direct or indirect interest or conflict, whether pecuniary or by bias, on any matter that has come before the Board shall make full disclosure of his interest prior to any action being taken on said matter. Any member who has made such a disclosure shall then refrain from any negotiations and voting, and from otherwise attempting to influence a decision in which he has an interest.
 - (7) The Board may adopt statements of policy, along with its rules of procedure, consistent with the Charter and any applicable ordinance, to enable it to perform its function.
 - (8) The Board may elect non-voting, advisory or student members to assist the board in its duties and functions.
 - (9) In addition to other provisions for amending the Board's rules of procedure, any rule adopted by the Board relating to the conduct of any hearing may be waived by the chairman, upon good cause shown.
 - (10) When reviewing applications for certificates of appropriateness, or when making any recommendation concerning historic preservation, the Board shall utilize, along with other resources, the Lewiston Historic Preservation Design Manual (1999), and the Lewiston Downtown Development District Preservation Plan (1997).
- (e) *Administration.* The planning and code enforcement department shall be responsible to provide for the administration of the affairs of the Board.
(Ord. No. 90-16, 1-11-91; Ord. No. 94-3, 5-5-94; Ord. No. 00-21, 10-19-00; Ord. No. 05-05, 3-17-05; Ord. No. 06-13, 10-19-06)

Sec. 3. Designation of structures and districts for preservation and conservation.

- (a) Significant structures and districts, except for districts established at the time of passage of this article, shall be designated in accordance with this section. All such designations may be initiated by written notification of the Historic Preservation Review Board by:
 - (1) Reference from the City Council;
 - (2) A petition signed by ten (10) or more residents of the City of Lewiston, eighteen (18) years of age or older;
 - (3) The Planning Board;
 - (4) The Lewiston Historic Commission;
 - (5) Maine Historic Preservation Commission; or
 - (6) The Historic Preservation Review Board, at its own initiation.
- (b) Any application for the designation of structures and districts for historic preservation shall be in writing and shall include the following:
 - (1) *Designation of structures for preservation and conservation.*
 - a. A concise description of the physical elements, qualities, architectural style and period represented by the structure, including a consideration of scale, materials, workmanship and spacial qualities;

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- b. A concise statement of how the structure meets the review criteria;
- c. Exterior photographs of the structure, illustrating significant details.

(2) *Designation of districts for preservation and conservation.*

- a. A concise statement of the physical elements that make this area a historic district and a description of building types and architectural styles and periods represented;
- b. A concise statement of how the district meets the review criteria;
- c. A justification of the boundaries of the district;
- d. A definition of the types of structures that do not contribute to the significance of the district and an estimate of the percentage of noncontributing structures;
- e. A map showing all district structures with the identification of contributing structures.

(c) The Historic Preservation Review Board shall hold a public hearing on any written application.

- (1) The public hearing shall be held within thirty (30) days of receipt of the application.
- (2) The Board shall make its report and recommendation, including the identification of contributing structures, when applicable, to the City Council within thirty (30) days after the public hearing has been closed. Failure of the Board to issue its report constitutes a denial of the designation of the proposed historic structure or district.
- (3) The Board shall require to be given proper notice of the public hearing to all applicants and to all owners of property within a proposed district.

- a. Failure of any petitioner to receive such notice of such public hearing shall not necessitate another hearing, shall not constitute grounds for objections by such petitioner and shall not invalidate any recommendation by the Board on such matter.
- b. Notice must be served a reasonable time in advance of the meeting, which will be construed to mean at least seven (7) days before the date of such meeting. Notice shall be by any method of personal service or substituted personal service authorized by the ordinances of the City of Lewiston and the laws of the State of Maine.

(d) The City Council, upon receipt of the Historic Preservation Review Board's recommendation, may designate structures or districts for historic preservation. Contributing structures within such districts shall be identified. Due consideration shall be given to the written views of owners of affected property and the City Council shall hold public hearings on any proposed structure or district for historic preservation designation.

(Ord. No. 90-16, 1-11-91; Ord. No. 00-21, 10-19-00; Ord. No. 05-05, 3-17-05)

Sec. 4. Standards for designation of structures and districts as significant.

In considering applications for designating structures or districts as significant, the Board shall be guided by the following criteria. In making a recommendation to the City Council for the

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designation of a structure or district, the Board shall make specific findings with respect to how the application conforms to these standards.

- (a) *Historic importance.* The structure, district or site:
 - (1) Has character, interest or value, as part of the development, heritage or cultural characteristics of the city, state or nation;
 - (2) Is the site of a historic event with an effect upon society;
 - (3) Is identified with a person or group of persons who had some influence on society; or
 - (4) Exemplifies the cultural, political, economic, social or historic heritage of the community;
- (b) *Architectural importance.* The structure or district:
 - (1) Portrays the environment of a group of people in an area of history characterized by a distinctive architectural style;
 - (2) Embodies those distinguishing characteristics of an architectural type specimen;
 - (3) Is the work of an architect or master builder whose individual work has influenced the development of the city; or
 - (4) Contains elements of architectural design, detail, materials, or craftsmanship that represent a significant innovation.
- (c) *Geographic importance.* The structure or district:
 - (1) Because of being part of, or related to, a square, park or other distinctive area, should be developed or preserved according to a plan based on a historic, cultural or architectural motif; or
 - (2) Due to its unique location or singular physical characteristic, represents an established and familiar visual feature of the neighborhood, community or city.
- (d) *Archeological importance.* The site has yielded or may be likely to yield, information important in prehistory or history.

(Ord. No. 90-16, 1-11-91; Ord. No. 00-21, 10-19-00; Ord. No. 05-05, 3-17-05)

Sec. 5. Certificates of appropriateness.

- (a) *Purpose.* The Historic Preservation Review Board shall protect designated historic structures and districts as listed in Section 6 of this article by the issuance of certificates of appropriateness.
- (b) *Exclusive authority of Board.* A certificate of appropriateness may only be issued by the Historic Preservation Review Board.
- (c) *When required.* A certificate of appropriateness is required for any of the following activities:
 - (1) Any change in the exterior appearance, including signage, of a designated historic structure or contributing structure within a designated historic district, as listed;
 - (2) New construction of a principal or accessory building or structure, where such building or structure will be located within a designated historic district, as listed;

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- (3) Demolition or removal of a designated historic structure or contributing structure within a designated historic district, as listed;
 - (4) Any change in siding materials, roofing materials, exterior door and window sash, and integral exterior decorative elements, including, but not limited to, cornices, brackets, windows, architraves, doorway pediments, railings, balusters, columns, cupolas, cresting, and roof decorations of a designated historic structure or contributing structure within a designated historic district, as listed.
- (d) *Application procedure.* An application for a certificate of appropriateness shall be submitted in writing to the director of planning and code enforcement. The director of planning and code enforcement shall date the application and transmit it to the chairman of the Historic Preservation Review Board. The Board shall consider each application and, within thirty (30) days of the date of submittal, hold a hearing and approve or deny the application. Upon mutual written consent of the Board and the applicant, the review period may be extended. Failure to take action on the application at the end of the review period shall constitute denial of the application.
- (e) *Application contents.* The application shall state the location, use and nature of the matter for which such certificate is sought and shall include the following information:
- (1) The applicant's name, address and interest in the property;
 - (2) The owner's name and address, if different from the applicant's;
 - (3) The present use of the property;
 - (4) A brief description of the work for which the certificate of appropriateness is required;
 - (5) A drawing or drawings to scale indicating the design and location of any proposed alteration or new construction for which the certificate is required;
 - (6) Photographs of the building and of adjacent buildings; and
 - (7) A site plan showing the structure in context and indicating improvements affecting appearance, such as walls, walks, terraces, accessory buildings, signs and other elements.
- (f) *Review criteria.* In considering applications for certificates of appropriateness and for demolition or removal of designated historic and contributing buildings or structures, and important portions and features thereof, the Board must find that the criteria listed below have been met. In all instances, the burden of proof shall be on the applicant and the proof shall include the production of evidence sufficient to warrant a finding by the Board that all the following applicable criteria have been met:
- (1) *Significant areas and districts.* The Historic Preservation Review Board shall consider the degree to which the project, within itself and in relation to other existing significant structures or proposed development, produces a functionally efficient and visually coherent grouping of buildings and spaces. The aim is to enhance the ability of the general public to locate, use, and enjoy designated significant districts and areas. This includes the degree to which the design:
 - a. Produces buildings that are well related visually in terms of light, air, height, shadow, spacing, bulk, and scale;

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- b. Locates portals, service loading areas, automobile access points, street furniture, interior building floor layouts, exterior public activity locations, and similar features in a manner that maximizes the efficient use of these facilities by the general public and the occupants of the private space:
 - c. Locates building masses and related architectural features in such a manner as to enhance the ability of the general public to find their way into and around the building and open spaces;
 - d. Integrates the architectural forms and the open spaces around them so as to enhance the quality of the pedestrian environment, including such factors as sunlight, weather protection, noise and air quality, seating arrangement, landscaping, street furniture, and artistic embellishments; and
 - e. Contains other attributes that improve the functional and visual enjoyment of the project.
- (2) *Significant structures and buildings.* The Historic Preservation Review Board shall utilize "The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings" in evaluating modifications to significant structures and designated historic structures:
- a. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
 - b. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
 - c. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
 - d. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
 - e. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.
 - f. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.
 - g. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
 - h. Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
 - i. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale,

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and architectural features to protect the historic integrity of the property and its environment.

- j. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

(3) *New construction within significant districts.* The Historic Preservation Review Board shall utilize the following criteria in evaluating applications for the construction of new buildings within designated historic districts:

- a. Mass. The height of principal building or structure, its bulk; the nature of its roofline, and the proportions of the new construction will be of the same scale and proportion as the existing significant structures;
- b. The location, size and proportions of openings in the facade, primarily windows and doors, of new construction will be consistent in proportion and rhythm with openings in the facade of existing significant structures;
- c. The massing and type of roof (flat, gabled, hip, gambrel, mansard) of the new construction shall complement the massing and type of roof of existing significant structures;
- d. Nature of building materials and texture shall exhibit the characteristics of texture, composition and reflectivity of adjacent significant structures and buildings; and
- e. Mechanical equipment or other utility hardware on the roof, ground or buildings will be screened from public view with materials harmonious with the building, or they will be so located not to be visible from public ways.

(4) *Demolition or removal of designated historic structure, contributing structures, or important portions and features thereof.* Applicants applying for the demolition or removal of designated historic or contributing buildings, or important portions and features thereof (see Section 4(a) through (d) of this article for standards to determine the importance of building features), shall clearly demonstrate that their application meets one (1) or more of the following demolition or removal criteria before the Board will approve the application for demolition or removal;

- a. The physical condition of the building makes the continued upkeep of the building, or important portions or features thereof, uneconomical; or
- b. The building or structure, or important portions and features thereof has been determined by the director of planning and code enforcement to represent an immediate hazard to the public health or safety, which hazard can not be abated by reasonable measures.

The demolition or removal of designated significant or contributing structures shall also be subject to the demolition delay provisions in Section 5(f)(5) and 6 below, unless otherwise exempted in Section 5(f)7 and 8. In addition, the Board must find that the reuse of the site will be compatible with the character of the district, and proposed buildings or structures will comply with the criteria in Section 5(f)(3) of this article.

(5) *Demolition delay.* The purpose of this section is to afford the city, Historic Preservation Review Board, the Lewiston Historic Commission, other preservation

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organizations and others interested in preservation the opportunity to acquire or arrange for the preservation of historic buildings and structures, or important portions and features thereof or the proper removal of historic artifacts, or the proper recordation of the building, structure and/or site. Before the issuance of a certificate of appropriateness or a demolition permit, a delay period of ninety (90) days shall apply to any building or structure and portions thereof that is:

- a. Designated historically significant or listed as contributing within an existing historic district as listed in Section 6 of this article;
- b. Listed on the National Register of Historic Places, but not designated significant locally as listed in Section 7 of this article;
- c. Within the proposed Lewiston Mill System District, as developed by Christopher Closs, as listed in Section 8 of this article; or
- d. "Buildings of major importance" and "buildings of importance", as designated in the Lewiston Historic Preservation Plan's "Preservation Index" (1995) developed by Russell Wright, Architect and adopted as part of the Comprehensive Plan for the City of Lewiston (1997) as listed in Section 8 of this article.

For the purpose of this section, buildings or structures, or important portions and features thereof referred to under c. and d. above shall be referred to as "other important buildings and structures."

- (6) *Demolition delay procedures.* In the event an application to demolish a building or structure, or important portions and features thereof that is designated historically significant pursuant to Section 6 of this article meets the criteria set forth in Section 5(f)(4), and the applicant receives permission from the Board to demolish or remove the building or structure or portions thereof, the issuance of a certificate of appropriateness shall be delayed for up to a period of ninety (90) days, subject to the procedures listed below. Similarly, if the building or structure, or important portions and features thereof is designated an "other important building or structure", under Section 5(f)(5) c. and d. above, issuance of the required demolition permit from the director of planning and code enforcement shall also be delayed for a period of up to ninety (90) days, and subject to the same procedures, listed below:

- a. Notices required. A statement shall be filed with the Board identifying the property proposed for demolition and providing other applicable information. The 90-day delay period set forth in this section shall not commence until such statement has been filed. During the delay period, the owner shall post a public notice of the proposed demolition or removal, including identification of the property, its owner or agents, their address and telephone number, reason for the demolition and other applicable information. The notice shall be published in a newspaper of general local circulation once a week for two (2) successive weeks and a copy forwarded to the director of planning and code enforcement. The first such publication shall be within fifteen (15) days after the filing of the statement with the Board. In addition, a copy of the notice shall be posted on the facade of the building or structure, or important portions and features thereof proposed for demolition. The City of Lewiston shall also forward a copy of the notice to the Maine Historic Preservation Commission, the Lewiston Historic Commission, and Maine Preservation.

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- b. During the delay period, the applicant shall work the city and others in the preservation community to accomplish the following:
1. Find alternatives to demolition, such as assisting in securing funding to preserve in place the building, structure, or important portions and features thereof; or finding other ways to preserve the building or structure such as outright purchase of the property when feasible, or relocation.
 2. Proper recordation of buildings, structures and sites including photography and narrative report;
 3. Saving of historic artifacts.
- (7) *Exceptions and emergencies.* This section shall not apply to any structure that has been ordered demolished by the City Council, or court, in accordance with Title 17 M.R.S.A. §§ 2851 through 2959 and amendments thereto, or to any structure that has been partially destroyed and is determined by the department of planning and code enforcement to represent an immediate hazard to the public health or safety, which hazard can not be abated by reasonable measures, specified by the department of planning and code enforcement, including securing apertures and/or erecting fences.
- (8) *Waivers.* The Board may, upon the applicant's request, waive all or any part of the 90-day delay period and demolition delay procedures. Such action shall be taken only upon:
- a. A finding by the Board that the strict application of the demolition delay provisions to the applicant and his property would cause undue hardship that could not be reasonably avoided. Undue hardship shall not include mere inconveniences or incidental financial loss;
 - b. The Board finds that the goals and objectives of the demolition delay can be achieved in less than ninety (90) days.
- (9) *Action by the Historic Preservation Review Board.* The board may approve, modify or deny the application:
- a. Upon approval of the application (except those that involve demolition pursuant to Section 5(f)(4) of this article), the Board shall immediately issue a certificate of appropriateness. The issuance of a certificate of appropriateness shall in no way be interpreted as a waiver of any regulation governing the issuance of a building permit. Any changes or modifications in the proposed work that are approved by the Board shall become conditions of the certificate of appropriateness.
 - b. Upon disapproval of the application, the applicant may reapply within a mutually agreed upon period, not to exceed forty-five (45) days, for a certificate of appropriateness, based upon amended plans for the proposed work. A building permit shall not be issued without evidence of a certificate of appropriateness.
- (10) *Appeals.* Any action of the Historic Preservation Review Board may be appealed in writing directly to the board of appeals, by any affected party.
- (11) *Violations and penalties.* Violations of this article shall be subject to penalties and fines pursuant to Article V, Sections 7 and 9 of this Code.
- (Ord. No. 90-16, 1-11-91; Ord. No. 00-21, 10-19-00; Ord. No. 05-05, 3-17-05)

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Sec. 6. Designated historic structures and historic districts.

- (a) *Boundary lines generally.* Unless otherwise described, the district boundary lines are the center lines of streets, alleys, waterways or public utility and railroad rights-of-way or such lines extended.
- (b) *Historic districts.* The following described districts are designated as historic districts:
 - (1) *Kennedy Park Historic District.* Start at the intersection of Pine and Blake Streets; Thence in a general southeasterly direction along Blake Street to a point approximately two hundred fifty (250) feet northwesterly of Birch Street; thence in a general southwesterly direction along a line two hundred fifty (250) feet from and parallel to Birch Street approximately one hundred twenty-five (125) feet; thence in a general southeasterly direction along a line one hundred twenty-five (125) feet from and parallel to Blake Street approximately fifty (50) feet; thence in a general northeasterly direction along a line two hundred (200) feet from and parallel to Birch Street to Blake Street; thence along Blake Street to Birch Street; thence along Birch Street to Bates Street; thence along Bates Street to a point approximately one hundred twenty-five (125) feet northwesterly of Birch Street; thence in a general southwesterly direction along a line one hundred twenty-five (125) feet from and parallel to Birch Street approximately one hundred twenty-five (125) feet; thence in a general southeasterly direction along a line one hundred twenty-five (125) feet from and parallel to Bates Street approximately one hundred twenty-five (125) feet to Birch Street; thence along Birch Street to a point approximately one hundred twenty-five (125) feet southwesterly of Knox Street; thence along a line one hundred twenty-five (125) feet southwesterly of and parallel to Knox Street to Spruce Street; thence along Spruce Street to a point approximately one hundred twenty-five (125) feet southwesterly of Park Street; thence along a line one hundred twenty-five (125) feet southwesterly of and parallel to Park Street to Chestnut Street; thence along Chestnut Street to Park Street Alley; thence along Park Street Alley to a point approximately one hundred seventy-five (175) feet southeasterly of Ash Street; thence along a line one hundred seventy-five (175) feet southeasterly of and parallel to Ash Street to Park Street; thence along Park Street to Pine Street; thence along Pine Street to Blake Street and the point of beginning.

The following are contributing structures within the Kennedy Park Historic District:

- 190 Bates Street (H.C. Little House)
- 192 Bates Street;
- 208 Bates Street (Wallace School);
- 220 Bates Street (St. Patrick's Church);
- 247 Bates Street (Trinity Episcopal Church), listed on National Register of Historic Places 3/30/78;
- 250 Bates Street (St. Dominic's School);
- 255 Bates Street;
- 28 Birch Street;
- 30 Birch Street;
- 30 Knox Street;

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56 Birch Street (Dominican Court);
143 Blake Street;
99 Chestnut Street
1 Knox Street;
5 Knox Street;
6 Knox Street;
10 Knox Street;
11 Knox Street;
20 Knox Street;
22 Knox Street;
25 Knox Street;
28 Knox Street;
103 Park Street (Knights of Columbus);
107 Park (Public Library - entrance at 200 Lisbon Street), listed on National Register of Historic Places 1/31/78;
120 Park Street (Kennedy Park and Bandstand);
27 Pine Street (City Hall), listed on National Register of Historic Places 10/21/76;
73 Pine Street (The Russell House);
35 Spruce Street;
47 Spruce Street;
1 Walnut Street (Albert Kelsey House).

- (2) *Lisbon Street Historic Commercial District.* Start at the intersection of Chestnut and Lisbon Streets: Thence in a generally southeasterly direction along Lisbon Street to the intersection of Lisbon and Cedar Streets; thence in a generally southwesterly direction along Cedar Street approximately one hundred thirty-eight (138) feet; thence in a generally northwesterly direction parallel to Lisbon Street to the intersection of Chestnut Street; thence along Chestnut Street to Lisbon Street and the point of beginning, listed on National Register of Historic Places 5/21/85.

The following are contributing structures within the Lisbon Street Historic Commercial District:

277 Lisbon Street (Institute Jacques-Cartier);
291 Lisbon Street (Centennial Block);
311 Lisbon Street (Simard and Sons Building - upper floors destroyed by fire and demolished 1996);
323 Lisbon Street (Condemned 2004 – demolished 2006);
331 Lisbon Street;
337 Lisbon Street;
339 Lisbon Street;
343 Lisbon Street (Condemned and demolished in 2004);
347 Lisbon Street;
353 Lisbon Street (Dulac Building);
359 Lisbon Street (Condemned and demolished in 2004).

