

Appendix Land Use Ordinances of the City of Westbrook



Adopted February 9, 2004
Last Updated August 19, 2020

Notes: These ordinances shall be known collectively and may be cited as the “Land Use Ordinances of the City of Westbrook, Maine”, adopted by the City Council on February 9, 2004. They replacing the following ordinances:

“Zoning Ordinance of the City of Westbrook, Maine,” as originally enacted on December 3, 1973, and amended subsequently.

“Site Plan Review Ordinance of the City of Westbrook,” adopted on May 7, 1979, and amended subsequently.

“Subdivision Ordinance of the City of Westbrook,” adopted on May 1, 1963 and amended subsequently.

Cross references – Planning Board, Sec. 2-265 et seq.; buildings, Ch. 6; Housing, Ch. 17.

State law reference – Planning and land use regulation, 30-A M.R.S.A. Sec. 4301 et seq.

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CITY OF WESTBROOK, MAINE
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SPECIAL THANKS TO:

The citizens of Westbrook who contributed their time and effort to this Ordinance.

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LAND USE ORDINANCE

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Chapter I Preamble

101 Purpose.

This zoning ordinance implements the land use strategies in Westbrook's Comprehensive Plan. The plan calls for Westbrook to:

Establish a well-balanced land use pattern that sustains the economic, institutional, and cultural role of the urban core while meeting the current and future needs of Westbrook citizens in a manner that is cost-effective, equitable, environmentally-sound, and sensitive to the City's visual and cultural character.

The City's cultural character has long been shaped by its history as a vibrant, technologically-advanced mill community. Now, as the mills' role in the community has decreased, Westbrook has a unique opportunity to re-invent itself. No longer dependent on processes that often polluted the environment, Westbrook citizens can now look forward to development and activity that is sensitive to the need of its families and children, respective of its neighborhoods and charm, and sensitive to its environment. To achieve these goals, this ordinance will accomplish the following:

- A. Promote and conserve the health, safety, and general welfare of its residents
- B. Promote a safe and sensitive use of the environment that respects our unique resources:
 - The Presumpscot and Stroudwater Rivers
 - Watersheds such as Mill Brook, Minnow Brook, Nasons Brook, Capisic Brook and Long Creek
 - The rural character of northwest Westbrook
 - The rural character of outer Stroudwater Street
 - The improved air quality
- C. Assist in the efficient provision, utilization, and expansion of the municipality's infrastructure
- D. Maintain and enhance the amenities found in our downtown and throughout our community
- E. Encourage the health of our existing neighborhoods and ensure that new neighborhoods have the same cohesive nature
- F. Conserve and encourage appropriate use of environmentally sensitive land and historically significant buildings, recognizing that Westbrook has a limited supply of both
- G. Promote harmonious interrelationships between differing land uses
- H. Encourage the mix of residential, business, and light industry centers
- I. Promote traffic safety for pedestrians and vehicles
- J. Encourage a mix of residential housing options to serve our diverse population, including senior citizens

(Ord. of 4-5-10)

102 Precedence.

In general, this Ordinance is complementary to other ordinances affecting the use, location, and dimensions of buildings in the City, but where there is a conflict, this Ordinance takes precedence.

In the shoreland zone, whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other ordinance, regulation or statute, the more restrictive provision shall control.

(Ord. of 12-13-04)

103 Citation.

This Ordinance shall be known as the "Westbrook Zoning Ordinance" and replaces a previous ordinance enacted by the City Council on December 3, 1973, and amended subsequently.

104 Zoning Map.

The City is divided into districts, as shown on the Westbrook Zoning Map, which map is made a part of this Ordinance, which is on file in the office of the City Clerk. The zoning map is based on the Comprehensive Plan's Future Land Use Map, also on file with the City Clerk's office.

105 Rules of Construction.

This Ordinance operates in accordance with the following rules of construction.

105.1 **Separability.** The invalidity of any provision of this Ordinance does not invalidate any other provision.

105.2 **Use of Certain Terms.** For the purposes of this Ordinance:

- A. Words used in the singular include the plural and words used in the plural include the singular,
- B. Words used in the present tense include the future,
- C. The word "shall" is mandatory; the word "may" is permissive,
- D. Terms not herein defined shall have the meaning customarily assigned to them in the Webster New Collegiate Dictionary.

105.3 **Abbreviations.** The following abbreviations are used in this ordinance.