- (c) *Historic structures, building or sites.* The following structures, buildings or sites have been designated as having significant historic value and are recommended for historic preservation:

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81 Ash Street (Healey Asylum) listed on National Register of Historic Places 10/1/79;
27 Bartlett Street (Sts. Peter and Paul Church) listed on National Register of Historic Places 7/14/83;
122 Bartlett Street (Dr. Louis Martel House) listed on National Register of Historic Places 1/4/83;
257 College Street (Hathorn Hall--Bates College) listed on National Register of Historic Places 5/25/70;
100 Campus Avenue (Marcotte Nursing Home) listed on National Register of Historic Places 12/26/85;
103 Lincoln Street (Grand Trunk RR Station) listed on National Register of Historic Places 6/4/79;
143 Lincoln Street (Dominican Block) listed on National Register of Historic Places 1/15/80;
23, 25, 29 Lisbon Street (Union Block) listed on National Register of Historic Places 4/25/86;
46 Lisbon Street (Grants Clothing) listed on National Register of Historic Places 4/25/86;
133 Lisbon Street (First McGillicuddy Block) listed on National Register of Historic Places 4/25/86;
145 Lisbon Street (Manufacturer's National Bank Building) listed on National Register of Historic Places 4/25/86;
186 Lisbon Street (Odd Fellows Block) listed on National Register of Historic Places 4/25/86;
200 Lisbon Street (Pilsbury Block) listed on National Register of Historic Places 4/14/83;
215 Lisbon Street (Monroe Building/Savings Bank Block) listed on National Register of Historic Places 1/20/78;
220 Lisbon Street (Atkinson Building) listed on National Register of Historic Places 2/2/83;
242 Lisbon Street (College Block) listed on National Register of Historic Places 4/25/86;
276 Lisbon Street (First Callahan Building) listed on National Register of Historic Places 4/25/86;
276 Lisbon Street (Second Callahan Building) listed on National Register of Historic Places 4/25/86;
381 Lisbon Street (Lord Block) listed on National Register of Historic Places 4/25/86;
415 Lisbon Street (Maine Supply Company Building) listed on National Register of Historic Places 4/25/86;
253 Main Street (St. Joseph's Church) listed on National Register of Historic Places 7/13/89;
377 Main Street (Holland-Drew House) listed on National Register of Historic Places 12/22/78;
497 Main Street (James C. Lord House) listed on National Register of Historic Places 7/21/78;
3 Mill Street (Cowan Mill) listed on National Register of Historic Places 8/1/85 (condemned and demolished 2009);
36 Oak Street (Oak Street School/Dingley Building) listed on National Register of Historic Places 10/8/76;
74 Oxford Street (Continental Mill Blocks) listed on National Register of Historic Places 7/10/79;

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101 Pine Street (Dr. Milton Wedgewood House) listed on National Register of Historic Places 1/10/86;

19 Wood Street (Jordan School) listed on National Register of Historic Places 3/22/84.

(Ord. No. 92-32, 1-7-93; Ord. No. 00-21, 10-19-00; Ord. No. 05-05, 3-17-05; Ord. No. 10-05, 04-15-10)

Sec. 7. Buildings and structures listed on the National Register of Historic Places but not designated locally.

(a) The following are those properties that are listed on the National Register of Historic Places, but whose owners at the time their individual properties were included in this article chose not to nominate them to be designated locally and therefore, are only subject to the demolition delay provisions of this article:

49 Ash Street (U.S. Post Office) listed on National Register of Historic Places 5/2/86;

142 College Street (Capt. Holland House) listed on National Register of Historic Places 3/21/85;

45 Golder Street (St. Mary's Hospital) listed on National Register of Historic Places 12/30/87;

49 Lisbon Street (Lyceum Hall) listed on National Register of Historic Places 4/25/86;

129 Lisbon Street (Osgood Building) listed on National Register of Historic Places 4/25/86;

157 Main Street (First National Bank Building) listed on National Register of Historic Places 4/25/86;

457 Main Street (Senator Frye House) listed on National Register of Historic Places 10/8/76;

54 Pine Street (Bradford House) listed on National Register of Historic Places 12/22/78 (demolished 2007);

11 Sabattus Street (Kora Temple) listed on National Register of Historic Places 9/11/75;

14 Ware Street (J.D. Clifford House) listed on National Register of Historic Places 12/30/87.

(b) Buildings and structures listed on the National Register of Historic places, but whose owners at the time their individual properties were included in this article chose not to nominate them to be designated locally and, are not subject to the demolition delay provisions of this article:

506 Main Street (Bradford Peck House) entered in the National register of Historic Places on 2/12/2009.

(Ord. No. 00-21, 10-19-00; Ord. No. 05-05, 3-17-05; Ord. No. 10-05, 04-15-10)

Sec. 8. Other important buildings and structures.

(a) The following have been designated as contributing structures or complexes within the Lewiston Mill System District and are only subject to the demolition delay provisions of this article:

520 Lisbon Street (Lewiston Bleachery and Dye Building);

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1 Beech Street (Lewiston Mill #2--Northern portion demolished 2004);
35 Beech Street (Lewiston Mill #1);
65 Canal Street (Bates Mill – Mill 7 demolished 1988, Mill 3 Annex demolished 2007 and the Executive Office Building demolished 2009);
2 Cedar Street (Continental Mill);
41 Chestnut Street (Hill Mill);
134 Main Street (Union Water Power Main Gatehouse);
296 Lincoln (Avon Mill);
332 Lincoln Street (Lewiston Gas & Light Company Building--Demolished 2001);
348 Lincoln Street (Androscoggin Mill #3--Portion demolished 2004);
354 Lincoln Street (Cumberland Mill);
550 Lisbon Street (Pepperell Mill)
15 Locust Street (Androscoggin Mill);
28 Middle Street (Maine Central Railroad Depot);
10 Mill Street (Union Water Power Substation);
6 Mill Street (Libbey Mill--Portion demolished 2001 and totally demolished 2007);
62 Oxford Street (Union Water Power Cross Canal #3 Hydro Station);
38 Water Street (Union Water Power Cross Canal #1 Gate House);
2 West Bates Street (Lewiston Machine Company Building).

- (b) The following properties have been designated as buildings of major importance or buildings of importance, within the Lewiston Historic Preservation Plan's "Preservation Index" and are only subject to the demolition delay provisions of this article:

35 Ash Street (First Manufacturers National Bank Building);
77 Bates Street (Portland Lewiston Interurban Building);
46 Cedar Street (St. Mary's Church);
59 Cedar Street (Charest-Lacasse Building);
68 Cedar Street (demolished 2004);
15 Lincoln Street (Davis Block – demolished 2008);
14 Lincoln Street (Carman--Thompson Company Building--Demolished 2002);
69 Lincoln Street;
132 Lincoln Street (FX Marcotte);
2 Lisbon Street (Central Block);
1 Lisbon Street (The Gateway Building);
43 Lisbon Street (J.J. Newberry Company Building);
50 Lisbon Street (Osgoods Building);
55 Lisbon Street (Depositors Trust Company Building);
71 Lisbon Street (Music Hall Building/Frye Block);
84 Lisbon Street (Burlington Chambers Apartments);
93 Lisbon Street;
96 Lisbon Street (Lincoln Stores);
108 Lisbon Street (A. Singer Building);
128 Lisbon Street (Sands Building);
159 Lisbon Street (Old Kora Temple – condemned 2006 and demolished 2007);
160 Lisbon Street (McGillicuddy Building);
167 Lisbon Street (D.B. Cressey Building – condemned 2006 and demolished 2007);
168 Lisbon Street;

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171 Lisbon Street (Greely Building- condemned 2006 and demolished 2007);
179 Lisbon Street (Centreville Plaza);
180 Lisbon Street (Ellard Building);
192 Lisbon Street (Garcelon Building);
195 Lisbon Street (Clifford Block);
199 Lisbon Street (Marcotte Furniture Building);
223 Lisbon Street (Le Messenger Building);
230 Lisbon Street (Pottle Building);
238 Lisbon Street;
305 Lisbon Street (condemned and demolished 2006);
330 Lisbon Street (Bergen Block--Demolished 1999);
369 Lisbon Street (demolished 2004);
385 Lisbon Street (Palange Building);
389 Lisbon Street (S.B.S. Lithuanian Hall);
391 Lisbon Street;
142 Main Street (Empire Theater – demolished 2005);
177 Main Street;
184 Main Street (Peck's Department Store);
195 Main Street;
250 Main Street (United Baptist Church);
253 Main Street (St. Joseph's Church Rectory);
29 Maple Street (Ritz Theater);
39 Maple Street (demolished 2005);
10 Oak Street (Oak Street Arms Apartments/Twin City Motor Corp.);
88 Oxford Street (St. Mary's Church Rectory Building);
20 Park Street;
37 Park Street;
104 Park Street (Daily Sun Building);
228 Park Street (demolished 2001);
257 Park Street (Androscoggin Mill Block);
263 Park Street (Androscoggin Mill Block);
271 Park Street (Androscoggin Mill Block--Listed on National Register of Historic Places 4/12/01);
31 River Street;
70 River Street.

(Ord. No. 00-21, 10-19-00; Ord. No. 05-05, 3-17-05; Ord. No. 10-05, 04-15-10)

Sec. 9. Main Street Frye Street National Historic District.

The following properties are located within the Main Street-Frye Street National Historic District (entered in the National Register of Historic Places on 01/23/2009). The Main Street-Frye Street National Historic District is not designated locally and, in addition, the individual properties are not subject to the demolition delay provisions of this article):

226 College Street (Thomas L. Angell House - two contributing buildings);
240 College Street (James T. Small House - one contributing building);
250 College Street (Abbie C. Whittum House - one contributing building);

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256 College Street (Emeline C. Boothby House - one contributing building);
262 College Street (Oren B. Cheney House - one contributing building);
6 Frye Street (Heircy Day House - two non-contributing buildings);
9 Frye Street (vacant lot - no resources);
10 Frye Street (Albert B. Nealey House - one contributing building);
11 Frye Street (William P. Frye House - one contributing building – demolished 2008);
16 Frye Street (George Colby Chase House - one contributing building);
17 Frye Street (Caroline W. D. Rich House - one non-contributing and one contributing building);
18 Frye Street (James A. Howe House - two contributing buildings);
19 Frye Street (David S. and Josephine L. Waite House - two contributing buildings);
24 Frye Street (Lyman G. Jordan House - one contributing building);
27 Frye Street (George D. Armstrong House - two contributing buildings);
28 Frye Street (John H. Rand House - one contributing building);
29 Frye Street (Byron Armstrong House - two contributing buildings);
30 Frye Street (Richard C. Stanley House - one contributing building);
31 Frye Street (Maurice Small House - one contributing building);
36 Frye Street (Evindar and Angenette Whittier House - one contributing building);
425 Main Street (Bauer Apartment Block - three contributing buildings);
437 Main Street (Colonel John M. Frye House - two contributing buildings);
443 Main Street (Ralph W. Crockett House - one contributing building);
444 Main Street (James Wirt White House - one contributing building);
449 Main Street (Wallace H. White Jr. House - two contributing buildings);
452 Main Street (Archibald Wakefield House - one contributing building);
453-455 Main Street (vacant lot - no contributing resource);
457 Main Street (Senator William P. Frye House - one contributing building);
460 Main Street (John D. Clifford House - one contributing building);
465 Main Street (Joseph H. and Rebecca Day House - two contributing buildings);
471 Main Street (John B. Smith House - one contributing building);
473 Main Street (Emma C. Smith House - one contributing building);
477 Main Street (Ashbury E. Soule House - one contributing building);
481 Main Street (John W. Perry House - two non-contributing buildings);
485 Main Street (George Bonnallie House - two contributing buildings);
487 Main Street (Sarah Wakefield House - one contributing building);
491 Main Street (Thomas Francis Butler House - one contributing building);
493 Main Street (Adolphe Plourde Apartment - one contributing building);
497 Main Street (James C. Lord House - two contributing buildings).

(Ord. No. 10-05, 04-15-10)

Sec. 10. Buildings and structures eligible for listing on the National Register of Historic Place whose owners at the time of such determination chose not to have their individual properties listed:

354 Main Street (Blake Ham House) is eligible for listing on National Register of Historic Places (determination made on February 12, 2009).

(Ord. No. 10-05, 04-15-10)

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ARTICLE XVI. DEVELOPMENT DISTRICTS**

Sec. 1. Downtown Development District.

There is hereby created, in the City of Lewiston, a special development district to be known as the "downtown development district" and described as follows:

Starting at a point at the edge of the Androscoggin River and the rear property line of a parcel on the northerly side of Main Street adjacent to the James B. Longley Memorial Bridge.

Along the rear property lines of the parcels fronting on Main Street from the James B. Longley Memorial Bridge to Hammond Street.

Hammond Street, Main Street, Blake Street, along the rear property lines of the parcels fronting on Main Street to Bates Street, Bates Street, Ash Street, Middle Street, Pine Street, Park Street.

Spruce Street and an extension thereof from Park Street to Canal Street.

Canal Street, along the rear property lines of the parcels fronting to Main Street to the Androscoggin River, along the river to the point of beginning.

The term "rear property lines" shall be deemed in all instances to mean the rear lot line of a lot fronting on a stated street or the rear lines of the building facing the street and not more than ten feet distant therefrom, whichever rear line is the greater distance from Main Street.

Unless otherwise described, the district boundary lines are the center line of streets or such lines extended.

Sec. 2. Southern Gateway Development District.

There is hereby created, in the City of Lewiston, a special development district to be known as the "southern gateway development district" and be described as follows:

The area bounded by the beginning of the intersection of Canal Street and Adams Avenue, along Adams Avenue to Knox Street, along Knox Street to Spruce Street, along Spruce Street to Lisbon Street, along Lisbon Street to Chestnut Street, along Chestnut Street to Canal Street and along Canal Street back to the point beginning.

(Ord. No. 03-07, 7-17-03)

Sec. 3. Western Gateway Development District.

There is hereby created, in the City of Lewiston, a special development district to be known as the "western gateway development district" and be described as follows:

The area bounded by the beginning of the intersection of Androscoggin River and Cross Canal #1, following the southern edge of Cross Canal #1 to the eastern edge of the main canal, along the eastern edge of the main canal to the gatehouse, where the boundary crosses the canal and follows the River's edge, parallel to Island Avenue, turning southward at the Monty Hydro Station, and following the river's edge to the point beginning.

(Ord. No. 03-08, 7-17-03)

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Sec. 1. Application.

This Code is not intended and shall not be interpreted to interfere with, abrogate, annul or repeal any ordinance, rule, regulation or permit previously enacted, adopted or issued pursuant to law.

Sec. 2. Interpretation.

(a) In interpreting and applying the provisions of this Code, they shall be held to be the minimum requirements for the promotion of the health, safety and general welfare of the residents of the City of Lewiston.

(b) Interpretation of what may not be clear in the Code shall be according to the intent of the Code and the comprehensive plan.

Sec. 3. Conflict with other ordinances.

Whenever the regulations of this Code conflict with those of another ordinance, the stricter shall apply.

Sec. 4. Severability.

(a) If any provision of this Code is declared invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to that provision of this Code directly involved in the controversy which gave rise to the judgment and shall not affect or impair the validity of any other provision of this Code.

(b) Nothing in this Code shall be construed to affect any suit or proceeding now pending in any court or any rights arising prior to its enactment pursuant to provisions of law then in effect.

Sec. 5. Amendments.

(a) *Power to amend.* The power to amend this Code rests in the city council of the city.

(b) *Proposed amendments.*

(1) A proposal to amend this Code may be initiated by:

- a. Reference from the city council; or
- b. Petition signed by not less than ten (10) residents of the City of Lewiston, eighteen (18) years of age and older; or
- c. The planning board at its own initiative.

(2) Any proposal to amend or repeal this Code shall be in writing and shall include the following:

- a. The setting out in full of the ordinance section or subsection to be repealed or amended, indicating matter to be omitted by enclosing it in brackets or by striking out type and indicating new matter by underscoring or italics;
- b. The enacting clause shall be "The City of Lewiston hereby ordains . . .";
- c. A statement indicating the reasons for the proposed amendment;
- d. A statement indicating how the proposed amendment is in conformance with the comprehensive plan.
- e. In the case of a petition for rezoning, a black line print of a diagram reflecting the verbal description of the proposed change and the relation of the proposed change to the presently existing district boundaries involved.

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- (3) Rezoning in accordance with architect's plan. When a person petitions for rezoning of an area for the purpose of development in accordance with an architect's plan, the area shall not be rezoned unless the petitioner posts a performance bond equal to at least twenty-five (25) percent of the estimated cost of the development. Said bond shall become payable to the city if the petitioner fails to begin construction in a substantial manner and in accordance with the plan within one (1) year of the effective date of the rezoning.
 - (4) Conditional or contract zoning. Proposals to rezone may include those for conditional or contract zoning pursuant to 30-A M.R.S.A. section 4352(8) as amended. Such a rezoning should be limited in its application and only be authorized where for reasons such as the unusual nature or unique location of the development proposed, the city council finds it necessary and appropriate to impose, by agreement with the property owner or otherwise, certain conditions or restrictions in order to ensure that the rezoning is consistent with the city's comprehensive plan. Nothing in this section shall authorize either an agreement to change or retain a zone or a rezoning which is inconsistent with the city's comprehensive plan. A proposal for conditional zoning shall contain, in addition to the requirements imposed hereby for other amendments, a written statement of the conditions regarding the use of the subject property which the proponent requests be imposed which are not generally applicable to other properties similarly zoned. A proposal for contract zoning shall contain, in addition to the requirements imposed hereby for other amendments, a proposed written contract which the proponent requests that the city enter into with the owner of the property affected by which, in consideration of the rezoning of said property, certain conditions or restrictions not imposed on other similarly zoned properties would be imposed.
- (c) *Amendment procedure.*
- (1) The planning board shall hold a public hearing on any proposal to amend this Code. Public hearings on proposals initiated by reference from the city council or by petition shall be held within thirty (30) days after the proposal has been submitted to the planning board, unless a greater number of days is authorized by the city council.
 - (2) The planning board shall make its report and recommendation on the proposal to the city council not more than fifteen (15) days after the public hearing has been closed. The failure of the board to issue its report constitutes approval of the proposal.
 - (3) The planning board's recommendation to the city council shall address the proposal's conformance with the comprehensive plan.
- (d) *Notice of public hearing.*
- (1) Notice to petitioners. The planning board shall give notice of the public hearing to the petitioners by mail. Failure of any petitioner to receive such notice shall not necessitate another hearing, shall not constitute grounds for objections by such petitioner, shall not invalidate any recommendation by the planning board on such zoning matter, nor any final action taken by the city council thereon.
 - (2) Public notice. On all proposals notice shall consist of a legal advertisement published in a newspaper of general circulation in the city at least two (2) times, the first at least seven (7) days prior to the hearing, and posting in the city building at least fourteen (14) days prior to the date of the hearing. On all

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rezoning proposals, notice shall also consist of a copy of the public hearing notice mailed to the owners of all property within or abutting the area proposed to be rezoned, together with, in the case of a proposal for conditional or contract rezoning, a copy of the proposed conditions and restrictions.

- (3) Manner of giving mailed notice. Mailed notice shall be given by first class mail at least seven (7) days prior to the hearing. Notices shall be mailed to the addresses shown on the property tax records of the city. Notices shall be deemed given when mailed.
- (e) *Vote requirements.*
 - (1) If the planning board approves a proposal, either by way of an official report to the city council or by way of default by failing to issue its report to the city council, the city council may, by affirmative vote of at least four (4) councilors at a regular or special meeting, duly called, amend this Code.
 - (2) If the planning board disapproves the proposal by way of an official report to the city council, the city council may amend this Code only by the affirmative vote of at least five (5) councilors at a regular or special meeting, duly called.
- (f) *Amendments affecting the resource conservation district.* The development department shall notify the state planning office by certified mail of all proposed amendments to this Code that would affect the resource conservation district. Such notice shall be given on or before the deadline imposed by section 5(c)(2) of this article.
- (g) *Conditional or contract zoning.* The city council may, pursuant to 30-A M.R.S.A. section 4352(8) as amended, approve a rezoning conditionally or by contract. Such a rezoning shall only be approved if:
 - (1) The change is consistent with the comprehensive plan.
 - (2) The change establishes rezoned areas which are consistent with the existing and permitted uses within the original district.
 - (3) All conditions and restrictions imposed relate only to the physical development or operation of the property and may include, by way of example:
 - a. Limitations on the number and types of uses permitted;
 - b. Restrictions on the scale and density of development;
 - c. Specifications for the design and layout of the buildings and other improvements;
 - d. Schedules for commencement and completion of construction;
 - e. Performance guarantees securing completion and maintenance of improvements, and guarantees against defects;
 - f. Preservation of open space and buffers, and protection of natural areas and historic sites;
 - g. Contributions toward the provision of municipal services required by the development; and
 - h. Provisions for enforcement and remedies for breach of any condition or restriction, which may include, by way of example:
 1. Provisions that violation of any of the conditions shall constitute a violation of the zoning and land use code.
 2. Statements that the conditions shall bind the owner, its successors, assigns and any person in possession or occupancy of the premises or any portion thereof and shall inure to the benefit of and be enforceable by the city.

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3. Provisions requiring the owner at his expense to record in the Androscoggin County Registry of Deeds a copy of the conditions and any required site plans within thirty (30) days following final approval of the petition by the city and that the form of the recording be in a form satisfactory to the city.
 4. Statement indicating that the conditions shall run with the land.
 5. Provisions that state in addition to all other remedies to which the city may be entitled under applicable provisions of statute ordinance, that if any party in possession or use of the premises fails or refuses to comply with any of the conditions imposed that any rezoning approved by the city in accordance with the conditions shall be of no force or effect and, in that event, any use of the premises and any buildings structures developed pursuant to the rezoning shall be immediately abated and brought into compliance with all applicable provisions of the zoning and land use code with the same effect as if the rezoning had never occurred.
 6. Statements indicating that if any of the conditions are found by a court of competent jurisdiction to be invalid, such a determination shall not invalidate any of the other conditions.
 7. The site plans should be attached and incorporated by reference.
- (4) The owner of the property rezoned has agreed in writing to the conditions imposed or has executed a contract in a form acceptable to the city council. Any rezoning approved by the city council conditionally or by contract shall be of no force or effect if the owner of the property fails or refuses to comply with the conditions imposed or the terms of the contract. In that event, any use of the property and any buildings and structures developed pursuant to the rezoning shall be abated and the property brought into compliance with all applicable provisions of this Code.

(Ord. No. 91-6, 6-6-91)

Sec. 6. Transitional rules.

Notwithstanding any other provisions to the contrary contained in this Code:

- (1) *Major subdivisions.* All approved lots on a major subdivision which was approved after October 31, 1972, and before the date of enactment of this Code shall be deemed to be conforming lots under this Code if, on or before the date of enactment of this Code, all public improvements provided for in said approved subdivision plan were substantially complete.
- (2) *Major subdivisions--Phase development.* All approved lots contained in the phase of a major subdivision which was approved after October 31, 1972, and before the date of enactment of this Code shall be deemed to be conforming lots under this Code if, on or before the date of enactment of this Code, all public improvements provided for in said phase of the approved subdivision plan were substantially complete.
- (3) *Same--Public improvements.* All major subdivisions for which complete applications were filed after October 31, 1972, and before the date of enactment of this Code which are finally approved by the planning board but for which complete applications for all

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required permits for the construction and completion of the public improvements required by said approved plan were not filed prior to the enactment of this Code may have said public improvements developed and constructed in accordance with said approved plan. All permits, licenses and certificates necessary for the development and construction of said public improvements in accordance with said approved plan may be applied for and issued in accordance with said approved plan so long as complete applications for all said required permits are filed within two (2) years from the date of enactment of this Code or two (2) years from the date of final approval of said subdivision, whichever is later.

(4) *Cluster development.*

- a. So long as subsection (2) hereof is complied with, any plan for a new town, planned unit development or cluster development which received final planning board approval after October 31, 1972, and on or before October 22, 1987, may be developed, constructed and used in accordance with the plans approved by the planning board and all permits, licenses and certificates necessary for the development, construction or use of said cluster development in accordance with said plan may be applied for and issued in accordance with those ordinances in effect on the date said plan was finally approved by the planning board and which were repealed on the enactment of this Code.
- b. In order to be entitled to the relief provided for in subsection (1) hereof, complete applications for all permits required for the development, construction and use of said cluster development must be filed within two (2) years of the date on which the planning board granted final approval of said cluster development; or, in the event of a development approved in phases, all said applications for permits required for the initial phase of said development shall be filed within two (2) years of said approval and filed thereafter in accordance with the phasing which was approved by the planning board.
- c. Any plan for a new town, planned unit development or cluster development which received preliminary planning board approval after October 31, 1972, and on or before October 22, 1987, may, if finally approved by the planning board, be developed, constructed and used in accordance with the following requirements:
 1. Said development, construction and use shall be, except as otherwise herein required, in accordance with said plan as finally approved.
 2. Said development, construction and use shall comply with those provisions of this Code which relate to permitted uses, minimum net lot area per dwelling unit and maximum number of dwelling units per building which are applicable in the district in which said development is located.
 3. Except as otherwise herein provided, all permits, licenses and certificates necessary for the development, construction or use of said cluster development in accordance with said plan may be applied for and issued in accordance with those ordinances in effect on the day before the enactment of this Code and which were repealed on its enactment.
- d. Any plan for a new town, planned unit development or cluster development for which a complete application for preliminary approval was filed after October 31, 1972, and on or before October 22, 1987, may, if finally approved by the planning board, be developed, constructed and used in accordance with the following requirements:

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1. Said development, construction and use shall be, except as otherwise herein required, in accordance with said plan as finally approved.
 2. Said development, construction and use shall comply with those provisions of this Code which relate to permitted uses, minimum net lot area per dwelling unit, maximum number of dwelling units per building, buffers and open space.
 3. Except as otherwise herein provided, all permits, licenses and certificates necessary for the development, construction or use of said cluster development in accordance with said plan may be applied for and issued in accordance with those ordinances in effect on the day before the enactment of this Code and which were repealed on its enactment.
- (5) *Development review.* Article XIII of this Code shall not apply to a development for which a building permit was issued prior to the date of enactment of this Code or to a development for which site location approval was obtained under former section 21-2 of the Revised Code of Ordinances.

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Sec. 1. Meaning of words.

All words not defined herein shall carry their customary and usual meanings. Words used in the present tense shall include the future. Words used in the singular shall include the plural. The word "lot" shall include "parcel" and "plot." The word "shall" is used to indicate the mandatory and the word "may" is used to indicate the permissive. The words "occupied" or "used" shall be considered as though followed by the words "or intended, arranged, or designed to be used or occupied."

Sec. 2. Definitions.

Unless otherwise expressly stated, the following words shall, for the purpose of this Code, have the meaning herein indicated:

Abutting property means any lot which is physically contiguous with the lot in question even if only at a point and any lot which is located across a public or private street or way from the lot in question in such a manner so that the extension of the side lot lines of the subject lot would touch the lot or enclose the lot.

Accessory use or structure means a subordinate use of a building, other structure or land, or a subordinate building or other structure:

- (1) Whose use is customary in connection with the principal building, other structure or use of land;
- (2) Whose use is clearly incidental to the use of the principal building, other structure or use of land;
- (3) Which is located on the same lot with the principal building, other structure or use of land or on a lot abutting such lot if in the same ownership or part of the same establishment, even if located in another district, or off-street parking in accordance with Article XII, Section 17(e)(2) of this Code. However, if the accessory use of structure is proposed to be located on a lot which is in another district and across a public or private street from the principal building, the use or structure must be permitted in that district in order to be allowed. Furthermore, accessory structures to be located on a lot across a public or private street may not be utilized for a home occupation and the sale of either lot in common ownership separating the accessory structure from the principal structure will create an illegal nonconformance which shall either be removed or brought into conformance with all provisions of the Code; and
- (4) Which does not constitute, in effect, conversion of the principal use of the premises to one not permitted.

Addition means as applied to a building or structure, means any construction which increases the floor area or the height of any portion of the building or structure.

Adjacent grade means the natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Adjoining property means any lot which is physically contiguous with the lot in question

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even if only at a point.

Adult business establishment means a business which:

- (1) Keeps for public patronage, or permits or allows the operation of, any adult amusement device as defined in Chapter 22, Article I, section 22-2 of the Code of Ordinances of the City of Lewiston; or
- (2) Offers live entertainment, customarily exhibits motion pictures, or displays any other visual representation described or advertised as being "X-Rated" or "For Adults Only", and which excludes persons from any portion of the premises by reason of immaturity of age or by use of such, or similar phrases; or
- (3) Offers as a substantial portion of its stock-in-trade, books, magazines, other periodicals, video recordings, marital aides, and devices characterized by their emphasis on specified anatomical areas or specified sexual activities, as defined in Chapter 22, Article I, section 22-2 of the Code of Ordinances of the City of Lewiston, "adult amusement devices"; or
- (4) Has an adult oriented live entertainment license pursuant to Chapter 10, Article IV of the aforementioned Code; or
- (5) Performs or practices the art of tattooing (tattoo parlors)

As used in this definition, "customarily" shall mean more often than an average of one (1) calendar week during any calendar month of operation, and "substantial portion" shall mean greater than thirty (30) percent of the books, magazines, other periodicals, video recordings, marital aides, and devices carried as stock-in-trade.

Agriculture means the cultivation of the soil, production of crops, including crops in commercial greenhouses, and raising and keeping of livestock, including animal husbandry, orchards, truck gardens, plant nurseries, poultry and other nondomestic animals, bees, the use of manure and fertilizers, the processing of agricultural products.

Allowed use means a use which is a permitted use or a conditional use, for which a conditional use permit has been granted, in the district in which it is located.

Alteration means as applied to a building or structure, means any change or modification in construction, exit facilities or permanent fixtures or equipment which does not include an addition to the building or structure. Ordinary repairs shall not be considered alterations.

Amendment means the addition of new material to this Code or the correction, modification or alteration of this Code by the city council in the manner prescribed by this Code for its amendment.

Aquifer means a geologic formation composed primarily of rock or sand and gravel which stores and yields significant quantities of groundwater to wells, springs, or streams.

Area of shallow flooding means a designated AO and AH zone on a community's Flood Insurance Rate Map (FIRM) with a one (1) percent or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

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Area of special flood hazard means the land in the flood plain having a one (1) percent or greater chance of flooding in any given year, as specifically identified in the Flood Insurance Study cited in Article XIV of this Code.

Art & craft studio means a business or commercial establishment which provides working space for artists or craftspeople including facilities for classes or demonstrations. Activities may include the accessory sales of supplies or materials necessary for these activities.

Arterial street is a public street shown on the most recent functional classification of the Maine Department of Transportation as a major or minor arterial, providing longer through travel between major trip generators (larger cities, recreational areas, etc.).

Automobile dealer (new) means an establishment primarily engaged in the retail sales of new automobiles together with accessory repair, service and parts facilities which are incidental to the sales operation. Sales of used vehicles are permitted as an accessory use.

Automobile dealer (used) means an establishment primarily engaged in the retail sales of used automobiles together with accessory repair and service facilities which are incidental to the sales operation.

Automobile graveyard means a yard, field or other area used as a place of storage for three (3) or more unserviceable, unregistered and/or uninspected, discarded, worn-out or junked motor vehicles.

Automobile repair garages means facilities for major maintenance and repair of passenger vehicles, motorcycles, pickup trucks and similar vehicles, including those uses listed under NAICS 8111-811198. The type of work normally provided by repair garages includes engine overhauls, transmission repairs, glass replacement, body work, painting and similar work not involving routine maintenance. Repair garages shall include muffler shops, brake shops, body shops, paint shops, and tune-up centers.

Automotive services, except repair means the uses listed under NAICS 8111-811198, which include car washes, detailing, automotive diagnostic centers, lubricating services, road services, rustproofing and other service uses similar to those listed.

Auxiliary business establishment means a business establishment primarily engaged in performing management, support services, and other general administrative functions related to business offices, located in a central facility, for other establishments such as, but not limited to, computer operation facilities, corporate offices and clearinghouses.

Awning (or canopy) means a roof-like cover that provides shelter or ornamentation. Awnings and canopies are said to be made of nonpermanent materials when constructed of cloth and small-diameter tubing, such as those commonly found projecting from buildings for the purpose of shielding doorways or windows from the elements.

Base flood means the flood having a one (1) percent chance of being equalled or exceeded in any given year, commonly called the one hundred (100) year flood.

Basement means a story (or portion of a story) of a building or structure having one-half or more of its clear height below grade or having its floor subgrade below ground level on all sides.

Bed and breakfast establishment means an accessory use to a single-family dwelling involving the renting of rooms to transient guests who are staying for a limited duration and the

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serving of breakfast to houseguests. A bed and breakfast establishment with four (4) or fewer rooms available for lodging shall be considered a home occupation if criteria (1) through (7) for home occupations are met. A bed and breakfast establishment may have five (5) or six (6) rooms available for lodging and shall also be considered a home occupation if approved pursuant to Article XIII and:

- (1) Criteria (2) through (7) for home occupations are met;
- (2) The lot on which it is located has frontage on one (1) of the following streets:
College Street;
East Avenue;
Lisbon Street;
Main Street;
Russell Street;
Sabattus Street;
Webster Street; and
- (3) Any meeting facilities are limited to twelve (12) non-guests.
- (4) Special outdoor functions such as weddings are limited to daylight hours only with no more than two (2) functions per month and a total of eight (8) functions per year. (Note: meeting facilities and special outdoor functions are limited to bed and breakfast establishments with five (5) or six (6) rooms available for lodging.)

Notwithstanding the provisions of criterion (5) for home occupations, the applicant shall submit plans and evidence to the reviewing authority that, due to the presence of physical buffers, as further described in Article XIII, and the location of outdoor functions on the property, noise associated with outdoor functions is not expected to be greater off the lot than that associated with normal residential activities.

A bed and breakfast establishment with seven (7) or eight (8) sleeping rooms for the public shall be considered as a tourist home for the purposes of this Code. A bed and breakfast establishment with more than eight (8) rooms shall be considered a hotel.

Board of appeals means the Lewiston Board of Appeals shall constitute the board of appeals within the meaning of this Code.

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

Buffer means a portion of a lot along a property boundary reserved for the purpose of mitigating the impacts of the use of the parcel on adjacent parcels. Within this portion of the lot, improvements consisting of landscaping, fencing, earth mounding or other similar devices shall be installed and maintained.

Building means any structure having a roof supported by columns or walls and intended

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for the shelter, housing, or enclosure of persons, animals, or chattels.

Building and construction contractors means a business or commercial establishment that may include an office, warehousing or equipment storage of a contracting firm.

Business and professional office means the uses listed under NAICS 52-56 and 62 8111-811198 which include financial, real estate, and insurance offices, tradesman's offices, social services, doctor's offices, legal offices, engineering offices, architectural offices, surveying services, research, development and testing services, and management services and other office uses similar to those listed.

Campground means a plot of ground upon which two or more campsites are located and maintained for occupancy by tents, camper trailers or other recreational vehicles as temporary living quarters for recreational, educational or vacation purposes.

Canopy. See "awning."

Cemetery means land used for the internment of the dead and dedicated for cemetery purposes including columbariums, crematories, mausoleums and mortuaries when operated in conjunction with and within the boundary of such cemetery.

Certificate of compliance means a document signed by the director of planning and code enforcement or his designee stating that a structure is in compliance with all of the provisions of this Code.

Changeable message sign (or display) means a sign capable of displaying words, symbols figures or images that can be electronically or mechanically changed by remote or automatic means.

Church means a building, together with its contiguous accessory buildings and uses, where persons regularly assemble for religious worship, and which building, together with its accessory buildings and uses, is maintained and controlled by a religious body organized to sustain public worship.

Civic and social organization means a not-for-profit organization of a charitable, philanthropic, social or fraternal nature organized under the laws of the State of Maine.

Clear-cut means any timber harvesting on a forested site greater than one (1) acre in size which over a ten-year period results in an average residual basal area of trees over six (6) inches in diameter of less than thirty (30) square feet per acre, unless one (1) or both of the following conditions exist:

- (1) If, after harvesting, the average residual basal area of trees over one (1) inch in diameter measured at four and one-half (4 1/2) feet above the ground is thirty (30) square feet per acre or more, a clear-cut does not occur until the average residual basal area of trees six (6) inches or larger measured at four and one-half (4 1/2) feet above the ground is less than ten (10) square feet per acre; or
- (2) After harvesting, the site has a well-distributed stand of trees at least five (5) feet in height, that meets the regeneration standards applicable under 12 M.R.S.A., ch. 805, § 8869, subsection 1.

Collector street is a public street shown on the most recent functional classification of the Maine Department of Transportation as a collector street which collects traffic from local roads

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and also connects smaller cities and towns with each other and to the arterials.

Commercial parking facilities means a facility for the short or long term parking of passenger vehicles which is not accessory to another use.

Commercial solid waste disposal facilities means a facility for the disposal of solid wastes which is operated as a business or commercial enterprise and not by a unit of local or state government. This definition shall include landfills, incinerators and similar facilities. Cogeneration facilities which involve the production of electricity are also included.

Community garden means the use of a lot(s) or a portion thereof for the purpose of growing vegetables, flowers and/or other cultivated plants which are intended for consumption and/or use primarily by the surrounding neighborhood as regulated under Article XII, section 4.

Comprehensive plan means a compilation of policy statements, goals, standards, maps and all pertinent data relative to the past, present and future trends of the municipality as defined by the laws of the State of Maine.

Conditions (requirements) means three (3) broad categories of conditions are recognized:

- (1) General conditions defined in a land use control ordinance which must be met by all applicants seeking a required permit under this Code;
- (2) Special conditions defined in a land use control ordinance which must be met, in addition to the general conditions, by applicants seeking a conditional use permit under this Code;
- (3) Those conditions which may be imposed by a board of appeals or planning board in granting approval of an application to protect abutting and nearby property owners from any adverse effects which would otherwise flow from the grant of the requested approval and to ensure consistency with the comprehensive plan.

Conditional use means a use which would not be appropriate without restriction but is acceptable if controlled as to number, area, location, relation to the neighborhood and similar criteria.

Congregate care and assisted living facilities means a residential facility that is primarily engaged in providing residential and personal care services for the elderly and/or other persons who are unable to or do not desire to live independently. The care typically includes room, board, supervision, and assistance in daily living, such as housekeeping, community spaces, common dining areas, transportation and specialized services such as medical support and physical therapy.

Contaminant means any substance whose concentration in surface or groundwater exceeds the background level or the current public health drinking water standards for Maine or standards for aquatic toxicity, whichever are most stringent. Background levels can be established by pre-development groundwater analysis. The drinking water and aquatic toxicity standards referenced above may be obtained from current manuals, including but not limited to: State of Maine Rules of the Department of Human Services relating to Drinking Water; "Drinking Water and Health" published by the National Academy of Sciences; "Suggested No-Adverse Response Levels" as determined by the EPA; "Ambient Water Quality Criteria" manuals, published by the EPA, or equivalent criteria.

Contributing structure means a structure located within a designated local historic district

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and identified as contributing to the historical, architectural or geographical significance of said district.

Cultural facilities means facilities dedicated to recognized public or philanthropic purposes and intellectual endeavor, such as a library, museum, auditorium or performing or visual arts center.

Day care center means a building, structure or other place in which a person, or combination of persons, maintains or otherwise carries out a regular program, for consideration, for any part of the day providing protection and child care for more than twelve (12) children under thirteen (13) years of age, who are unattended by parents or guardians for any part of the day.

Designated historic district means a geographically definable area possessing a significant concentration, linkage or continuity of sites, buildings, structures or objects united by past events or aesthetically by plan or physical development and designated in accordance with the requirements of this Code as appropriate for historic preservation. Such historic districts may also comprise individual elements separated geographically, but linked by association or history.

Designated historic structure means any improvement, building or structure of particular historical, architectural or geographic significance to the community and designated in accordance with the requirements of this Code as appropriate for historical preservation.

Developer means any person, corporation, municipality or other governmental agency or authority or any combination of these entities engaged in any planning or land development activity or activities aimed at using, reusing or rehabilitating air space, land, water or other natural resources.

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

Discharge means the accidental or intentional injection, dumping, spilling, leaking, or placing of materials upon or into any land or waters.

Dissolve means a mode of message transition on a changeable message sign accomplished by varying the light intensity or pattern, where the first message gradually appears to dissipate and lose legibility simultaneously with the gradual appearance and legibility of the second message.

Distribution facilities means facilities for the storage and distribution of products via trucks or similar vehicles including related office facilities.

Drinking place (alcoholic beverages) means a business or commercial establishment which customarily excludes persons under the age of twenty-one (21) from admission to its premises, including, but not limited to, uses for which a special amusement permit is required pursuant to Chapter 10, Article III of the Code of Ordinances of the City of Lewiston, class A lounges, dance halls and establishments serving alcoholic beverages other than restaurants as defined herein. Drinking places shall not include retail stores where alcoholic beverages are sold for consumption off premises.

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Drive-in restaurant means an eating establishment which meets one (1) or both of the following criteria:

- (1) The establishment has no provisions for the consumption of food within the building and is designed so that customers eat in their cars or take the food from the premises for consumption, or
- (2) The establishment has facilities allowing the customer to purchase food or beverages without leaving his vehicle.

Driveway means an access for vehicles to a parking space, garage, dwelling or other structure. An entrance means an access serving all other uses.

Dwelling means any building or structure or portion thereof designed or used for residential purposes.

- (1) *Single-family detached dwelling.* A structure having a length to width ratio of less than four (4) to one (1), and a minimum horizontal dimension at its narrowest point of at least sixteen (16) feet and containing only one (1) dwelling unit for occupation by not more than one (1) family. A family shall include the group of individuals housed within a "community living arrangement" which is a housing facility for eight (8) or fewer persons with disabilities that is approved, certified or licensed by the State of Maine. A community living arrangement may include a group home, foster home or intermediate care facility. A single-family detached dwelling shall not include mobile homes as defined herein, but shall include any other manufactured housing meeting these criteria.
- (2) *Single-family attached dwelling.* A building containing single-family dwelling units each with two (2) or more vertical fire separation walls, or one (1) vertical fire separation wall in the case of a dwelling unit at the end of a group of attached units; which have no dwelling units above or below them; and which have no common hallways.
- (3) *Two-family dwelling.* A building containing two (2) dwelling units, such building being designed for residential use and occupancy by two (2) families living independently of each other.
- (4) *Multifamily dwelling.* A building containing three (3) or more dwelling units, such buildings being designed for residential use and occupancy by three (3) or more families living independently of one another, with the number of families not exceeding the number of dwelling units and which is not a single-family attached dwelling.

Dwelling unit means a room or group of rooms, containing at least three hundred (300) square feet of living area, designed and equipped exclusively for use as living quarters for one (1) family, including provisions for living, sleeping, cooking, and eating. The term shall not include hotel or motel rooms or suites, rooming house rooms, or similar accommodations.