- A. ' is foot or feet.
- B. " is inches
- C. S.F. is square feet.
- D. mm is millimeter(s)

106 Zoning Change.

The Westbrook City Council may amend, revise, replace or otherwise change this zoning Ordinance, or zoning map, after the following:

106.1. **Complete Replacement.** If the City Council is enacting a complete replacement of this zoning Ordinance or zoning map, the Planning Board must have held a public hearing on the proposed replacement, reviewed the language, and made a recommendation to the City Council.

A. Notice for the public hearing shall follow the procedure outlined in section 106.1.A.(1). through (4)., below. Notices shall indicate that the public hearing is for a complete replacement of the ordinance. If any complete replacement is made to the zoning map, all notices defined in sections 106.1.A.(1) through (4) must include a copy of the proposed zoning map:

(1) Posted in city hall:

(a) At least 13 days prior to the hearing.

(2) Posted on the city's website:

(a) At least 13 days prior to the hearing.

(3) Published at least two (2) times in a newspaper of general circulation:

(a) The first at least 12 days prior to the hearing and the second at least 7 days prior to the hearing.

(4) Mailed to all property owners in the City using the most recent property owner and address records on file with the Westbrook Assessing Department:

(a) The notice shall be mailed by first class mail at least 13 days before the public hearing,

(b) The Planning Board shall prepare and file a written certificate indicating the person to whom the notice was mailed, at what address, and when and from where the notice was mailed.

Notification for a complete replacement of this ordinance or zoning map shall also follow any guidelines set forth in Chapter 2 of the City Ordinances.

106.2. **Revision, Amendment, or Changes Other Than a Complete Replacement.** The Planning Board has held a public hearing on the proposed revision, amendment or change, reviewed the language, and made a recommendation to the City Council.

A. Notice for the public hearing shall follow the procedure outlined in section 106.2.A.(1). through (4)., below. If any revision, amendment or change is made to the zoning map, all notices defined in sections 106.2.A.(1) through (4) must include a copy of the proposed zoning map:

- (1) Posted in city hall:
 - (a) At least 13 days prior to the hearing.
- (2) Posted on the city's website:
 - (a) At least 13 days prior to the hearing.
- (3) Published at least two (2) times in a newspaper of general circulation:
 - (a) The first at least 12 days prior to the hearing and the second at least 7 days prior to the hearing.
- (4) If the revision, amendment or change affects the use or performance standards of an individual property or zoning district, notice shall be mailed to both the property proposed for change and each property owner within 500 feet from any portion of the property proposed for change; public and private rights-of-way do not limit the 500 foot distance measurement:
 - (a) The notice shall be mailed by first class mail at least 13 days before the public hearing,
 - (b) The Planning Board shall prepare and file a written certificate indicating the person to whom the notice was mailed, at what address, and when and from where the notice was mailed.

1063. **Public Hearing.** The City Council has held a public hearing, for which the notice for said hearing must be:

- A. Posted in city hall:
 - (1) At least 13 days prior to the hearing.
- B. Posted on the city's website:
 - (1) At least 13 days prior to the hearing.
- C. Published at least two (2) times in a newspaper of general circulation:
 - (1) The first at least 12 days prior to the hearing and the second at least 7 days prior to the hearing.

107 Contract Zoning

- A. An applicant for contract zoning shall submit an application to the Planning Board on forms provided by the City with the following information and/or fees:
 - (1) A plot plan showing the following:
 - (a) Location of the property proposed for development and its boundaries and dimensions.
 - (b) Location and dimensions of existing and proposed buildings or other structures.
 - (c) The lines of existing and proposed streets, driveways, parking facilities and sidewalks.
 - (2) A detailed statement of the proposed use of the property.
 - (3) A statement setting forth the precise zoning change requested.