Elevated building means a nonbasement building (a) built, in the case of a building in Zones A1-30 or A, to have the top of the elevated floor, elevated above the ground level by means of pilings, columns, posts, piers, or "stilts;" and (b) adequately anchored so as not to impair the structural integrity of the building during a flood of up to one (1) foot above the magnitude of the base flood. In the case of Zones A1-30 or A, "elevated building" also includes a

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building elevated by means of fill or solid foundation perimeter walls less than three (3) feet in height with openings sufficient to facilitate the unimpeded movement of flood waters, as required in Article XIV, Section 6(1).

Elevation certificate means an official form (FEMA Form 81-31, 07/00, as amended) that (a) is used to verify compliance with the flood plain management regulations of the national flood insurance program; and, (b) is required as a condition for purchasing flood insurance.

Equipment dealer means a business or commercial enterprise involving the retail sales and service of trucks and construction, wood harvesting, or similar wheeled or tracked vehicles designed primarily for nonhighway use.

Equipment repair garage means a business or commercial enterprise involving the major repair of trucks and construction, wood harvesting, or similar off-road equipment but not including the retail sales of these vehicles.

Equivalent dwelling unit means a measure of the density of use of a residential structure equal to one (1) dwelling unit having three (3) or more bedrooms or sleeping rooms, or one (1) and a third dwelling units having two (2) bedrooms or sleeping rooms or two (2) dwelling units having one (1) bedroom or sleeping room.

Essential services means the construction, alteration or maintenance of gas, electrical or communication facilities; steam, fuel, electric power or water transmission or distribution lines, towers and related equipment; telephone cables or lines, poles and related equipment; gas, oil, water, slurry or other similar pipelines; municipal sewage lines, collection or supply systems; and associated storage tanks; and municipal storm drainage systems. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, channels, cables, fire alarms and police call boxes, traffic signals, hydrants and similar accessories, but shall not include service drops or buildings which are necessary for the furnishing of such services.

Fade means a mode of message transition on a changeable message sign accomplished by varying the light intensity, where the text message gradually reduces the intensity to the point of not being legible and the subsequent message gradually increases intensity to the point of legibility.

Family day care home means child care for three (3) to twelve (12) children under thirteen (13) years of age (not related by blood or marriage to, or legal wards of the operator, or foster children living in the private family residence (i.e. dwelling unit) serving as the day care home) who are unattended by parents or guardians for any part of the day. A family day care home shall be operated by a person who is domiciled and a resident within the private family residence, and who is the holder of all necessary licenses and permits from the State of Maine and/or the City of Lewiston.

Farm housing means dwelling units located on an active farm which are accessory to the agricultural use and are occupied by employees of the farm or members of the farm household. Any farm housing shall be located on the same parcel as the agricultural use.

Farm stand means a temporary structure containing less than five hundred (500) square feet of floor area for the sales of agricultural products between May first and December first.

Fence means an artificially constructed barrier of any material or combination of materials erected to enclose or screen areas of land.

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Flood or flooding means:

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

Flood boundary and floodway map means the official map delineating floodway and flood hazard boundaries as determined by the Federal Insurance Administration.

Flood elevation study means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

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

Flood insurance study. See "Flood Elevation Study."

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

Flood plain management means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and flood plain management regulations.

Flood plain management regulations means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a flood plain ordinance, grading ordinance, and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Floodway. See "Regulatory Floodway."

Floodway encroachment lines means the lines marking the limits of floodways on federal, state, and local flood plain maps.

Floodproofing means any combination of structural and nonstructural additions, changes or adjustments to structures which reduces or eliminates flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floor area ratio means the ratio of the sum of the floor area of all stories of a building or group of buildings (excluding basements) on one (1) lot to the total lot area.

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Forest management means timber cruising and other forest evaluation activities, management planning activities, insect and disease control, pruning and other stand improvement, regeneration of forest stands, and other similar associated activities.

Forest management plan means a site specific document signed by a forester registered in the state which outlines proposed activities to ensure compliance with performance standards and regeneration requirements established pursuant to 12 M.R.S.A., ch. 805, subchapter III-A, and describes how other natural resources are being protected.

Frame means a complete, static display screen on a changeable message sign.

Frame effect means a visual effect used on a changeable message sign to change from one message to another.

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

Frontage means the linear distance between the sidelines of a lot, measured along a continuous lot line that borders upon an accepted public street or public easement, or upon a private road within a commercial, industrial or residential development that has been reviewed and approved, pursuant to Article XIII of this Code, since January 9, 1988 or previously approved by the planning board. The lot frontage requirement cannot be met by accumulation of noncontiguous frontage segments. In the case of a lot situated on a T-turn or a curve of a way, the measurement of frontage may include the entire length of the property line along such way. Frontage for a single-family dwelling may also be obtained pursuant to Article XII, Section 10 of this Code.

For developed lots of record as of the adoption date of this Code which (i) have frontage on opposing streets and (ii) are themselves comprised of lots shown in whole or in part on recorded subdivision plans, if, but for the frontage could be so divided into two (2) or more lots, each of which will meet currently applicable space and bulk requirements, frontage for the developed parcel shall be deemed to be that closest to the principal structure on the developed parcel.

Functionally dependent use means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Gasoline service stations means buildings and premises where gasoline, oil, grease, batteries, tires and automobile accessories may be supplied and dispensed at retail and where routine servicing and minor repairs may be made. Uses permissible at a gasoline service station do not include the operation of a commercial parking facility, major engine repairs or the sales, leasing or renting of vehicles or equipment.

Grade means with reference to a building or structure, it means the average elevation of the ground adjoining the building or structure on all sides.

Gross floor area means the sum of the gross horizontal areas of the floors of a building

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measured from the exterior face of exterior walls, or from the centerline of a wall separating two (2) buildings, but not including interior parking spaces, mechanical rooms, loading space for motor vehicles, or any space where the floor-to-ceiling height is less than six (6) feet.

Groundwater means all of the water found beneath the surface of the ground. For purposes of aquifer protection, this term refers to the subsurface water present in aquifers and recharge areas.

Group care facility means a boarding care facility for more than eight (8) individuals wherein children under eighteen (18) years of age or adults over sixteen (16) years of age and not legally related to the operator are provided personal care, supervision and social or rehabilitative services. Uses within the meaning of this definition must be licensed by the State of Maine and may include, but are not limited to, group homes, half-way homes and congregate homes but do not include foster family homes.

Hazardous material means a product or waste, or combination of substances that, because of quantity, concentration, or physical, chemical, or infectious characteristics, poses a substantial present or potential hazard to human health, safety, or welfare or the environment when improperly treated, stored, transported, used, disposed of or otherwise managed. This term includes petroleum and any materials or substances designated as hazardous by the United States Environmental Protection Agency and/or the Maine Department of Environmental Protection.

Height of building means vertical measurement from the lowest point of the finished grade on the foundation to the highest point of the building or structure, excluding incidental protrusions such as chimneys and antennae.

Height equivalent means a horizontal distance equal to the height of a building or structure.

Historic structure means any structure that is:

- (1) Designated as historic and on the local register as provided under article XV;
- (2) Listed individually in the National Register of Historic Places (a listing maintained by the department of interior) or preliminarily determined by the secretary of the interior as meeting the requirements for individual listing on the national register;
- (3) Certified or preliminarily determined by the secretary of the interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the secretary of the interior to qualify as a registered historic district.

Home occupation means an occupation conducted in a dwelling unit or a structure accessory thereto, provided that all of the following criteria are met:

- (1) No person other than a member of the family residing on the premises shall be engaged in such occupation; and
- (2) The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than twenty-five (25) percent of the total floor area of the dwelling unit and accessory structures used in the home occupation shall be used in the conduct of the home occupation; and

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- (3) There shall be no change in the outside appearance of the building or premises, or any visible evidence of the conduct of such home occupation other than one (1) sign, except as hereinafter permitted; and
- (4) No traffic shall be generated by such home occupations in greater volumes than would normally be expected in the neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street and other than in a required yard; and
- (5) No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors or electrical interference detectable to the normal senses off the lot, if the home occupation is conducted in a detached one-family dwelling, or outside the dwelling unit if conducted in any other form of dwelling. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in a radio or television receiver off the premises, or causes fluctuations in line voltage off the premises; and
- (6) There shall be no stock in trade regularly maintained or any new commodity sold on the premises; and
- (7) The following are specifically excluded as home occupations: Convalescent or nursing home, tourist home, animal hospital, restaurants, doctors' offices, dentists' offices, real estate offices, registered primary caregivers, beauty shops and barber shops, except those that are owner-occupied, one (1) chair, appointment-only shops that meet all the other home occupation criteria.

Hospital means an institution providing health services primarily for in-patients and medical or surgical care of the sick or injured, including, as an integral part of the institution, such related facilities as laboratories, outpatient departments, training facilities, central service facilities and staff offices.

Hotel, inn or motel means a commercial building or group of buildings built primarily to accommodate for a fee travelers and other transient guests, who are staying for a limited duration, with sleeping and associated rooms. A hotel, inn or motel may include suites or rooms, cooking and similar facilities within the rooms to accommodate guests, restaurant facilities where food is prepared and meals served to its guests and other customers, and associated facilities for the convenience and servicing of guests. A hotel, inn or motel room or suite of rooms, as distinguished from a dwelling unit, each shall contain less than a total of six hundred (600) square feet of living area, provided that the area may be larger if, in the sole opinion of the planning board, the facility will function or is functioning as a hotel or motel and not as a residential dwelling unit.

Household pets means animals for use by the residents of the premises only. Household pets shall not be construed to include farm animals such as: Horses, sheep, pigs, chickens, geese, pigeons. The term "household pets" is distinct from "kennel"; see the latter.

Impacted property means a lot which has frontage on the same street(s) as the lot in question and lies, in whole or in part, within five hundred (500) feet of any property line of the subject lot.

Impervious surface ratio means the ratio of the total area of a parcel covered by impervious surfaces including buildings, parking lots, roads, drives, accessways, sidewalks, and

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other paved surfaces, paved drainage ways and any other surfaces covered by materials which substantially impede the percolation of rainwater into the soil to the total lot area.

Individual private campsite means an area of land which is not associated with a campground, but which is developed for repeated camping by only one (1) group not to exceed ten (10) individuals and which involves site improvements which may include, but not be limited to gravel pads, parking areas, fire places, or tent platforms.

Industrial use means the use of real estate, buildings or structures, or any portion thereof, for assembling, fabricating, finishing, manufacturing, packaging or processing operations, including the processing of raw materials.

In-law apartment means an accessory apartment contained within or attached to a single-family dwelling which meets the standards of section 11 of Article XII.

Intensification means any construction, reconstruction, use of a building, structure or other land use activity, which results in an increase in the volume of traffic, the amount of required off-street parking, the hours of operation, the size of the use, noise, dust, odor, vibration, glare, smoke, litter, the need for municipal or other facilities serving the site, or the effect on the soils on the site.

Junkyard means a yard, field, or other area used as a place of storage for:

- (1) Discarded, worn-out or junked plumbing, heating supplies, household appliances and furniture;
- (2) Discarded, scrap or junked lumber;
- (3) Old or scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, waste and all scrap iron, steel and other scrap ferrous or nonferrous material; and
- (4) Garbage dumps, waste dumps and sanitary fills.

Kennels means a business involving the raising or boarding of dogs.

Level of service means a measure of the operational performance of a street or intersection as determined in accordance with the procedures of the Institute of Traffic Engineers (ITE).

Light industrial uses means industrial activity involving the manufacturing, packaging, assembly, or distribution of finished products from previously prepared material, including, by way of example only, the following: bakeries, bottling, printing and publishing, pharmaceuticals, machine shops, precision instruments, watchmakers, musical instruments, toys and sporting goods, pottery and ceramics using only previously pulverized clay, wood products, jewelry, assembly of electrical components, canteen services, tool and die shops, and the packaging of foods. Light industrial uses do not include the processing of raw materials or salvaging operations.

Loading space means an on-the-property space for the standing, loading or unloading of vehicles to avoid undue interference with the public use of streets and alleys.

Locally established datum means for purposes of this Code, an elevation established for a specific site to which all other elevations at the site are referenced. This elevation is generally not referenced to the National Geodetic Vertical Datum (NGVD) or any other established datum and

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is used in areas where mean sea level data is too far from a specific site to be practically used.

Lodging house means a building or group of attached or detached buildings containing three (3) or more lodging units for occupancy for weekly or longer periods of time with or without board, for compensation, in which common kitchen or living facilities may or may not be provided, as distinguished from hotels and tourist homes in which rentals are generally for daily or weekly periods and occupancy is by transients. Lodging units shall not meet the definition of a dwelling unit and for the purposes of computing density and parking requirements; two (2) lodging units shall equal one (1) multi-family dwelling unit. A boarding house shall be considered a type of lodging house.

Lot means a contiguous parcel of land in single ownership comprised of one (1) or more parcels described in deeds, plats or other legal documents recorded in the Androscoggin County Registry of Deeds.

Lot, corner means a parcel of land at the junction of and fronting on two (2) or more intersecting streets.

Lot coverage ratio means the ratio of that area of the lot covered by buildings or structures divided by the total lot area.

Lot, depth of means the mean distance from the street line of the lot to its opposite line, measured in the general direction of the side lines of the lot. In a corner lot, the depth is the longer dimension thus measured.

Lot, interior means a lot other than a corner lot.

Lot line means a line dividing one (1) lot from another, or from a street or other public space.

Lot of record means a lot shown on or described in a subdivision plan or deed on file in the Androscoggin County Registry of Deeds on the date of adoption or subsequent amendment of this Code.

Lot or ground coverage means the percentage of lot area covered or occupied by principal and accessory structures.

Lot size means the area of land enclosed within the boundary lines of a lot.

Lot width means the horizontal distance between the side lines of a lot measured along a straight line, either parallel to the front lot line if the front line is a straight line or tangent to the mid point of the curvilinear setback line if the front lot line is curvilinear, both measured at the minimum required front setback line.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of Article XII of this Code.

Lumber and building material dealer means a commercial business involving the retail or wholesale sales of lumber, construction materials, hardware, paint and similar materials in which a portion of the inventory is stored outside or in semi-enclosed structures.

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Manufactured home park or subdivision means for the purposes of article XII, section 4, and article XIV, a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

Manufactured housing unit/also known as a manufactured home means structures, transportable in one (1) or two (2) sections, which were constructed in a manufacturing facility and are transported to a building site and designed to be used as dwellings when connected to the required utilities, including the plumbing, heating, air conditioning and electrical systems contained therein, including both mobile homes and modular homes, but excluding travel trailers. For the purposes of article XII, section 4, and article XIV, the term manufactured home also includes park mobile homes, travel trailers, and other similar vehicles placed on a site for greater than one hundred eighty (180) consecutive days.

Marijuana means the leaves, stems, flowers and seeds of all species of the plant genus cannabis, whether growing or not. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake or sterilized seed of the plant which is incapable of germination.

Mean sea level means the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's flood insurance rate map are referenced.

Mineral exploration means hand sampling, test boring, or other methods of determining the nature or extent of mineral resources which create minimal disturbance to the land and which include reasonable measures to restore the land to its original condition.

Mineral extraction means any operation within any twelve (12) month period which removes more than one hundred (100) cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material from its natural location, and transports the removed material away from the extraction site.

Minor improvement means all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than fifty (50) percent of the market value of the structure. It also includes, but is not limited to: accessory structures as provided for in Article XIV, Section 6(j), mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

Mixed residential development means a residential development involving a mixture of detached single-family dwellings, single-family attached dwellings with less than eight (8) common walls, two-family dwellings or multifamily dwellings with less than five (5) dwelling units per structure. Mixed residential developments may contain a mixture of the listed building types; but, multifamily dwellings shall not constitute more than sixty (60) percent of the total number of dwelling units in the development.

Mixed single-family residential development means a planned residential development involving a mixture of single-family detached dwellings and attached single-family dwellings.

Mixed-use structure means a building containing one (1) or more dwelling units and

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nonresidential space. Said nonresidential space must be permitted in the underlying zoning district.

Mobile home means a factory-fabricated structure meeting the standards of the U.S. Department of Housing and Urban Development which is built on a permanent chassis, is designed to be used as a dwelling unit and was constructed after June 15, 1976. Mobile homes built before June 15, 1976, are considered to be older mobile homes and are prohibited, unless they meet safety and design standards put forth by the state manufactured housing board and those contained in the Revised Code of Ordinances of the City of Lewiston.

Mobile home lot means a parcel of land within a mobile home park for the placement of a single manufactured housing unit and the exclusive use of its occupants.

Mobile home park means a contiguous parcel of under land unified ownership with a minimum area of five (5) acres designed and/or used to accommodate a minimum of three (3) manufactured housing units on mobile home lots which are to be rented or leased, but not sold. The management and maintenance of a mobile home park shall be deemed to be the responsibility of a single owner or operator, with improved lots and/or services being available under a leasing arrangement.

Mobile home park cluster development means a mobile home park where the lot area of the individual mobile home lots may be reduced to a minimum of four thousand (4,000) square feet in accordance with the provisions of this Code provided that the density of the park conforms with the minimum net lot area of six thousand five hundred (6,500) square feet per unit by providing permanent open space as part of the development.

Mobile home park road is a private road used for access of motor vehicles to homes located in a mobile home park and used solely for vehicular movement within the park.

Modular home means those units which the manufacturer certifies are constructed in compliance with 10 M.R.S.A. Chapter 951, and rules adopted under that chapter, meaning structures, transportable in one (1) or more sections, which are not constructed on a permanent chassis and are designed to be used as dwellings and must be placed on permanent foundations.

Multi-family development means a residential development that includes three (3) or more freestanding, multi-family dwellings on single or multiple contiguous lots in common ownership; or a single building containing twelve (12) or more dwelling units.

Municipal buildings and facilities means facilities owned and operated by the City of Lewiston for the conduct of the city's business including, but not limited to, municipal office buildings, schools, police and fire stations, public works garages and facilities, public safety facilities, solid waste disposal facilities, sewerage systems, sewage disposal facilities and similar uses.

National Geodetic Vertical Datum (NGVD) means the national vertical datum, whose standard was established in 1929, which is used by the National Flood Insurance Program (NFIP). NGVD was based upon mean sea level in 1929 and also has been called (1929 Mean Sea Level (MSL)).

Neighborhood stores means a retail store that occupies less than five thousand (5,000) square feet of total floor space and within which no alcoholic beverages are consumed.

Net lot area means the total acreage of a lot less the area required for access and less the

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area which is not suitable for development because of sustained slopes in excess of twenty-five (25) percent, water bodies, one hundred (100) year flood plains, and wetlands. "Access" as used herein includes all land within street right-of-way boundaries, but does not include land used for individual driveways or for parking areas.

New construction means structures for which the "start of construction" commenced on or after the effective date of flood plain management regulations adopted by a community and includes any subsequent improvements to such structures.

Nonconforming lot means a lot of record which is defined as a lot in a plan or deed filed in the Androscoggin County Registry of Deeds, which, at the effective date of the adoption or amendment of this Code, was in lawful existence, but which does not comply with one (1) or more of the space and bulk requirements of the zoning district in which it is located.

Nonconforming structure means a structure which, at the effective date of the adoption or amendment of this Code, was in lawful existence, but which does not comply with one (1) or more of the space and bulk requirements of the zoning district in which it is located.

Nonconforming use means a use of a premise, parcel of land or structure which, at the effective date of the adoption or amendment of this Code, was in lawful existence, but which does not comply with the applicable use regulations of the zoning district in which it is located.

Nonintensive outdoor recreation means outdoor recreational uses that involve minimal structural development or regrading of the terrain but which, if properly designed, neither cause nor are subject to serious damage from flooding or soil erosion. Examples of nonintensive recreational uses include, but are not limited to, golf courses, tennis courts, playing fields, ice skating rinks, and boat docks.

Normal high water line means that line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. In the case of wetlands adjacent to rivers and great ponds, the normal high water line is the upland edge of the wetland, and not the edge of the open water.

North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. Reference is made to the NAICS throughout this Code to assist with defining permitted and conditional uses.

Nursing or convalescent home means a state licensed residential care facility in which nursing care and medical services are performed under the general direction of persons licensed to practice medicine in the State of Maine for the accommodation of convalescent or other persons who are not in need of hospital care, but who do require, on a twenty-four (24) hour basis, nursing care and related medical services. This definition shall include skilled nursing facilities, intermediate care facilities and nursing homes.

Official map means a map, prepared and adopted by the planning board and approved by the city council, which shows the lines of ways, public property and subdivisions.

Official zoning map means a map prepared by the City of Lewiston Planning Board and adopted by the city council outlining each district established or modified by the municipality. The map is filed in the office of the city clerk.

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Off-street parking space means a paved or gravel surfaced area not in a street or alley which is permanently reserved for the temporary storage of one (1) automobile.

One hundred-year flood. See "base flood."

Open space means that portion of a lot which is characterized by natural scenic beauty or openness and which is dedicated to being preserved or kept open in order to enhance urban or rural areas as important physical, social, recreation, conservation, aesthetic or economic assets.

Open space ratio means the ratio of the total area of a parcel maintained in lawns, gardens, planters, or other natural vegetation to the total lot area.

Owner means the owner of record of a property and his duly authorized agent or attorney, a purchaser, devisee, fiduciary and a person having a vested or contingent interest in the property in question.

Penthouse means an enclosed structure, other than a roof structure, located on the roof, extending not more than twelve (12) feet above and used primarily for living or recreational accommodations.

Performance guaranteed means a cash, property or other bond satisfactory to the City of Lewiston to ensure the actual carrying out of every duty, act, requirement or condition, the performance of which was the basis for issuing the permit or approval.

Permanent foundation means a foundation that includes all of the following:

- (1) A full, poured concrete or masonry foundation;
- (2) A poured concrete frost wall or a mortared masonry frost wall, with or without a concrete floor;
- (3) A reinforced, floating concrete pad for which the municipality may require an engineer's certification if it is to be placed on soil with high frost susceptibility; and
- (4) Any foundation which, pursuant to Chapter 7 of the Revised Code of Ordinances of the City of Lewiston is permitted for other types of single-family dwellings.

Permitted use means a use or structure permitted in a given location as a matter of right under the provisions of this Code subject only to those general conditions which are to be met by all applicants seeking a required permit under this Code.

Personal service means a service exemplified by the types of services listed under NAICS 812, including but not limited to laundry and cleaning services, photography studios, shoe repair shops, funeral homes, mortuaries, beauty salons, barber shops, day spas, and similar services to the general public. This definition does not include tattoo parlors.

Petroleum means oil, gasoline, petroleum products and by-products, and all other hydrocarbons which are liquid under normal atmospheric conditions.

Piers, docks, wharfs, bridges and other structures and uses extending over or beyond the normal high water line or within a wetland means

Temporary. Structures which remain in or over the water for less than seven (7) months in any period of twelve (12) consecutive months.

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Permanent. Structures which remain in or over the water for seven (7) months or more in any period of twelve (12) consecutive months.

Pitched, shingled roof means a roof with a pitch of two (2) or more vertical units for every twelve (12) horizontal units of measurement and which is covered with asphalt or fiberglass composition shingles or other materials, but specifically excluding corrugated metal roofing materials.

Places of assembly, amusement, recreation, entertainment, or culture means facilities designed to accommodate the public for amusement, entertainment, recreation or social activities including halls, auditoria, sports arenas, gymnasiums, skating and hockey rinks, stadia, golf courses, racetrack operations (excluding motorized vehicle racing), meeting rooms, theaters, and similar facilities but not including movie theaters.

Premises means one (1) or more parcels of land which are in the same ownership and contiguous.

Principal building means the building occupied by the chief or principal use on the premises. When a garage is attached to the principal dwelling in a substantial manner as by a roof or common wall, it shall be considered as a part of the principal dwelling for the purpose of computing yard requirements.

Private industrial/commercial developments means industrial or commercial developments where lots within the development may gain their required frontage on private roads, as long as the development meets the standards under Article XIII, section 10.

Private road is any road, not maintained or accepted by the Lewiston City Council, that conforms to the applicable public street or public court standards of this policy.

Public court is a way providing direct access within identifiable neighborhoods and to abutting land accepted by the Lewiston City Council as a public street, used for the access of motor vehicles for up to ten (10) single family dwellings with frontage on said public court.

Public indoor amenity space means malls, courts, arcades or other spaces available for public use within a building.

Public sewerage means a sewer system operated by the City of Lewiston or other governmental authority.

Public street is a way providing direct access within identifiable neighborhoods and to abutting land, and where through traffic is usually discouraged, carrying less than 1,000 ADT and which has been accepted by the Lewiston City Council as a public street, or has been constructed or accepted by the state or federal government as a public street or road.

Recharge area means an area composed of permeable materials which allows precipitation and surface water to filter into the ground and replenish groundwater in aquifers.

Recreational vehicle means a vehicle which is:

- a. Built on a single chassis;
- b. Four hundred (400) square feet or less when measured at the largest horizontal projection, not including slideouts;
- c. Designed to be self-propelled or permanently towable by a motor vehicle; and

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- d. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Recreational vehicle dealer means a business or commercial enterprise involving the retail sales and service of new or used recreational vehicles including motor homes, camper trailers, boats, snowmobiles and similar vehicles.

Recycling and reprocessing facility means a commercial enterprise involving the handling, storing and processing of waste materials including but not limited to automobiles, scrap metal, paper, rags, chemicals, oils, solvents and similar materials but not involving the on-site disposal of these materials.

Registered dispensary or dispensary means a not-for-profit entity registered pursuant to State Law that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana, paraphernalia or related supplies and educational materials to registered patients who have designated the dispensary to cultivate marijuana for their medical use and the registered primary caregivers of those patients.

Registered patient means a patient who has a registry identification card issued by the State of Maine.

Registered primary caregiver or primary caregiver means a person, a hospice provider licensed under Title 22 M.R.S.A. chapter 1681 or a nursing facility licensed under Title 22 M.R.S.A. chapter 405 that provides care for a registered patient and that has been named by the registered patient as a primary caregiver to assist with a registered patient's medical use of marijuana. A person who is a primary caregiver must be at least 21 years of age and may not have been convicted of a disqualifying drug offense.

Regulatory floodway means (1) the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot, and (2) in Zone A riverine areas is considered to be the channel of a river or other watercourse and the adjacent land areas to a distance of one-half the width of the flood plain as measured from the normal high water mark to the upland limit of the flood plain.

Repair means the replacement of existing work with equivalent materials for the purpose of its maintenance, but not including an addition, change or modification in construction, exit facilities or permanent fixtures or equipment.

Residential zoning districts means those zoning districts in which residential uses are predominate uses allowed. This shall include the following districts: Rural-Agricultural (RA), Low Density Residential (LDR), Suburban Residential (SR), Medium Density Residential (MDR), Neighborhood Conservation "A" (NCA), and Neighborhood Conservation "B" (NCB).

Restaurant means a business or commercial establishment which serves food to the public for consumption on the premises and may include the sale of food for consumption off premises. Restaurants serving alcoholic beverages, also referred to as food service establishments FSE-Class A, B, C, and E, must offer full course meals at all times while open, shall not exclude persons under the age of twenty-one (21) from full use of the establishment at all times, and shall not possess a special amusement permit for dancing as defined pursuant to Chapter 10, Article III, of the Code of Ordinances of the City of Lewiston. Restaurants serving alcoholic beverages that do not satisfy the above provisions shall be deemed to be and regulated

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as drinking places.

Retail means sale to the ultimate consumer for direct consumption and not for trade.

Right-of-way means a strip of land acquired by deed, reservation, dedication, forced dedication, prescription or condemnation and intended to be occupied or occupied by a road, cross-walk, railroad, electric transmission lines, oil or gas pipeline, water line, sanitary or storm sewer and other similar uses.

Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Roof means the roof slab or deck with its supporting members.

Roof structure means a structure above the roof of any part of a building enclosing a stairway, tank, elevator machinery or service equipment, or such part of a shaft as extends above the roof, and not housing, living or recreational accommodations.

Rural areas means rural areas include both open agricultural fields and woodlands. The land is either undeveloped or developed at very low intensity with scattered farms or homes. Although some parcels may abut a highway, they are generally of such a depth that most development will occur off the highway frontage in the form of residential enclaves, large scale retail centers, and/or campus style office industrial parks.

Scroll means a mode of message transition on a changeable message sign where the message appears to move vertically across the display surface.

Self-storage facilities means a business or commercial establishment consisting of small, individually lockable storage units which are rented, leased or sold to the general public for the storage of personal property. A self-storage facility may contain an accessory dwelling unit for the exclusive use of a resident manager.

Setback, front means the distance between the front line of the property or the side line of the street, whichever is closer to any part of any principal or accessory structure, and the nearest part of any principal or accessory structure.

Setback, normal high water mark means the distance from the normal high water mark of any perennial stream or pond to the nearest part of a structure.

Setback, rear means the distance between the rear line of the lot, extending the full width of the lot, and the nearest part of any principal or accessory structure. Back and rear setback are synonymous terms.

Setback, side means the distance between the side property line and the nearest part of any principal or accessory structure. Any lot line not a back lot line or a front lot line shall be deemed a side lot line.

Shelter means a charitable facility operated by a not-for-profit corporation or a religious organization providing free temporary overnight housing in a dormitory-style, barrack-style, or per-bed arrangement to homeless individuals.

Shore frontage means the length of a lot's shoreline as measured in a straight line between the points of intersection of the side lot lines with the shoreline at normal high water elevation.

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Sight distance means the length of unobstructed sight line of motor vehicle drivers in normal daylight conditions. Sight distance shall be measured from the perspective of a hypothetical person seated in a vehicle from three vantage points: (1) sitting in the access viewing vehicles traveling on the highway (both left and right), (2) traveling on the highway viewing a vehicle sitting in an access and (3) traveling on the roadway viewing a vehicle turning into the access (both ahead and behind). In case of discrepancy between these measurements, the lesser measurement shall be used to determine whether the sight distance standard is met. Sight distance shall be measured to and from the point on the centerline of the proposed access that is located ten (10) feet from the edge of traveled way. The height of the hypothetical person's view shall be three and one-half (3 1/2) feet above the pavement and the height of the object being viewed shall be four and one-fourth (4 1/4) feet above the pavement.

Sign means a structure, device, letter, banner, symbol, or other representation which is used as or is in the nature of an advertisement, announcement, or direction; which is erected, assembled, affixed or painted on the exterior of a building or structure and which is visible from a public way. For purposes of this Code, "visible from a public way" means capable of being seen without visual aid by a person of normal visual acuity, from a way designated for vehicular use and maintained with public funds.

Sign area means the area of the smallest square, rectangle, triangle, circle, or combination thereof, which encompasses the facing of a sign, including copy, insignia, background and borders, but not including structural supports of the sign. A sign's area is the sum of the areas of each of its sides. A wall sign's area shall be based on the area of a freestanding sign as calculated above that would be required to accommodate the same features.

Sign, awning means a sign mounted on a temporary overhanging shelter to the face of a building.

Sign, directory means a sign listing the names and locations of principal businesses, services, activities, or individuals.

Sign, ground means an outdoor sign that is directly and permanently supported on the ground and is physically separated from any other structure.

Sign, marquee means a sign mounted on or suspended from a permanent overhanging shelter perpendicular to the face of a building.

Sign, projecting means an outdoor sign which is attached to a wall and extends at a ninety (90) degree angle from the wall for more than eighteen (18) inches.

Sign, roof means an outdoor sign that is displayed above the eaves of a building.

Sign, wall means an outdoor sign that is attached flat to or pinned away from the wall of a structure and does not project more than eighteen (18) inches from the wall.

Sign, window means a sign mounted on a window or located inside a window and not part of a show window display.

Single-family cluster development means a residential subdivision consisting of detached single-family homes with each dwelling located on an individual lot. The lot area of the individual lots may be reduced in accordance with provisions of this Code provided that the overall density of the development conforms to the zoning district regulations by providing permanent open space as part of the development.

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Sludge means residual materials produced by industrial processes, water or sewage treatment processes, or domestic septic tanks.

Small day care facility means child care for three (3) to twelve (12) children under thirteen (13) years of age who, are unattended by parents or guardians for any part of the day, in a non-home setting. Small day care facilities shall not be operated within a private family residence (i. e. dwelling unit).

Special flood hazard area. See "area of special flood hazard."

Start of construction means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the principal structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Stream means a channel between defined banks. A channel is created by the action of surface water and has two or more of the following characteristics:

- (1) It is depicted as a solid or broken blue line on the most recent edition of the U.S. Geological Survey 7.5-minute series topographic map or, if that is not available, a 15-minute series topographic map.
- (2) It contains or is known to contain flowing water continuously for a period of at least three months of the year in most years.
- (3) The channel bed is primarily composed of mineral material such as sand and gravel, parent material or bedrock that has been deposited or scoured by water.
- (4) The channel contains aquatic animals such as fish, aquatic insects, or mollusks in the water or, if no surface water is present, within the stream bed.
- (5) The channel contains aquatic vegetation and is essentially devoid of upland vegetation.

"Stream" does not mean a ditch or other drainage way constructed and maintained solely for the purpose of draining stormwater or a grassy swale.

Structure means anything constructed or erected with a fixed location on or in the ground, or attached to something having a fixed location on or in the ground, excluding light poles, awnings and canopies, transformer pads, driveways, walkways, patios, and other paved surfaces, fences, and underground utilities and their related appurtenances (not including buildings) whether or not underground. Additionally, for floodplain management purposes, a structure is a walled and roofed building or a gas or liquid storage tank that is principally above

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ARTICLE II. DEFINITIONS

ground.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

Substantial development means improvements to a site for which development approval has been granted pursuant to the standards set forth in article XIII which constitutes one or more of the following: The complete construction of at least 50 percent of all proposed principal buildings; the installation of all proposed principal building foundations; the construction of all road bases for proposed streets in subdivisions unless the project is phased, in which case only those road bases in an active phase need be constructed; filling and grading to near finish contours for earth material activities in excess of 5,000 cubic yards for major projects, or 1,000 cubic yards for minor projects; and the construction of all proposed additions or accessory uses or structures to a level of completion where a temporary certificate of occupancy has been issued by the code enforcement officer.

Substantial improvement means any reconstruction, repair, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. For purposes of this definition "substantial improvement" is considered to occur at the time of the first alteration of any wall, ceiling, floor, or structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:

- (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure, and a variance is obtained from the board of appeals.

Subsurface sewage disposal system means a collection of treatment tank(s), disposal area(s), holding tank(s) and pond(s), surface spray system(s), cesspool(s), well(s), surface ditch(es), alternative toilet(s), or other devices and associated piping designed to function as a unit for the purpose of disposing of wastes or wastewater on or beneath the surface of the earth. The term shall not include any wastewater discharge system licensed under 38 M.R.S.A. section 414, any surface wastewater disposal system licensed under 38 M.R.S.A. section 413, Subsection 1-a, or any public sewer. The term shall not include a wastewater disposal system designed to treat wastewater which is in whole or in part hazardous waste as defined in 38 M.R.S.A. Chapter 13, Subchapter 1.

Suburban strip means the organizing principle of the Suburban Strip is the highway, and development is largely geared for automobile convenience. Buildings are spatially separated, and have a relatively low density due mostly to the high parking ratios. Existing land uses are mixed and include residential, commercial retail and office. Some parcels are not yet developed. Historically, buildings have been of relatively inexpensive construction, and lack widely recognized architectural or historical significance.

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ARTICLE II. DEFINITIONS

Swimming pool means a body of water in an artificial receptacle or other container, whether in the ground or above the ground, used or intended to be used for swimming or bathing and designed for a water depth of thirty-six (36) inches or more.

Tattoo parlor is a business or commercial establishment at which an individual performs or practices the art of tattooing on the person of another. This involves inserting pigment under the skin of a human being by pricking with a needle or otherwise, so as to produce an indelible mark or figure visible through the skin.

Timber harvesting means the cutting or removal of at least ten (10) cords, or equivalent, of timber on a lot or lots in contiguous ownership during a calendar year for the primary purpose of selling or processing forest products.

Time and temperature sign means a special type of changeable message sign that is capable of displaying only public service information such as time, date and temperature, but not words, symbols or other advertising messages.

Tourist home means a commercial building which accommodates, for a fee, travelers or other transient guests who are staying for a limited duration, and having eight (8) or fewer sleeping rooms. A tourist home may include associated rooms for meals or the use of guests.

Transit and ground transportation facilities means urban transit systems, chartered bus, school bus, interurban bus and rail transportation, and taxis with either scheduled or nonscheduled service, as defined in NAICS subsection 485.

Travel means a mode of message transition on a changeable message sign where the text appears to move horizontally across the display surface.

Urban neighborhoods means urban neighborhoods are characterized by established housing and commercial development, and may include historically or architecturally significant buildings. Densities are relatively high and buildings are in close proximity to one (1) another. Buildings relate strongly to the street, and the streetscape is well defined by street trees, building facades, and pedestrian activity. Automobile travel speeds are relatively slow, and pedestrian traffic is high.

Upland edge of a wetland means the boundary between upland and wetland. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation; or where the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems that are six (6) meters (approximately twenty (20)foot) tall or taller.

Utility structures means buildings which house or service utility services, including structures such as radio towers, transmitting stations, and satellite dishes serving more than a residential use on a single lot. Satellite dishes serving a residential use on a single lot shall be considered accessory to such use.

Variance means a relaxation of the terms of this Code where such variance will not be contrary to the public interest, and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the Code will result in unnecessary or undue hardship. As used in this Code, a variance is authorized only for the space and bulk requirements of Article XI and the performance standards of Article XII.

Warehousing means the storage of goods, wares and merchandise in a warehouse.

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ARTICLE II. DEFINITIONS

Wetland means land which is associated with or linked to the drainage systems of streams, ponds, and lakes, and the soils of which are saturated, with the water table at or above surface level for most of the year.

Wholesale means sale for resale, not for direct consumption.

Yard means an open, landscaped area adjacent to the property line which is not and may not be occupied by buildings, structures, parking lots, storage or similar uses. Access roads or drives and sidewalks may be located to allow vehicular and pedestrian traffic to cross yard areas.

(Ord. No. 89-3, 4-7-89; Ord. No. 89-11, 9-15-89; Ord. No. 90-4, 5-17-90; Ord. No. 90-10, 10-4-90; Ord. No. 90-12, 11-16-90; Ord. No. 90-15, 1-11-91; Ord. No. 91-1, 3-19-91; Ord. No. 91-6A, 7-4-91; Ord. No. 92-5, 3-5-92; Ord. No. 92-18, 9-10-92; Ord. No. 92-20, 9-10-92; Ord. No. 93-9, 6-17-93; Ord. No. 95-1, 2-2-95; Ord. No. 95-8, 7-20-95; Ord. No. 96-7, 7-18-96; Ord. No. 96-11, 9-12-96; Ord. No. 97-7, 9-11-97; Ord. No. 97-9, 10-16-97; Ord. No. 00-16, 8-17-00; Ord. No. 00-17, 8-17-00; Ord. No. 00-19, 10-5-00; Ord. No. 00-27, 1-11-01; Ord. No. 01-23, 2-7-02; Ord. No. 02-21, 1-9-03; Ord. No. 03-18, 1-1-04; Ord. No. 04-02, 2-19-04; Ord. No. 04-06, 4-15-04; Ord. No. 04-21, 9-9-04; Ord. No. 04-25, 2-3-05; Ord. No. 04-26, 2-3-05; Ord. No. 05-07, 3-17-05; Ord. No. 05-20, 1-19-06; Ord. No. 06-04, 4-20-06; Ord. No. 06-05, 4-20-06; Ord. No. 07-01, 3-8-07; Ord. No. 07-02, 3-22-07; Ord. 10-13, 12-23-10; Ord. No. 10-14, 1-6-11; Ord. No. 11-15, 01-19-12; Ord. No. 12-03, 04-05-12; Ord. No. 12-04, 04-05-12; Ord. No. 12-15, 02-07-13)

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ARTICLE III. OFFICIAL MAP

Sec. 1. Applicability.

The city, through the planning board, may adopt and amend an official map showing the location of public ways and other public property, ways used in common by more than two (2) owners of abutting property and approved subdivisions. The map may include all or part of the city, and the following provisions apply only to that area outlined on the adopted map:

- (1) When the official map has been approved by the city council, the map shall be filed in the office of the city clerk. All amendments to the map shall be approved by the city council, and all amendments so approved shall be recorded by the city clerk.
- (2) The lines of ways, public property and subdivisions established or modified after adoption of the official map shall be added to the map and become part of it. The planning board shall prepare the map and keep it current.
- (3) On the official map, the planning board may place lines of planned new and/or modified ways and public property which are in conformance with the city's comprehensive plan.
- (4) The placing of a line on the official map does not constitute the establishment or modification of any way or public property, nor the taking or acceptance of land for any purpose.
- (5) A permit for the erection of any structure to be located within the boundaries of an existing or proposed way or public property shown on the official map may not be issued, except as provided by Title 35, Sections 2341 and 2347 of the State of Maine's Revised Statutes. A permit for the erection of any structure or the use of land which requires access from a way may not be issued unless a way which provides the required access appears on the map or has been approved for the purpose by the planning board. A public water supply, sewer or other public utility, a pavement or other improvement may not be constructed along a way not shown on the map, or approved for the purpose by the planning board.

APPENDIX A – ZONING AND LAND USE CODE
ARTICLE IV. ESTABLISHMENT OF DISTRICTS

Sec. 1. Zoning map.

A map entitled "Official Zoning Map, City of Lewiston" is hereby adopted as part of this Code and shall be referred to as the "official zoning map." The official zoning map shall be identified by the signature of the mayor, chairman of the planning board and attested by the signature of the city clerk. The official zoning map shall be located in the office of the city clerk.

Sec. 2. Zoning districts.