- (4) A statement setting forth the conditions or restrictions which the applicant proposes to be applied as a condition of the proposed rezoning. The Planning Board may recommend further conditions or restrictions as outlined in Section 107(4).
 - (5) A non-refundable application fee in such amount(s) as the City Council may from time to time establish in the City Fee Schedule. The fee shall be paid at the time the application is filed with the Planning Board.
 - (6) A consulting and review fee in such amount as the City Council may from time to time establish in the City Fee Schedule. The fee shall be placed in escrow with the City at the time the application is filed with the Planning Board. The fee shall be used by the City in accordance with Section 500.8 Consulting and Review Fees; Inspection Fees of the Land Use Ordinances.
 - (7) Evidence of right, title or interest in the property.
 - (8) Additional Information
 - (a) Traffic Impact Study/Assessment:
 - (i) The applicant must submit a traffic study for all projects that will require a Traffic Movement Permit from the Maine Department of Transportation (MDOT). At a minimum, the traffic study must provide all information set forth in Section 7 of MDOT's Rules and Regulations Pertaining to Traffic Movement Permits, as may be amended from time to time. The Planning Board or City Council may require additional information in the traffic study during the application review process.
 - (ii) For projects that will not require a Traffic Movement Permit from the MDOT, the Planning Board or City Council may request a traffic study or traffic assessment as part of the application. The Board or Council will determine the parameters of the traffic study or traffic assessment as part of the application review process.
- B. Pursuant to 30-A M.R.S.A. section 4352, contract zoning is authorized where, for such reasons as the unusual nature or unique location of the development proposed, the City Council finds it necessary or appropriate to impose, by agreement with the property owner or otherwise, certain conditions or restrictions relating to the physical development or operation of the property, which are not generally applicable to other properties similarly zoned. All rezoning under this section shall establish rezoned areas, which are consistent with the existing and permitted uses within the original zones. All such rezoning shall be consistent with the City's Comprehensive Plan.
- C. The Planning Board shall conduct a public hearing prior to any property being rezoned under this section. Notice of this hearing shall be posted in the municipal office at least 13 days prior to the hearing and shall be published in a newspaper of general circulation within the City at least two times, the first publication to be at least seven days before the hearing. Notice shall also be sent to the owners of all property within 500' of the property to be rezoned, any public drinking water supplier if the area to be rezoned is within its source protection area, and to the owners of property proposed to be rezoned. This notice shall include a map indicating the area to be rezoned and a copy of the proposed conditions and restrictions. The applicant shall be responsible for all fees incurred in the notification of the public hearing.

- (1) The City Council will also hold a public hearing prior to any property being rezoned under this section. Notice of this hearing shall be published in a newspaper of general circulation within the City at least two times, the first publication to be at least seven days before the hearing. The applicant shall be responsible for all fees incurred in the notification of the public hearing.
 - (2) The Recreation and Conservation Commission shall review the project and make a recommendation to the Planning Board. Upon receipt of the application, the Commission shall have thirty (30) days to make its recommendation to the Planning Board. If no recommendation is received by the Planning Board within the thirty (30) day period the Planning Board may proceed with a public hearing without the recommendation.
- D. Conditions and restrictions imposed under the authority of this section may include, by way of example:
- (1) Limitations on the types and number of uses permitted.
 - (2) Restrictions on the scale and density of development.
 - (3) Specifications for the design and layout of building and other improvements.
 - (4) Schedules for the commencement and completion of construction.
 - (5) Preservation and creation of open space and buffers, and protection of natural areas and historic sites.
 - (6) Contributions toward the provision of municipal services generated by the development.
 - (7) Performance guarantees adequate to secure completion and maintenance of improvements, and guarantees against defects.
 - (8) Provisions for enforcement and remedies for breach of any condition or restriction.
- E. All development receiving a contract rezoning is not exempt from the otherwise applicable standards in Section 500 Westbrook Subdivision and Site Plan Review Standards.
- F. No proposal to amend the official zoning map shall be entertained within one year from the date of denial of the same request, unless the Planning Board determines that the application is a substantial change from the previously denied rezoning application.

Chapter II General Provisions

201 Definitions.

Terms used in this Ordinance are defined as follows (Please note that Ordinances in Chapter IV may have their own definitions):

Abutter. The owner of land sharing a common boundary or corner with a site, parcel of land, or lot on which activity is proposed that is regulated by this ordinance.

Accessory Apartment. (Added per Ord. of 11/17/14; Ord. of 4/23/18) (Previously categorized as Accessory Apartment or In-Law Apartment) A secondary dwelling unit established in conjunction with and clearly subordinate to a primary dwelling unit. Accessory dwelling units are a permitted accessory use in all Districts where dwelling units are allowed and are subject to the approval of the Code Enforcement Officer. Accessory Dwelling Units are only permitted for single family dwelling units and subject to standards stated in Section 202.

Accessory Use. A structure or use which is subordinate and incidental to, and serves a permitted use; and is located on the same lot as the principal structure or use; except as otherwise expressly provided in this Ordinance. In no case shall an accessory use dominate in area, extent, or purpose, the principal lawful use or structure. In all cases, accessory uses shall meet the same performance standards of this ordinance as principal uses. The keeping of bees or animals typically associated with farms shall be allowed as an accessory use to a principal residential use on the same lot, provided that (1) the keeping of such animals separately regulated in the Code of Ordinances is done in accordance with those regulations; (2) the keeping of such animals is not done for commercial purposes; and (3) the keeping of animals typically associated with farms, but not limited to goats, cows, and horses, shall only be allowed in those residential zones that

allow a farm as a permitted use. The keeping of bees as an accessory use shall comply with the requirements set forth in the Code of Ordinances. (Ord. 03-03-08; 9-14-15)

Adult Daycare. An adult daycare center licensed by the State of Maine for providing daycare services to adults who are mentally disadvantaged or incapacitated in some way that requires such services.