The city is divided into the following districts, as shown by the district boundary lines on the official zoning map:

- RA Rural Agricultural District
- LDR Low Density Residential District
- SR Suburban Residential District
- MDR Medium Density Residential District
- RF Riverfront District
- NCA Neighborhood Conservation "A" District
- NCB Neighborhood Conservation "B" District
- OR Office-Residential District
- DR Downtown Residential District
- IO Institutional-Office District
- CB Community Business District
- HB Highway Business District
- CV Centreville District
- OS Office-Service District
- I Industrial District
- UE Urban Enterprise District
- M Mill District
- RC Resource Conservation District
- GC Groundwater Conservation Overlay District
- LC Lake Conservation Overlay District
- MH Mobile Home Park Overlay District

(Ord. No. 00-19, 10-5-00)

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ARTICLE IV. ESTABLISHMENT OF DISTRICTS

Sec. 3. District boundaries.

- (a) *Uncertainty of boundaries.* Where uncertainty exists with respect to boundaries of various districts as shown on the official zoning map, the following rules shall apply:
- (1) Boundaries indicated as approximately following the center lines of streets, highways, or rights-of-way shall be construed to follow the center lines of such rights-of-way;
 - (2) Boundaries indicated as approximately following well established lot lines shall be construed as following such lot lines;
 - (3) Boundaries indicated as approximately following municipal limits shall be construed as following municipal limits;
 - (4) Boundaries indicated as following shorelines shall be construed to follow the normal high water line, and in the event of natural changes in the shoreline shall be construed as moving with the actual shoreline;
 - (5) Boundaries indicated as approximately following the center line of streams and other water bodies shall be construed to follow such center lines and in the event of natural change in the location of the water body, shall be construed as moving with the actual center line;
 - (6) Boundaries indicated as parallel to or extensions of features indicated in subsections (1) through (5) above shall be so construed. Distances not specifically indicated on the official zoning map shall be determined by the scale of the map.
 - (7) Boundaries indicated as approximately following natural features such as flood plains, wetlands, aquifers or watershed boundaries shall be construed to follow said natural feature. The location of said natural feature shall be determined by reference to:
 - a. The flood insurance rate map and floodway map;
 - b. The inventory of significant wetlands;
 - c. The state studies of significant sand and gravel aquifers.
- (b) *Division of lots by district boundaries.* Where a zoning district boundary line other than the boundary of an overlay district divides a lot or parcel of land in the same ownership of record at the time such line is established by adoption or amendment of this Code, the use regulations applicable to the one (1) portion of the lot may be extended into the other portion of the lot by not more than thirty (30) feet, provided that the other portion is not a Resource Protection District. The space and bulk regulations of the districts shall apply to the land within those districts and are not subject to the thirty (30) foot provision.
- (c) *Division of lots by municipal boundaries.* When a lot is situated in part in the city and in part in an adjacent municipality, the provisions, regulations and restrictions of this Code shall be applied to that portion of such lot as lies in the city.

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ARTICLE V. ADMINISTRATION AND ENFORCEMENT

Sec. 1. Conformity required.

No building hereafter erected, moved, added to or structurally altered, no existing building or structure and no land shall be used except in conformance with the provisions, regulations and restrictions of this Code. All construction or moving of buildings and structures or the alteration of the land shall be in conformance with this Code.

Sec. 2. Violation as a nuisance.

Any property or use existing in violation of this Code is a nuisance.

Sec. 3. General provisions.

- (a) All buildings and other structures shall be so located and arranged on lots as to provide safe and convenient access for fire protection, servicing and off-street parking and loading located on the premises. No building or structure may be constructed or erected on any lot which does not have at least fifty (50) feet of frontage.

However, lots of record that existed prior to December 9, 1987, which were legally established having less than fifty (50) feet of frontage, may apply for a variance pursuant to Article VIII, section 4(2) of this Code in order to have a building or structure constructed or erected on said lot.

- (b) Land within the lines of a street may not be counted as part of any lot for the purposes of meeting the area requirements of this Code even though the fee to such land is owned by the owner of such lot.
- (c) No division of land shall be made whereby any lot created thereby is smaller than the minimum size required for the district in which said lot is located, or has less frontage, setback or yard space than the minimum required, except as provided by Article VI and subsection (w), below.

In addition, the following criteria apply to the creation of all lots unless demonstrated adequately to the reviewing authority that the application of one (1) or more of the following criteria is not practical:

- (1) If a lot on one (1) side of a stream, road, or other similar barrier fails to meet the minimum lot size required by the zoning ordinance, it may not be extended to the other side of the barrier to meet the minimum lot size or for the purposes of individual, on-site waste disposal.
- (2) Lots in which parcels of land such as narrow strips are used or are joined to other parcels to meet minimum lot size or frontage requirements, or other reconfiguration of parcels which create irregular-shaped lots (examples of such lots are illustrated in the Site Plan Review Ordinance and Design Guidelines) are prohibited.
- (3) For all proposed lots the lot width shall be at least equal to the minimum frontage requirement.
- (4) All proposed lots must be able to completely contain within its boundaries an area

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ARTICLE V. ADMINISTRATION AND ENFORCEMENT

as would be defined by a circle with minimum diameter equal to the required minimum frontage for the district.

- (5) To the extent possible, lots will be oriented in order to make maximum use of direct sunlight and where feasible, side lot lines shall be at right angles to street lines (or radial to curving street lines.)
- (d) Any land taken by eminent domain, or conveyed to a public entity incident to the construction or improvement of a public way or utility line shall not be deemed to be transferred in violation of the area, width, setback and yard space provisions of the Code.
- (e) Except as provided in subsection w, below, no lot may be reduced in size if, as a result, the setbacks, yards, or other open spaces are smaller than prescribed by this Code. No setback, yard, or other open space may be counted as required open space for more than one (1) building.
- (f) On a corner lot in any district, a building or structure may face either street, and the front setback and yard shall be between the principal building or structure and the street on which the building or structure is to be numbered. The side setback and yard, between the building and side street, shall meet front setback and yard requirements of the applicable district. Additionally, the rear setback and yard, between the principal building and the abutting property on the side street, shall meet side setback and yard requirements of the applicable district.
- (g) A use which is not specifically listed as a permitted or conditional use shall be regulated as a conditional use if the board of appeals or the planning board, reviewing a major development under Article XIII, determines that the proposed use is substantially similar to and compatible with permitted or conditional uses in that district.
- (h) The following land areas shall not be included in the calculation of net lot area or minimum lot size in any zoning district:
 - (1) Land which is situated below the normal high water mark of any water body.
 - (2) Land which is located within the one-hundred (100) year flood plain as identified by an authorized federal or state agency.
 - (3) Land which is located within a wetland as identified and defined by the State of Maine.
- (i) Any use which was a legally existing permitted use prior to the adoption or subsequent amendment of this Code and which becomes a conditional use as a result of the adoption or amendment shall not be deemed to be a nonconforming use but shall be deemed to be, and regulated as, a conditional use for which a permit was duly issued.
- (j) The minimum lot size, minimum frontage, minimum setback and minimum yard requirements of Article XI for single-family cluster developments, mixed residential developments, mixed single-family residential developments and mobile home parks shall apply to the development in its entirety as if it were a single unit. The setback and yard requirements shall apply only where the development abuts an existing public street or easement or property which is not part of the development. Individual buildings or lots within these developments shall comply with the space and bulk regulations appropriate to the type of use.

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- (k) Except for streets, no access for a use shall be permitted across a residential zoning district in which said use is not permitted, unless no other means of access is available and the proposed access and use are to be located on a single lot of record in existence as of December 9, 1987; and the use complies with the standards of Article XI, district regulations and the development of the lot and access complies with the standards of Article XII, performance standards; and Article XIII, development review standards, of this Code.
- (l) Unless expressly designated as an allowed use under Article XI of this Code, no lot in any zoning district may contain more than one (1) principal structure in residential use.
- (m) In all zones, non-permanent structures may be used for the purposes of temporary construction offices during on-site construction. Permits for such structures will be issued for a period not to exceed twelve (12) months. Such permits may be extended by the Code Enforcement Official upon submission of evidence that construction is proceeding in good faith and in accordance with approved plans.
- (n) Unless expressly designated as an allowed use under Article XI of this Code, a lot in a residential zoning district or a lot in residential use may not contain in outside storage more than one (1) unregistered or uninspected vehicle.
- (o) No lot in any residential zoning district may contain any vehicle utilized for commerce which is parked thereon when not in use except for one passenger-type van, small utility van or pickup truck (but not including tow trucks or ambulances).
- (p) Lots on which a building existed on December 9, 1987 may contain unenclosed porches, landings, other similar building features up to thirty-six square feet in total area, and wheelchair ramps, which project up to seven feet into a required yard.
- (q) Chimneys, air conditioners, cornices, eaves, belt courses, sills, canopies and awnings made of nonpermanent materials, architectural or other similar features, excluding building projections with interior space such as bay windows, may encroach into a required yard by up to two feet. [Canopies made of permanent materials, such as those commonly found at gasoline service stations, must meet setback requirements at their fixed location on or in the ground, and the ends and sides of the canopies must meet all yard requirements.]

However, for nonresidential uses, all types of proposed awnings and canopies may encroach into a required yard to the extent the existing yard has been legally occupied by pavement, crushed stone or hard-packed gravel, as long as the installation will not result in undue impact on adjacent properties, due to the placement of the awnings or canopies, location of service, parking or storage areas, or blocking of solar access, and shall in no way interfere with the utilities or with convenient and safe use of the sidewalk and street right-of-way by all pedestrians and vehicles, but in no case may the canopy be closer than two feet from the property line.

Awnings and canopies that are attached to a building without any support structures affixed to the ground or pavement may project over a sidewalk or street right-of-way as long as the following criteria are met:

- (1) The awning or canopy must be safely made, fixed, supported and maintained, so as in no way to interfere with the convenient and safe use of the sidewalk and

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street right-of-way by all pedestrians and vehicles;

- (2) The lowest part of such awning or canopy shall be at least eight feet in height above the sidewalk or street right-of-way;
 - (3) The awning or canopy shall be a minimum distance of two feet from the curb-face or edge of pavement line;
 - (4) On designated historic structures, or within designated historic districts, canopy or awning installations must be approved by the historic preservation review board for appropriateness as provided under article XV, section 5; and
 - (5) Signage on the awning or canopy must conform to the standards of article XII, section 16.
- (r) Lots on which a building existed on December 9, 1987 may contain unenclosed fire escapes to the lot line if they are required by law as a second means of egress. Fire escapes will be located and designed to minimize encroachment into the yard area. This provision shall not apply when a fire escape is required as a result of alterations to a building.
- (s) Lots which front on existing or proposed culs-de-sac may reduce their required frontage by not more than 25 percent as long as the lot width is not less than the minimum frontage required in the district.
- (t) Notwithstanding the provisions under article VI, nonconformance, lots on which a gasoline service station existed on December 9, 1987, which are going through modernization modifications, may replace existing nonconforming pump islands as long as the installation does not worsen the existing violation of the required setback or yard, and is approved in connection with development review pursuant to article XIII hereof.
- (u) Notwithstanding the provisions under article XI, district regulations, with respect to standards for minimum side and rear setbacks and yards, one structure not exceeding 100 square feet in floor area and a height of ten feet, which is accessory to a residential use and is to be utilized for storage purposes only, may be constructed within three feet of the side or rear property line, but not closer than 15 feet from the nearest point of any principal residential structure existing on any adjacent lot.
- (v) Notwithstanding the provisions under article XI, sections 1 through 14, district regulations, with respect to space and bulk standards for setbacks, yards, maximum lot coverage ratios, maximum impervious surface ratios, minimum open space ratios, and maximum building height, modifications of these standards not to exceed 25 percent may be granted by the code enforcement official provided that the criteria contained in article IX, subsections 3(9)(a) through (d) are met and satisfied; for lots in the highway business and community business zoning district with frontage on Main Street, Sabattus Street or Lisbon Street, the modification may be up to 30 percent. The code enforcement official shall not grant modifications for developments that also require other levels of approval by the board of appeals, planning board, or staff review committee; where additional levels of approval are required, the board of appeals, planning board or staff review committee may grant such modifications.

If the code enforcement official finds that the aforementioned criteria is met, at least ten days prior to granting such modification, he/she must notify the owner(s) of the

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property(ies) that is/are immediately adjacent to the proposed improvement, of the proposed modification. For the purpose of this subsection, immediately adjacent to the proposed improvement shall mean, with respect to setback or yard requirements, only those properties which share the common property line from which the required setback is measured or by reference to which the required yard is defined; with respect to maximum lot coverage ratios, maximum impervious surface ratios, minimum open space ratios and maximum building height, "immediately adjacent to the proposed improvement" shall mean those properties that share any common property line with the property which is the subject of the requested modification. If an aggrieved party feels that the code enforcement official has erred in his/her finding, he/she may take an administrative appeal pursuant to article VIII, section 4(1), except that, for the purpose of this subsection, the time set forth in said article VIII, section 4(1) for taking such an appeal shall be ten days after the mailing of the notification required hereby. If an administrative appeal is not filed, or if each owner of property immediately adjacent to the proposed improvement waives in writing the ten-day appeal period, the code enforcement official may grant the modification.

- (w) In the downtown residential zoning district, attached principal residential structures that do not share common hallways or stairways for access to individual dwelling units and detached principal residential structures may be conveyed separately if the staff review committee, pursuant to the provisions of article XIII section 3, finds that all the following standards are met:
- (1) The structures were constructed prior to December 9, 1987.
 - (2) At least one dwelling unit in each building shall be owner occupied.
 - (3) The lot shall be divided to minimize any resulting nonconformities with regard to the space and bulk standards of the zoning district in which the buildings are located.
 - (4) The applicant shall assure implementation of any easements required for access, parking, utilities, maintenance and similar circumstances.
 - (5) The applicant shall submit a standard boundary survey plan prepared by a professional surveyor depicting the location of each building and the boundaries of each lot. Such plan shall also include any easements as described in subsection (4), above.
- (x) *Temporary housing.* Notwithstanding article V, section 3(1) and article XI, district regulations, mobile homes and recreational vehicles such as motorhomes and travel trailers may be used as temporary housing on lots where owner occupied single-family detached dwellings and owner occupied two-family dwellings have been damaged or destroyed by fire, flood, lightning, wind, structural failure or any other cause provided that the following conditions can be met and satisfied:
- (1) Temporary housing shall only be approved in those situations where the homeowner makes a valid case to the satisfaction of the code enforcement official that it is in the best interest of the home owner to not leave the site for other temporary housing.
 - (2) Temporary housing shall be approved on a lot where reconstruction is underway

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or pending.

- (3) Upon receipt of a permit by the code enforcement official, temporary housing may be established for not longer than 90 days; however, two extensions, each not to exceed 90 days, may be granted by the code enforcement official provided that the reconstruction of the permanent housing is being diligently pursued to a level of completion where a temporary certificate of occupancy may be issued by the code enforcement official.
 - (4) Temporary housing shall be placed not closer than five feet from a side and rear property line and ten [feet] from a front property line; however, the ten-foot front setback may be reduced by the code enforcement official to the extent necessary to accommodate temporary housing if he/she finds, following an on-site inspection of the premises, that a lesser distance will neither create, nor aggravate a safety hazard or interfere in municipal snow plowing activities.
 - (5) Temporary housing must be located a minimum of six feet from the nearest point of any principal structure.
 - (6) There shall not be more than one mobile home or recreational vehicle placed on any lot for use as temporary housing.
 - (7) The temporary housing shall be connected to an approved electrical supply other than a generator, and to municipal or private water and sewer; and connection permits are required.
 - (8) Temporary housing shall be removed within 30 days from the completion of the reconstruction; however, in the event that the reconstruction is not completed at the termination of the approved time period, including any extensions, the temporary housing must be removed within 30 days from said termination.
- (y) *Registered primary caregivers.* Notwithstanding Article IX, District Regulations, the following provisions apply to registered primary caregivers as defined in Article II, Section 2:
- (1) Registered primary caregivers engaged in the cultivation of medical marijuana for two to five registered patients shall not cultivate medical marijuana on or within any property containing more than two dwelling units
 - (2) Registered primary caregivers not engaged in the cultivation of medical marijuana and registered primary caregivers engaged in the cultivation of medical marijuana for one registered patient are not subject to sections 5 and 6 of this Article and are permitted throughout the City.
 - (3) Registered primary caregivers engaged in the cultivation of medical marijuana for two to five registered patients are permitted in accordance with Article XI and subject to licensing as per Chapter 22. Article XV of the Code of Ordinances of the City of Lewiston.

(Ord. No. 89-3, 4-7-89; Ord. No. 90-15, 1-11-91; Ord. No. 91-1, 3-19-91; Ord. No. 92-27, 11-19-92; Ord. No. 93-17, 10-7-93; Ord. No. 95-8, 7-20-95; Ord. No. 97-2, 4-17-97; Ord. No. 98-6, 7-2-98; Ord. No. 99-11, 5-20-99; Ord. No. 00-5, 5-4-00; Ord. No. 03-17, 1-1-04; Ord. No. 08-10, 1-15-09; Ord. No. 10-14, 1-6-11)

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Sec. 4. Administrative official.

Unless otherwise specifically stated, the director of code enforcement and the code enforcement officers and inspectors under his supervision (hereinafter code enforcement official) shall administer and enforce this Code and shall have all the powers and duties provided for in 30 M.R.S.A. Section 4966, as amended.

Sec. 5. Administrative procedures.

- (a) A building/ use permit shall be required for all activities regulated by this code including, but not limited to the following:
- (1.) The construction, alteration, relocation, demolition, placement, or removal of or the addition to any structure or building or part thereof;
 - (2.) The construction/ installation of a wall or fence 3.5 feet or greater in height in accordance with Article XII, Sec. 7;
 - (3.) The erection/ installation of a sign or the replacement of a sign face regulated in accordance with Article XII, Section 16 of this code;
 - (4.) The construction/ installation of a swimming pool regulated in accordance with Article XII, Section 6 of this code;
 - (5.) The construction of a driveway or parking lot;
 - (6.) The change of use or occupancy of a building, structure, or lot of land
 - (7.) Campgrounds

No permit shall be issued for the construction, addition, alteration, removal, demolition or change of use of any building, structure or part thereof, or for the use of any premises unless the plans and intended use indicate that the building, structure or premises is to conform in all respects to this Code and the land use laws of the State of Maine.

- (b) The code enforcement official is hereby authorized and directed to make such inspections as are necessary to determine satisfactory compliance with this Code.
- (c) The code enforcement official shall be given free access at reasonable hours to all parts of lots and structures regulated by this Code.
- (d) The code enforcement official shall act upon all written applications for building or use permits required by this Code signed by the applicant and directed to the code enforcement official, either by issuing or refusing to issue such permits within 30 days from the date of filing of the application. Notice of refusal to issue any permit shall be given to the owner or to his authorized representative in writing and shall state the reasons for said refusal. The failure of the code enforcement official to issue a written notice of his decision, directed to the applicant, within 30 days from the date of filing of the application, constitutes a refusal of the permit. The applicant may then either appeal the decision of the code enforcement official to the board of appeals or reapply for a permit after changing whatever conditions led to the original denial.
- (e) All applications for permits for proposed buildings shall be accompanied by a site and a floor plan drawn to scale and submitted in duplicate reflecting the outside contour of all buildings and main bearing partitions, location of said building on the lot, and such other

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information as may be required to demonstrate compliance with this Code. All applications for permits for structures shall be accompanied by a sketch submitted in duplicate of the proposal giving the location of the structure on the property and all dimensions necessary for a clear understanding of what is intended.

- (f) The code enforcement official shall, upon approval of any application for a building or use permit required by this Code, furnish the applicant a permit and retain a copy for his files.

(Ord. No. 11-16, 1-19-12)

Sec. 6. Fees.

- (a) *Payment of fees.* A permit shall not be valid until the fees prescribed by the Policy Manual of the City of Lewiston have been paid, nor shall an amendment to a permit be released until the additional fee, if any, has been paid.
- (b) *Belated fees.* Any person who commences any work prior to obtaining a permit required by this code shall be subject to a double permit fee.
- (c) *Refunds.* Upon request by the applicant and approval of the director of code enforcement, a permit fee may be refunded within 90 days of issuance of the permit.

(Ord. No. 11-16, 1-19-12)

Sec. 7. Certificate of occupancy.

No building or structure, nor any use of land hereafter erected, moved, added to, or structurally altered, nor any use of land which is intensified shall be permitted until the code enforcement official has issued a certificate of occupancy, certifying that the completed building, structure and/or use are in conformance with the terms of this Code. A temporary certificate of occupancy may be issued for a period of not more than six months, provided there is a schedule for timely completion of the work and the code enforcement official determines that there are no hazards to the occupants or the public. The code enforcement official may revoke any certificate of occupancy if he finds that any conditions of approval are not being met. (Ord. No. 89-3, 4-7-89; Ord. No. 11-16, 1-19-12)

Sec. 8. Violations.

- (a) The code enforcement official, on his own initiative, at the request of any municipal officer, or upon any complaint in writing of a possible violation of this Code, shall make or cause to be made an investigation of facts and an inspection of the premises where such violation is said to exist.
- (b) If said investigation or inspection reveals evidence of a violation, the code enforcement official shall give notice of the violation to the owner or his agent and to the occupant of such premises. Said notice shall:
 - (1) Be in writing;

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- (2) Include a statement of the reasons for its issuance;
 - (3) Allow a reasonable time fixed in the notice for the performance of any act it requires;
 - (4) Be served upon the owner or agent and the occupant of the premises, as the case may require, by the code enforcement official or be sent by certified mail to their last known address.
- (c) Whenever, after investigation and inspection, the code enforcement official finds evidence of a violation which requires immediate action to protect the public health and safety, he may, without notice, issue an order reciting the existence of such an emergency and require that such action be taken as he may deem necessary to meet the emergency. Notwithstanding any other provisions of this Code, such order shall be effective immediately.
- (Ord. No. 11-16, 1-19-12)

Sec. 9. Violation abatement.