Adult-Use/ Retail Marijuana. Marijuana that is cultivated, manufactured, distributed or sold by an adult-use/retail marijuana establishment or adult-use/retail marijuana social club.

Adult-Use/ Retail Marijuana Cultivation Facility. A facility or an entity licensed to cultivate, prepare and package adult-use/retail marijuana and to sell adult-use/retail marijuana to adult-use/retail marijuana establishments and adult-use/retail marijuana social clubs.

Adult-Use/ Retail Marijuana Establishment. Includes adult-use/retail marijuana stores, adult-use/retail marijuana cultivation facilities, adult-use/retail marijuana products manufacturing facilities, and adult-use/retail marijuana testing facilities.

Adult-Use/ Retail Marijuana Product. Concentrated adult-use/retail marijuana and adult-use/retail marijuana products that are composed of adult-use/retail marijuana and other ingredients and are intended for use or consumption, including, but not limited to, edible products, ointments and tinctures.

Adult-Use/ Retail Marijuana Products Manufacturing Facility. A facility or an entity licensed to purchase adult-use/retail marijuana; manufacture, prepare and package adult-use/retail marijuana products; and sell adult-use/retail marijuana and adult-use/retail marijuana products only to other adult-use/retail marijuana products manufacturing facilities, adult-use/retail marijuana stores and adult-use/retail marijuana social clubs.

Adult-Use/Retail Marijuana Social Club. A facility or an entity licensed to sell adult-use/retail marijuana and adult-use/retail marijuana products to consumers for consumption on the licensed premises.

Adult-Use/Retail Marijuana Store. A facility or an entity licensed to purchase adult-use/retail marijuana from an adult-use/retail marijuana cultivation facility and to purchase adult-use/retail marijuana products from an adult-use/retail marijuana products manufacturing facility and to sell adult-use/retail marijuana and adult-use/retail marijuana products to consumers.

Adult-Use/Retail Marijuana Testing Facility. A facility or an entity licensed and certified to analyze and certify the safety and potency of adult-use/retail marijuana and adult-use/retail marijuana products.

Aquifer. A geologic formation composed of rock or sand and gravel that stores and transmits significant quantities of recoverable water.

Aquifer Recharge Area. A primary or secondary recharge area composed of porous material or rock sufficiently fractured to allow infiltration and percolation of surface water and transmission of it to aquifers.

Artisan Food and Beverage. Small Scale production, preparation of food and/or beverage made on

site with minimal automated processes involved and may include direct sales to consumer and product tasting. This definition includes uses such as small batch food producers and bakeries, craft breweries, micro-distilleries, wineries, small batch candy shops and cheese makers. Outdoor seating is allowed.

Asphalt plant. An industrial facility used for the production of asphalt, or asphalt products, used in building or construction, and includes facilities for the administration or management of the business, the stockpiling of bulk materials used in the production process or of finished products manufactured on the premises and the storage and maintenance of required equipment, but does not include the sale of finished asphalt products to the general public. (Ord. of 6-7-10 (effective as of 3-24-08))

Automobile Dealership. A retail business carried on by the franchisee of a motor vehicle manufacturer or affiliate of the franchisee, primarily housed in a structure and characterized by a mixture of related uses upon a commercial parcel, the principal use of which shall be the marketing of new or used automobiles or both, by sale, rent, lease, or other commercial or financial means. Secondary supporting uses may also exist upon the same site, such as maintenance, repair and service areas, parts storage areas, and financial service areas. For the purposes of this definition, the word “automobile” shall also include trucks. (Ord. of 6/23/14; 1/5/15)

Automobile Repair Service. A business for the purpose of vehicular repair, where the sale of petroleum products is also permitted. Services may also include so-called quick lube services and other specialty auto repair. (Amended per Ord. of 11/17/14)

Bank Class 1. A bank or similar financial institution with one or more drive-up windows, including ATM machines, whether attached or unattached.

Bank Class 2. A bank or similar financial institution where drive-up windows are not permitted, although an attached walkup ATM is permitted.

Base Flood. A flood having a one percent chance of being equaled or exceeded in any given year, as defined by Flood Insurance Rate Maps.