If after such notice and demand (or demand in the emergency situation described in subsection 8(c), above) such violation has not been abated within the time specified, the code enforcement official will institute, in the name of the city, any and all actions and proceedings, either legal or equitable, that may be necessary or appropriate for the enforcement of the provisions of this Code. The code enforcement official is hereby authorized to institute proceedings in the district court in accordance with Rule 80K of Maine Rules of Civil Procedure, as amended.

(Ord. No. 11-16, 1-19-12)

Sec. 10. Penalty.

Any person, including, but not limited to, a land-owner, his agent, tenant, contractor or other person in possession of or having control or use of any building, structure, land or premise, or part thereof, who violates any of the provisions of this Code or fails to conform to any of the provisions thereof, shall be penalized in the manner provided for in 30-A M.R.S.A. Section 4452, as amended. Each day such violation or failure to comply is permitted to exist after notification thereof shall constitute a separate violation.

(Ord. No. 93-9, 6-17-93; Ord. No. 11-16, 1-19-12)

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ARTICLE VI. NONCONFORMANCE

Sec. 1. Purpose.

The purpose of this article is to regulate nonconforming lots, uses and structures, as defined in this Code, such that they can be reasonably developed, maintained, or repaired, or changed to other less nonconforming uses or brought into conformance with this Code.

Sec. 2. Nonconforming lots.

- (a) *Single, unimproved lots.* A single, unimproved, nonconforming lot which is not contiguous with any other lot in the same ownership may be used as if it were a conforming lot provided that all of the following are met:
- (1) The lot shall have at least 50 feet of frontage;
 - (2) The use does not require a lot size greater than the established minimum lot size for the particular district;
 - (3) The use conforms to all other requirements of the particular district, or a variance has been obtained from the board of appeals;
 - (4) The use conforms to all other applicable local and state land use regulations; and
 - (5) All structures conform to all space and bulk requirements except lot size and frontage.
- (b) *Multiple unimproved lots.* Two or more contiguous, unimproved nonconforming lots held in the same ownership of record at the time of adoption or amendment of this Code shall be combined to the extent necessary to comply with the space and bulk regulations of the district in which they are located and thereafter shall be considered under the provisions of subsection 2(a) of this article.
- (c) *Single, unimproved lots adjacent to developed lot.*
- (1) A single, unimproved, nonconforming lot contiguous with a developed conforming lot held in the same ownership at the time of adoption or amendment of this Code shall be developable only if the unimproved is a lot of record and satisfies the requirements of subsections 2(a)(1)--(5) of this article. If the unimproved lot does not meet said requirements, it shall be combined with the developed lot.
 - (2) If an unimproved lot has frontage on a parallel or nearly parallel street from a contiguous nonconforming developed lot held in the same ownership at the time of adoption of this Code and complies with subsection 2(a) of this article, the lots may be conveyed separately or together.
- (d) *Multiple unimproved lots adjacent to improved lot.* If two or more unimproved nonconforming lots are held in contiguous ownership with a developed lot, any subsequent division of the lots shall comply with the requirements of this Code.
- (e) *Single developed lots.* A nonconforming lot containing a legally existing structure may be used as if it were a conforming lot provided that any change or expansion of the use or structure shall comply with all applicable space and bulk regulations of the district in

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which it is located and shall not increase any nonconformity with respect to lot area, floor area ratio or impervious surface ratio.

- (f) *Multiple developed lots.* If two or more contiguous, nonconforming lots or parcels are in the same ownership of record at the time of adoption or amendment of this Code, and if a principal structure or use exists on each lot, the nonconforming lots may be conveyed separately or together, providing all other state law and local land use ordinance requirements are met.
- (g) *Contiguous lots in shoreland area.* Two or more contiguous lots or parcels held in single or joint ownership at the time of adoption or amendment of this Code that do not individually meet the dimensional requirements of the shoreland area standards as outlined under article XII, subsection 2(e) shall be combined to the extent necessary to meet the dimensional requirements.

This provision shall not apply to two or more contiguous lots, at least one of which is nonconforming, held in single or joint ownership at the time of adoption or amendment of this Code and recorded in the registry of deeds if the lot is serviced or to be serviced by a public sewer, or can accommodate a subsurface sewage disposal system in conformance with article XII, subsection 2(m), the State of Maine Subsurface Wastewater Disposal Rules, and if they can meet either of the following criteria:

- (1) Each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or
- (2) The lots must be reconfigured or combined so that each lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

Should the lots not be able to meet either of the aforementioned criteria, the owner(s) of record may apply to the board of appeals for a variance in order to develop said lots provided that: (1) Each lot can meet the minimum lot size for newly created lots in their underlying residential zoning district; and (2) each lot is serviced by public sewage; and (3) all of the standards for the granting of a variance as listed under article XI, subsections (2)(a--f) have been met.

(Ord. No. 89-3, 4-7-89; Ord. No. 90-2, 5-17-90; Ord. No. 92-19, 9-10-92; Ord. No. 94-10, 8-18-94; Ord. No. 03-15, 12-18-03)

Sec. 3. Nonconforming structures.

- (a) *Maintenance and enlargement.* A structure in lawful existence as of the effective date of this Code that does not meet space and bulk regulations of the district in which it is located, may be repaired and maintained. Unenclosed porches, decks, stairways and other similar facilities may be added or modified provided that they are located so that they comply with setback and yard requirements or do not worsen the violation of the required setback or yard requirement of the existing structure. It may be enlarged and/or accessory structures may be added to the site without a variance upon obtaining a building permit from the code enforcement official, provided that all of the following are met:
 - (1) The enlargement or accessory structure does not itself exceed the prescribed height standard;

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- (2) The enlargement in combination with the existing structure does not exceed, or worsen the existing violation of, the prescribed maximum lot coverage, floor area ratio, impervious surface ratio, off-street parking requirement or other regulation of intensity of use; and
 - (3) The enlargement or accessory structure itself meets the prescribed setback requirements and yard requirements; provided, however, that a vertical expansion of a detached single-family residential structure, which does not meet the prescribed setback requirements and yard requirements, may be built; (a) if the vertical expansion does not extend any further into the required yard or setback than does the existing structure over which it is built; and (b) if the expansion will not result in undue impact on adjacent properties, due to the placement of buildings or structures, location of service, parking or storage areas, diversion of surface water or blocking of solar access.
 - (4) Structures which are located in a shoreland area and are nonconforming because they; (a) do not meet the current space and bulk standards of the zoning district in which they are located; or (b) do not meet the shoreline setback requirements as outlined under article XII, subsection 2(d)(1) of this Code, may be enlarged as long as subsections (1), (2) and (3) above are met, and the expansion of the structure's volume or floor area, during the lifetime of the structure, is less than 30 percent.
- (b) *Reconstruction.* A nonconforming structure which is damaged or destroyed by fire, flood, lightning, wind, structural failure or any other cause to an extent less than 80 percent of the market value of the structure at the time of such damage or destruction may be reconstructed as it existed; but if the damage equals or exceeds 80 percent of the market value, it may be reconstructed only in conformance with space and bulk regulations of the district in which it is located.
- (1) A residential structure which is located in a shoreland area and is nonconforming because it; (a) does not meet the current space and bulk standards of the zoning district; or (b) does not meet the shoreline setback as outlined under article XII, subsection 2(d)(1), and which is damaged or destroyed by 50 percent or less of the market value of the structure before such damage or destruction, excluding normal maintenance or repair, may be reconstructed, in place, as it existed. However, if the structure is removed, or damaged or destroyed by more than 50 percent of the market value of the structure before such damage or destruction, it may be reconstructed or replaced, provided that a permit is obtained within one year of the date of said removal, damage or destruction, and that such reconstruction or replacement is in compliance with the water setback requirement to the greatest practical extent as determined by the code enforcement director. In no case shall a structure be reconstructed or replaced so as to increase its nonconformity.
 - (2) In determining whether the building enlargement, reconstruction or replacement meets the setback requirements, as outlined under article XII, subsection 2(d)(1), to the greatest practical extent, the following criteria shall be considered:
 - a. The size of the lot;

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- b. The slope of the land;
- c. The potential for soil erosion;
- d. The location of other structures on the property and on adjacent properties;
- e. The location of the septic system, and other on-site soils suitable for septic systems; and
- f. The type and amount of vegetation to be removed in order to accomplish the enlargement, reconstruction or replacement.

(Ord. No. 89-3, 4-7-89; Ord. No. 89-9, 7-20-89; Ord. No. 92-19, 9-10-92)

Sec. 4. Nonconforming uses.

- (a) *Continuance.* The use of land, buildings, structures, lawful at the time of adoption or subsequent amendment of this Code, may continue, although such use does not conform to the provisions of this Code. This shall include the replacement of mobile homes in a nonconforming mobile home park, provided all other provisions of article XII, section 14 are met, as well as the replacement of mobile homes on individual lots, provided all other provisions of article XII, sections 2, 4, and section 13, subsections (2) through (6) are met and the new mobile home must meet the suggested safety standards as proposed in appendix A of "Maine's New Mobile Home Park Law - A Guidebook for Local Officials," dated September, 1989. Permitted uses that were made conditional uses as a result of the adoption or amendment of this Code shall be treated as conditional uses for which a permit was duly issued, and any expansion of such structure or use shall occur only after the issuance of a conditional use permit in accordance with article X.
- (b) *Resumption.* Whenever a nonconforming use of land and/or a structure is superseded by an allowed use, such structure and/or land shall thereafter conform to the provisions of this Code and the nonconforming use may not be resumed, except as provided below in section 4(c)(2).
- (c) *Abandonment.*
 - (1) If any nonconforming use of a building, structure or land is discontinued for a period of 12 consecutive months or more, abandonment, except as provided below, is conclusively presumed and such use shall not be resumed, and only a use conforming with the provisions of the district in which the property is located shall be made of such building, structure or land. Abandonment of a seasonable nonconformity is conclusively presumed when the building, structure or use is idle, unopened or otherwise not in actual use during any part of any two consecutive calendar years. Nonconforming uses presumed abandoned may be reestablished during the 12-month period immediately following the date of presumed abandonment as long as a completed application for the conditional use permit is submitted to the office of the director of code enforcement within this period, and the permit is subsequently granted by the board of appeals. In addition to applying the standards for conditional use permits (article X, sections 3 and 4), the board of appeals shall grant a permit only when it finds that the following additional standards have been met:

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- (a) Good cause has been shown for the discontinuance of the use; and
 - (b) The proposed use will not inhibit or discourage the creation, development or use of permitted uses in the neighborhood.
- (2) For those historic buildings and structures identified in Appendix A, Article XV, Sections 6 through 10 of this Code located in the Centreville district, a nonconforming use may be reestablished to its original use in an effort to retain and preserve the original purpose of said building or structure as long as a completed application for the conditional use permit is submitted to the office of the director of planning and code enforcement and the permit is subsequently granted by the board of appeals. In addition to applying the standards for conditional use permits (article X, sections 3 and 4), the board of appeals shall grant a permit only when it finds that the following additional standards have been met:
- a. Documentation has been shown demonstrating what the original use of the building or structure was;
 - b. Good cause has been shown for the discontinuance of the use;
 - c. That the proposed use will not inhibit or discourage the creation, development or use of permitted uses in the Centreville district;
 - d. That the proposed use will not create a traffic hazard, nor increase an existing traffic hazard;
 - e. That the amount of parking required to meet the minimum code requirements for the proposed use exists on the site or will be otherwise provided in accordance with article XII, Section 17 of the Code;
 - f. That the amount of noise, odors, vibrations, smoke, dust and air discharges of the proposed use shall be equal to or less than the present use;
 - g. That the rate of surface water runoff from the site will not be increased;
 - h. That the hours of operation of the proposed use will be compatible with the existing, surrounding land uses;
 - i. That the proposed use will not increase the adverse impact on surrounding properties.
- (d) *Expansion of use.* The expansion of a nonconforming use including a nonconforming outdoor use of land is not permitted. Additions to residential buildings and structures accessory to residential uses are permitted as long as the use is not intensified. In all zoning districts, except the Resource Conservation District and the Groundwater and Lake Conservation Overlay Districts, on legally-developed existing lots of record as of the adoption date of this Code, which contain less than 75 feet of lot width, said residential additions and accessory structures shall meet the applicable minimum space and bulk requirements of article XI, section 5 Neighborhood Conservation "A" District, subsection (3) for existing lots having less than 20,000 square feet. On developed lots of record as of July 2, 1998, containing 75 or more feet of lot width, the minimum space and bulk regulations of the applicable zoning district shall apply.
- (e) *Conversion to a new, nonconforming use.* The board of appeals may grant permission for the conversion of an existing nonconforming use into another nonconforming use in accordance with the procedures of article IX if the board finds that the new use will be

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more conforming to the intent of this Code and more compatible with the existing development of the neighborhood than the existing use. The existing nonconforming use shall be discontinued if the conversion is approved by the board of appeals and the approved change implemented. In determining whether the new use is more conforming to the intent of the Code, the board of appeals shall find all of the following:

- (1) That the existing use was legally established, was made nonconforming by the adoption or amendment of the Code and is not a home occupation;
 - (2) That the proposed use is of the same character or less noxious than the current nonconforming use. The determination as to whether such a use is of the same character or less noxious is to be made by a reference to the most restrictive zoning district where the current nonconforming use is allowed;
 - (3) That the proposed use will not create a traffic hazard, nor increase an existing traffic hazard;
 - (4) That the amount of parking required to meet the minimum code requirements for the proposed use exists on the site or will be otherwise provided in accordance with article XI of the Code;
 - (5) That the amount of noise, odors, vibrations, smoke, dust and air discharges of the proposed use shall be equal to or less than the present use;
 - (6) That the rate of surface water runoff from the site will not be increased;
 - (7) That the hours of operation of the proposed use will be compatible with the existing, surrounding land uses;
 - (8) That the proposed use will not increase the adverse impact on surrounding properties.
- (f) *Replacement of nonconforming use.* A nonconforming use which is damaged or destroyed by fire, flood, lightning, wind, structural failure or other cause to an extent less than 80 percent of the market value of the structure at the time of such damage or destruction may be reconstructed as it existed; but if the damage equals or exceeds 80 percent of the market value, it may be reconstructed, upon the receipt of development approval and a building permit, only in full conformance with the space and bulk regulations of the district in which it is located. Any reconstruction of a nonconforming use shall be the same size or less than the previous structure, and the intensity of use shall not be increased. Any reconstruction permitted by this subsection shall be begun within one year and completed within two years of the date of such damage or destruction. The board of appeals may extend the period for reconstruction upon a showing that work could not begin or be completed for reasons outside the control of the owner.

(Ord. No. 89-3, 4-7-89; Ord. No. 91-5, 5-16-91; Ord. No. 94-16, 11-3-94; Ord. No. 97-6, 6-17-97; Ord. No. 98-6, 7-2-98; Ord. No. 10-09, 10-7-10)

Sec. 5. Nonconforming signs.

A nonconforming sign which has been removed for more than 30 days shall not be reinstalled. A nonconforming sign, to be replaced or altered shall be brought into conformance with the provisions of this Code. (Ord. No. 89-3, 4-7-89)

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Sec. 6. Nonconforming adult business establishments and drinking places.

Notwithstanding article VI, section 4, any nonconforming adult business establishment or drinking place shall be entitled to operate and continue operation if it was lawfully open for business on the effective date of this section and was lawfully engaged in business activity, as an adult business establishment or drinking place, for at least 150 days during the 12-month period prior to the effective date of this section and said adult business establishment or drinking place shall be entitled to continue to operate on an annual basis provided it was lawfully open for business and was lawfully engaging in business activity, as an adult business establishment or drinking place, on at least 150 days during the preceding 12-month period.

(Ord. No. 89-3, 4-7-89; Ord. No. 05-07, 3-17-05)

Sec. 7. Off-street parking and loading spaces.

- (a) A building or structure which is nonconforming as to the requirements for off-street parking space shall not be enlarged or altered to create additional dwelling units, seats, accommodations, or floor space unless off-street parking is provided sufficient to satisfy the requirements of this Code for the enlargement or alteration.
- (b) A use which is nonconforming as to the requirements for off-street parking space may not be changed or intensified unless off-street parking is provided for an additional number of spaces representing the difference between what this Code would require for the existing use were it not nonconforming and what this Code requires for the proposed use.
- (c) A building which is nonconforming as to the requirements for off-street loading space shall not be enlarged or added to unless off-street loading space is provided sufficient to satisfy the requirements of this Code for the addition or enlargement.

(Ord. No. 89-3, 4-7-89)

Sec. 8. Transfer of ownership.

Ownership of nonconforming lots, structures and uses may be transferred and the new owner may continue the nonconforming use or continue to use the nonconforming structure or lot, subject to the provisions of this Code.

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ARTICLE VII. PLANNING BOARD

Sec. 1. Purpose.

The purpose of this article is to establish the organization, authority and responsibilities of the planning board.

Sec. 2. Authority.

The planning board is established pursuant to Section 4.05 of the City Charter and the laws of the state as amended.

Sec. 3. Organization and rules.

- (a) A quorum necessary to conduct an official meeting of the planning board shall consist of at least four members.
- (b) The concurring vote of at least four members is required to constitute an action on any matter requiring a public hearing.
- (c) All seven members enjoy the same rights and privileges regardless of any planning board office that they may hold.
- (d) The mayor or chairman of the planning board may call special meetings of the board.
- (e) Any request for a recommendation by the city council shall be acted upon within 30 days of the request except as otherwise provided for by statute or ordinance or unless a longer period is specified by the city council.
- (f) The planning board may adopt rules of procedure and may adopt statements of policy consistent with the Charter and this Code to assist it in the performance of its functions.
- (g) No member of the board shall participate in the hearing or disposition of any matter in which he has an interest. Any question of whether a member has a conflict of interest sufficient to disqualify the member shall be decided by a majority vote of the members present, except the member whose possible conflict is being examined. Where such vote results in a tie, the subject member shall be disqualified.

Sec. 4. Powers and duties.

- (a) The planning board shall prepare and maintain the official map.
- (b) The planning board shall prepare and maintain a comprehensive plan as defined in 30 M.R.S.A. section 4961 as amended and shall review and make recommendations on all investigations, reports and plans relating to the planning and development of the city or affecting the comprehensive plan.
- (c) The board shall perform those duties prescribed by ordinance and statute including, but not limited to, approving or disapproving subdivisions, making recommendations on amendments to the land use code and administering and enforcing certain provisions of the Code.
- (d) The board shall perform those duties requested by the city council and may perform duties upon request of other public agencies.

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ARTICLE VII. PLANNING BOARD

- (e) The board shall review the annual capital program and report to the city council in accordance with Section 6.05 of the City Charter its findings regarding the needs of the city for the improvement, replacement and alteration of existing facilities and the acquisition or construction of additional facilities and the order in which such projects should be undertaken. The board shall hold at least one public hearing prior to making its recommendations to the city council.
- (f) The board shall review and make a recommendation to the city council with regard to all capital expenditures costing \$100,000.00 or more which are not included in the annual capital program.
- (g) The board may provide assistance and recommendations to any municipal department on matters affecting the comprehensive plan. Each officer and department of the city shall give all reasonable aid, cooperation and information to the board.
- (h) The board shall review and make a recommendation to the city council with regard to the acquisition, except through tax lien foreclosure (36 M.R.S.A. section 942 as amended), and disposition of all public ways, lands, buildings and other municipal facilities.
- (i) The powers and duties described in this section are subject to the powers and duties assigned to the historic preservation review board in article XV of this Code.
- (j) Conditional use permits. The board shall hear and decide applications for conditional use permits, where the development is a major development as defined in article XIII of this Code, in accordance with the standards and procedures set forth in article X of this Code.
- (k) Modifications. The board shall hear and decide requests for the reduction of the provisions under article XI, sections 1 through 14, district regulations, with respect to space and bulk standards for setbacks, yards, maximum lot coverage ratios, maximum impervious surface ratios, minimum open space ratios, and maximum building height, where the development is a major development as defined in article XIII, subsection 3(a)(2) of this Code. In order for the board to grant the aforementioned relief, it must find that the standards contained in article IX, sections 3(9), (10) and (11), as applicable, are met.
- (l) The board shall make determinations necessary for its review of major developments as defined in article XIII of this Code.

(Ord. No. 89-3, 4-7-89; Ord. No. 98-6, 7-2-98; Ord. No. 99-11, 5-20-99)

Sec. 5. Administration and staff support.

- (a) The planning director shall assist the planning board in the administration of its powers and duties including preparing agendas and minutes, providing public notice of meetings, handling correspondence and maintaining all official records.
- (b) Unless otherwise specifically provided in this Code, whenever the planning board conducts a public hearing, notice of said public hearing shall be provided by publication of said notice at least seven days prior to the hearing in a newspaper of general circulation in the city.

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Sec. 6. Appeal of planning board action.

Any appeal from an action of the planning board in administering the provisions of this Code shall be made to the superior court in accordance with the provisions of Rule 80B of the Maine Rules of Civil Procedure as amended.

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ARTICLE VIII. BOARD OF APPEALS

Sec. 1. Purpose.

The purpose of this article is to establish the authority and responsibilities of the board of appeals for the administration and enforcement of this Code.

Sec. 2. Authority.

The board of appeals created by Section 4.06 of the Charter shall serve as the board of appeals under this Code and shall hear and decide those appeals set forth in this section.

Sec. 3. Organization and rules.

- (a) The board of appeals shall conduct its meetings in accordance with the provisions of 30-A M.R.S.A. section 2691, and chapter 2, article IV, division 2, of the Code of Ordinances as amended.
- (b) The board of appeals shall adopt rules of procedure to aid it in the orderly conduct of its meetings.

Sec. 4. Power and duties.

The board of appeals shall have the following powers and duties under this Code:

- (1) *Administrative appeals.* To affirm, modify, or reverse the action of the code enforcement official in issuing or denying any building permit, certificate of occupancy, other permit, order, requirement, decision, determination or interpretation in the enforcement of this Code. No administrative appeal shall lie to the board of appeals from a determination of the planning board. An administrative appeal shall be taken within 30 days of the date of the decision or action of the enforcement official, or within 60 days of the date of application, if no action has been taken thereon, unless otherwise specified by law. The filing of an administrative appeal shall not stay the administrative action from which said appeal is taken.
- (2) *Variances.* To approve, approve with conditions, or disapprove appeals for variances from the strict enforcement of only the provisions of this Code which relate to the space and bulk standards of the district regulations (article XI), and/or floodplain management and administration standards (article XIV). The board of appeals is not empowered to grant a variance to allow a use in a district in which it is not allowed under the district regulations of article XI.
- (3) *Changes from one nonconforming use to another nonconforming use, or for the reestablishment of an abandoned nonconforming use.* To approve, approve with conditions, or disapprove requests to change a nonconforming use to a new nonconforming use or for the reestablishment of an abandoned nonconforming use, pursuant to article VI of this Code.
- (4) *Determination of zoning boundaries.* To interpret the boundaries of land use districts shown on the "official zoning map" in accordance with the standards set forth in article IV of this Code when there is uncertainty about the location of a

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district boundary.

- (5) *Appeals of staff decisions on development reviews.* To affirm, modify or reverse the action of the staff review committee in approving or denying applications for development review and approval of minor projects when the applicant or any party to the action appeals the decision of the committee as provided for in article VIII.
- (6) *Conditional use permits.* To hear and decide applications for conditional use permits in accordance with the standards and procedures set forth in articles IX and X of this Code unless the development is a major development as defined in article XIII of this Code.
- (7) *Modification of off-street parking standards.* To hear and decide requests for modifications of the requirements of article XII, subsections 17(e) and (h).
- (8) *Modification of fence and wall standards.* To hear and decide requests for modifications of the requirements of article XII, section 7, of this Code relative to walls and fences.
- (9) *Appeals of historic preservation review board actions on certificates of appropriateness.* To affirm, modify or reverse the actions of the historic preservation review board in issuing or denying certificates of appropriateness as provided for in article XV.
- (10) *Modifications.* The board shall hear and decide requests for the reduction of the provisions under article XI, sections 1 through 14, district regulations, with respect to space and bulk standards for setbacks, yards, maximum lot coverage ratios, maximum impervious surface ratios, open space requirements and maximum building height.

The board of appeals may not further reduce space and bulk requirements already reduced pursuant to the cluster provisions found under article XIII, sections 7 and 9; or reduce the minimum lot size, minimum setback and minimum yard requirements of article XI for single-family cluster developments, mixed residential developments, mixed single-family residential developments and mobile home parks as they apply to the development in its entirety as if it were a single unit; or further modify yard and setback reductions allowed for awning and canopy installations, and existing service stations, pursuant to article V, subsections 3(q) and (t), respectively.

The board of appeals may not further reduce space and bulk requirements already reduced pursuant to the cluster provisions found under article XIII, sections 7 and 9; or reduce the minimum lot size, minimum setback and minimum yard requirements of article XI for single-family cluster developments, mixed residential developments, mixed single-family residential developments and mobile home parks as they apply to the development in its entirety as if it were a single unit; or further modify yard and setback reductions allowed for awning and canopy installations, and existing service stations, pursuant to article V, subsections 3(q) and (t), respectively.

(Ord. No. 89-3, 4-7-89; Ord. No. 90-10, 10-4-90; Ord. No. 91-1, 3-19-91; Ord. No. 91-2, 3-19-91; Ord. No. 91-5, 5-16-91; Ord. No. 94-17, 11-17-94; Ord. No. 98-6, 7-2-98; Ord. No. 99-11, 5-20-99; Ord. No. 06-05, 4-20-06)

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Sec. 1. Applicability.

The procedures and standards set forth in this article shall apply to appeals that are brought before either the board of appeals or planning board under this Code and, except as otherwise provided in article X, to applications for conditional use permits pursuant to article X.

(Ord. No. 89-3, 4-7-89)

Sec. 2. Appeal procedures.

(a) *Petition.*

- (1) A written petition for an appeal shall be filed in the office of the director of code enforcement within the applicable time period as set out in this Code. In the event no specific time period is provided for in this Code, the petition shall be filed within 30 days of the action from which the appeal is taken. When the appeal is taken from a failure or refusal to act, the petition shall be filed within 60 days after the action was first requested. The petition shall be on forms provided by the city for that purpose and shall be addressed to the board of appeals. A nonrefundable application fee, as established from time to time by the city council to cover administrative costs and the costs of a hearing, shall accompany each petition.
- (2) The petition for appeals shall contain the following information:
 - a. Street address of the property in question;
 - b. The legal name and address of the petitioner;
 - c. The legal name and address of the owner of the property involved;
 - d. The legal name and address of the applicant for any permit which is the subject of the appeal, if different from the owner;
 - e. Description of the property in question;
 - f. Petitioner's description of what is intended to be done;
 - g. A drawing, which is substantially to scale, of the site, showing existing and proposed buildings, roads, drives, parking areas and utilities, the actual relationship of these facilities to each other and the boundaries of the parcel and the location of buildings or abutting lots which are within 50 feet of the property line of the site. Where development approval is required by article XIII of the Code, this drawing shall meet the requirements of article XIII, subsection 3(h)(3).
 - h. A statement of the reason or reasons why the petitioner believes the appeal should be granted;
 - i. If the appeal challenges the issuance of a permit, a description of the permit which was issued.

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- (b) *Scheduling.*
- (1) All hearings shall be held within 30 days of the receipt of a complete petition for appeal, unless otherwise agreed between the petitioner and the board of appeals at the hearing of which public notice has been given pursuant to subsection (c) of this section.
- (c) *Public notice.* Before taking action on a petition for appeal, the board of appeals shall hold a public hearing. The office of the director of code enforcement shall notify, by regular mail, the following parties of the subject matter, time, date and place of the hearing at least seven days before the date of such hearing:
- (1) Each member of the board of appeals;
 - (2) The petitioner, the development department, the mayor and city council, the director of code enforcement, and the owner of the property which is the subject matter of the appeal, if other than the petitioner;
 - (3) The owners of property within 300 feet of all the frontage on both sides of the street and all landowners whose property touches upon the lot involved in the appeal.

The owners of property shall be considered to be the parties listed by the chief assessor as those against whom taxes are assessed. Failure of any property owner to receive said notice shall not necessitate another hearing and shall not invalidate any action by the board of appeals.

- (d) *Representation.*
- (1) Anyone may appear personally at a public hearing or be represented by an agent or an attorney. When the petitioner is not represented by an attorney, the board shall provide to the petitioner a copy of the provisions of this Code applicable to the appeal.
 - (2) The petitioner, either personally or through an agent or attorney, must appear at the hearing at which the petition is to be heard. Failure to appear shall require that the board dismiss the petition and provide the petitioner with written notice thereof.
 - (3) A continuance may be granted to a petitioner or other party in interest where good cause is shown.
- (e) *Conduct of hearing.* All interested persons shall be given a reasonable opportunity to have their views expressed at any hearing.
- (f) *Action by the board.* Within 45 days of the hearing of which public notice was given pursuant to subsection (c) of this section, the board shall render its decision, granting the appeal, granting it subject to conditions or denying it. The failure of the board to act within 45 days shall be deemed a denial of the appeal, unless such time period is mutually extended in writing by the petitioner and the board. Within five days of such decision or the expiration of such period, whichever first occurs, the secretary shall mail notice of such decision or failure to act to the petitioner and, if the appeal was granted, shall notify the director of code enforcement, listing all conditions imposed by the board.

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Sec. 3. Standards for the granting of appeals.

The Board of appeals shall grant an appeal only when it finds that the following standards have been met:

- (1) *Administrative appeals.* That the code enforcement official erred in either his interpretation of the Code or in the application of the Code to the particular circumstances of the application. If the board of appeals finds that the code enforcement official correctly interpreted and applied the provisions of this Code, the board shall affirm his decision. If the board finds that the code enforcement official erred in the interpretation or application of the Code, the decision of the code enforcement official shall be reversed and the board shall make an official interpretation of the Code to be used by the code enforcement official.
- (2) *Variances.*
 - a. The board of appeals shall grant a variance only when it finds that the strict application of a provision of this Code to the petitioner and his property would cause undue hardship. The term "undue hardship" as used in this subsection means:
 1. The land in question cannot yield a reasonable return unless a variance is granted because there are physical conditions unique to the property which are of such an extraordinary nature that strict application of the provisions of this Code greatly decreases its value for any use to which it can be put under the provisions of this Code;
 2. The need for the variance is due to unique circumstances of the property and not to the general conditions of the neighborhood;
 3. The hardship is not the result of action taken by the petitioner or a prior owner;
 4. The granting of the variance will not alter the essential character of the locality;
 5. The granting of the variance will not result in undue impact on adjacent properties due to the placement of buildings or structures, location of storage, parking or service areas, diversion of surface water or blocking of solar access; and
 6. The granting of the variance will not impede the ability of public safety services to reach or service the property or adjacent properties.
 - b. In addition to the standards contained in subsection a., within mandated shoreland zoning areas or in resource conservation, lake conservation or groundwater conservation districts, the board of appeals shall grant a variance only when it finds that the granting of the variance:
 1. Will not result in unsafe or unhealthful conditions;
 2. Will not result in erosion or sedimentation;

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3. Will not result in water pollution;
 4. Will not result in damage to spawning grounds, fish, aquatic life, bird and other wildlife habitat;
 5. Will conserve shoreland vegetation;
 6. Will conserve visual points of access to waters as viewed from public facilities;
 7. Will conserve actual points of public access to waters;
 8. Will conserve natural beauty; and
 9. Will avoid problems associated with floodplain development and use, such as erosion, increased risk of flood damage to upstream properties or increased flood damage.
- c. The board of appeals shall grant a variance from the floodplain management standards of article XIV only when it finds that the granting of the variance:
1. Within any designated regulatory floodway will not result in an increase in flood levels during the base flood discharge;
 2. Is supported by good and sufficient cause;
 3. Will not result, should a flood comparable to the base flood occur, in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public or conflict with existing local laws and ordinances;
 4. Will not cause a conflict with other state, federal or local laws or ordinances; and
 5. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and the board of appeals may impose such conditions to a variance as it deems necessary.
- d. The board of appeals shall grant a variance for new construction, substantial improvements, or other development for the conduct of a functionally dependent use only when it finds that:
1. Other criteria of article IX and article XIV, subsection 6(k) are met; and
 2. The structure or other development is protected by methods that minimize flood damage during the base flood and create no additional threats to public safety.
- e. The board of appeals may grant a variance for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or a state inventory of historic places. upon the determination that:

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1. The development meets the criteria of subsections 3(2)(a) through (d) above; and
 2. The proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- f. Any applicant who meets the criteria of article IX, subsections (a) through (e) shall be notified by the board of appeals in writing over the signature of the chairman of the board of appeals that:
1. The issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25.00 per \$100.00 of insurance coverage;
 2. Such construction below the base flood level increases risks to life and property;
 3. The applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain; and
 4. The board of appeals shall submit to the code enforcement official a report of all variance actions, including justification for the granting of the variance and an authorization for the code enforcement official to issue a flood hazard development permit, which includes any conditions to be attached to said permit.
- (3) *Changes from one nonconforming use to another nonconforming use.* That the criteria set out in article VI, section 4 have been met.
- (4) *Determination of zoning district boundaries.* That the criteria set out in article IV, section 3 have been met.
- (5) *Appeals of staff decisions on development reviews.* That the staff review committee erred in the interpretation or application of the approval criteria set forth in article XIII. If the board finds that the staff review committee correctly interpreted and applied the provisions of this Code, the board shall affirm its decision. If the board finds that the committee erred in its decision, the decision of the committee shall be reversed and the board shall approve, approve with conditions or deny the application.
- (6) *Modifications of off-street parking requirements.* That the criteria set out in article XII, section 17, subsections (e) and (h) have been met.

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- (7) *Modification of wall and fence requirements.* That the criteria as set out in article XII, section 7, subsection (f), have been met.
- (8) *Appeals of historic preservation review board actions on certificates of appropriateness.* That the historic preservation review board erred in the application of the approval criteria set forth in article XV. If the board of appeals finds that the historic preservation review board correctly interpreted and applied the provisions for granting a certificate of appropriateness, the board of appeals shall affirm its decision. If the board of appeals finds that the historic preservation review board erred in its decision, the decision of the review board shall be reversed and the board of appeals shall approve, approve with conditions, or deny the application.
- (9) Modifications of setbacks, yards, maximum lot coverage ratio, maximum impervious surface ratio, minimum open space ratios, and maximum building height requirements by not more than 25 percent; for lots in the highway business and community business zoning districts with frontage on Main Street, Sabattus Street or Lisbon Street, the modification may be up to 30 percent. The requested modifications of the aforementioned space and bulk requirements shall meet the following criteria:
 - a. Detached single-family dwellings and their accessory structures may be located a minimum of ten feet from the nearest point of any existing principal structure or building on any adjacent lot.

All other residential and nonresidential structures requesting modifications must be constructed in accordance with the current building code.
 - b. The granting of the reduction will not result in undue impact on adjacent properties due to the placement of buildings or structures, location of service, parking or storage areas, diversion of surface water or blocking of solar access;
 - c. The modification will not impede the ability of public safety services to reach or service the property or adjacent properties;
 - d. The modification provisions cannot be used to further modify space and bulk requirements already reduced pursuant to the cluster provisions found under article XIII, sections 7 and 9; or to reduce the minimum lot size, minimum frontage, minimum setback and minimum yard requirements for article XI for single-family cluster developments, mixed residential developments, mixed single-family residential developments and mobile home parks as they apply to the development in its entirety as if it were a single unit; or to further modify yard and setback reductions allowed for awning and canopy installations, and existing service stations, pursuant to article V, subsections 3(q) and (t), respectively.
- (10) Modifications of front setbacks limited to vertical expansions, side and rear yards, side and rear setbacks, maximum lot coverage ratios, maximum impervious surface ratios, minimum open space ratios, maximum building height requirements by more than 25 percent (or by more than 30 percent for lots in the highway business and community business zoning districts with frontage on Main

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Street, Sabattus Street or Lisbon Street), but not greater than 50 percent. The requested modifications of the aforementioned space and bulk requirements shall meet the criteria contained in subsection 3(9) above and the following additional criteria:

For modifications to the front setbacks, side and rear yards, side and rear setbacks, maximum lot coverage ratios, maximum impervious surface ratios, minimum open space ratios and maximum building height requirements, the proposed structure, building, storage area, parking or other impervious area cannot otherwise be practically located on the lot to satisfy the code requirements from which relief is sought. In assessing practicality, the board shall take into consideration impediments to development imposed by floodplains, wetlands, shore land zoning, topography, geology, lot size and configuration and limitations caused due to existing conditions of development.

The reviewing authority shall also assess the need for the development and the use of the property in relation to the relief requested such as could the proposed improvements be reduced in scope or be reasonably placed at another location on the lot and still generally meet the petitioners objectives; or are there aesthetic, architectural or structural considerations that warrant that the proposed relief be granted.

- (11) Modifications of side and rear yard and side and rear setback requirements by more than 50 percent. The requested modification of the aforementioned space and bulk requirements shall meet the criteria contained in subsections 3(9) and 3(10) above. In addition, the reviewing authority shall require that the petitioner obtain a maintenance easement/agreement from the owner(s) of adjacent impacted property(ies), (i.e. those properties that are immediately adjacent to the proposed improvement(s) requiring relief that will, in the reviewing authority's opinion, be impacted due to construction, maintenance, stormwater runoff, snow and the potential to limit future development opportunity). The easement/maintenance agreement shall be in a form acceptable to the reviewing authority and shall be recorded at the Androscoggin County Registry of Deeds by the petitioner prior to the issuance of any required permits. In addition, the property boundary subject to the requested relief shall be established by a licensed land surveyor with verification provided to the code enforcement official prior to the issuance of any permits for the requested improvements.

(Ord. No. 89-3, 4-7-89; Ord. No. 90-10, 10-4-90; Ord. No. 91-1, 3-19-91; Ord. No. 93-9, 6-17-93; Ord. No. 94-17, 11-17-94; Ord. No. 94-19, 1-12-95; Ord. No. 98-6, 7-2-98; Ord. No. 98-12, 11-19-98; Ord. No. 99-10, 5-6-99; Ord. No. 02-01, 2-21-02; Ord. No. 06-05, 4-20-06)

Sec. 4. Burden of proof.

The burden of proof is on the petitioner to demonstrate satisfaction of all standards imposed for the granting of an appeal.

Sec. 5. Conditions of approval.

In granting any appeal, the board of appeals may impose conditions on that approval that

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it finds necessary to ensure full satisfaction of the standards imposed for the granting of the appeal and other applicable provisions of this Code. Violations of these conditions shall be a violation of this Code. Such conditions may include, but are not limited to, specifications for the following:

- (1) Vegetation, buffering, and screening;
- (2) Increased setbacks and yards, and access restrictions;
- (3) Hours of use and operational controls;
- (4) Location of signs, parking and lighting;
- (5) Conservation easements and other deed restrictions;
- (6) Professional maintenance and inspection of facilities or improvements necessary to ensure adequate maintenance and inspection;
- (7) Off-site improvements of roads, utilities or drainage facilities.

Sec. 6. Limit of variances.

The board of appeals shall limit the terms of any variance granted to that which is necessary to relieve the proven hardship.

Sec. 7. Reapplication.

If the board of appeals denies an appeal, the petitioner may not have a petition seeking the same or similar relief heard within 90 days of the denial unless the board finds at a duly noticed public hearing, substantial new evidence has been brought forward or that an error of law or mistake of fact was made. If the board so finds, the board shall proceed to hear the second petition on the merits. If the board does not so find, the second petition shall be dismissed.

Sec. 8. Notification of state.

The office of the director of code enforcement shall notify the state department of environmental protection of any variance granted by the board of appeals in areas covered by mandatory shoreline zoning.

Sec. 9. Duration of permission.

Any right, including but not limited to variances, miscellaneous appeals and changes or extensions of nonconforming uses, secured by action of the board of appeals, shall expire if the work or change involved is not begun within six months and substantially completed within one year of such action. However, the board may grant one or more extensions of time, each not to exceed one year, if, prior to the expiration of the applicable time, the petitioner files a written request with the board stating the reason for such request. Notwithstanding the above, the board may grant an extension of time not to exceed two additional years on the date of action on an appeal if the petition for appeal requests such extension. In all cases, the burden of proof shall be on the petitioner to demonstrate that, under the circumstances, the work or change involved cannot reasonably be begun, or substantially completed, within the applicable time.

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Sec. 10. Floodplain notification.

Any petitioner who is granted a variance in a flood hazard area shall be notified by the board of appeals in writing that:

- (1) The construction of a structure below the base flood level may result in greatly increased premium rates for flood insurance; and
- (2) Such construction below the base flood level increases risks to life and property.

Prior to the granting of any such variance, the petitioner must file with the board of appeals a written statement that he is fully aware of all the risks inherent in the use of land subject to flooding, that he assumes those risks and agrees to indemnify and defend the city against any claims filed against it that are related to the petitioner's decision to use land located in a floodplain and that the petitioner individually releases the city from any claims the petitioner may have against the city that are related to the use of land located in a floodplain.

Sec. 11. Effect of granting of appeal.

The granting of an appeal shall merely authorize the preparation, filing and processing of applications for any permits or approvals which may be required by the codes and ordinances of the city including, but not limited to, a building permit, a certificate of occupancy or a development approval. It shall not authorize the petitioner to proceed with the project unless proper permits and approvals are obtained.

Sec. 12. Effect of grant of variance for single-family detached dwelling on individual residential lot.

Unless specifically limited by the board of appeal's granting of a space or bulk variance for a single-family detached dwelling on an individual residential lot, subsequent additions or improvements to the lot shall not require an additional variance with respect to the space or bulk standard which was the subject of the prior variance, but shall be subject to all other use and space and bulk standards, existing as of the time of subsequent additions or improvements, for the district in which the lot is located.

(Ord. No. 03-12, 9-4-03)