Base Site Area. Area of a lot of land in square feet.

Bed and Breakfast Class 1. A dwelling in which not more than 10 rooms are rented on a daily basis, and where meals may be provided. (Ord. of 11-19-12)

Bed and Breakfast Class 2. A dwelling occupied by the owner as his principal place of residence where not more than 5 rooms are rented on a daily basis, and where meals may be provided.

Boarding Home for Sheltered Care: A group home for the sheltered care of persons, which, in addition to providing food and shelter, may also provide some combination of personal care, social or counseling services, or transportation. This definition does not include facilities for the treatment of substance use disorder or disabled (physical or mental) persons.

Boarding Home for Sheltered Care, Performance Standards:

- 1.The minimum distance between any two such facilities shall be 1,500 feet, measured from the closest property line to closest property line in an offset.
- 2.Any such facility shall house no more than eight persons. (8 total, including live-in staff, if any)
- 3.Property must be serviced by Public Sewer and Public Water.
- 4.Transit accessible or means of transportation provided by facility.
- 5.Provide the Codes Office with documentary evidence in letter form that the structure meets current fire codes for the designated use under NFPA. This evidence/certification will be provided from an engineer or architect and must be reviewed by the appropriate City official. State Fire Marshall review may also be required.
- 6.Facility shall be licensed as a boarding care according to regulations issued by the Maine Department of Health and Human Services and reviewed by the State Fire Marshall's Office.

Boarding house or Lodging house - A dwelling, which, for compensation, provides lodging, or lodging and meals to more than four persons (or more than 2 bedrooms max) and where owner resides in the building. No provisions for cooking in individual rooms other than a main kitchen is allowed, and meals may or may not be provided.

Boarding houses and Lodging houses shall meet the following conditions:

- 1.Be owner-occupied;
- 2.Have smoke detectors in each sleeping room;
- 3.Property must be serviced by Public Sewer and Public Water.
- 4.Provide the Codes Office with documentary evidence in letter form that the structure meets current fire codes for the designated use under NFPA. This evidence/certification will be provided from an engineer or architect and must be reviewed by the appropriate City official. State Fire Marshall review may also be required.
- 5.Any such house shall contain no more than eight persons, including the owner.

Boarding Kennel. Any place, building, tract of land or abode in or on which 3 or more privately owned companion animals are kept at any one time for their owners in return for a fee or compensation. For the purposes of this Ordinance, a Boarding Kennel also includes a facility where 3 or more companion animals are kept for training purposes, including but not limited to obedience, guide and service training, for a fee or compensation.

Bottle Club. A facility operated on a regular, profit or nonprofit basis for social activities in which members or guests provide their own liquor, where no liquor is sold on the bottle club premises, which maintains suitable facilities for the use of members on a regular basis or charges an admission fee to members or the general public and where members, guests or others are regularly permitted to consume liquor. As used in this definition, "regularly" includes daily, weekly or monthly, but does not include once a year or less often. (Added by Ord. of 4/6/15)

Bottle Club Premises. All parts of contiguous real estate occupied by the bottle club over which

the bottle club owner has direct or indirect control or interest and which the bottle club owner uses in the operation of the bottle club. (Added by Ord. of 4/6/15)

Buffer Zone. Area of undeveloped or landscaped land, measured in horizontal distance, used to provide separation between conflicting uses.

Building. Any structure having a roof, partial roof supported by columns or walls used or intended to be used for the shelter or enclosure of persons, animals or objects regardless of the materials of which it is constructed.

Business Office. A facility used by a commercial, financial, professional, or government enterprise or establishment. For the purposes of this ordinance, the definition of a business office includes limited production or manufacturing operations wherein the office function is the primary activity, and printing and publishing operations. *This term does not include the growing or dispensing of medical marijuana by medical marijuana dispensaries, caregivers, or patients.*

Business Office 2. A facility used by a financial, professional or government enterprise or establishment during usual business hours that only performs functions generally found in an office setting. This includes the use of desks, files, computers, photocopying machines, desktop printers and similar equipment. General business activities may not be conducted outside of the structure in which the office is located. For the purposes of this ordinance, the definition of a business office 2 does not include research and development facilities, limited production or manufacturing operations, or printing and publishing operations. In addition, these specifically excluded activities may not be permitted as an accessory use to the primary business office functions. (Ord. of 02-05-07) *This term does not include the growing or dispensing of medical marijuana by medical marijuana dispensaries, caregivers, or patients.*

Campground. A tent park or recreational vehicle park where individual lots of no less than 10 x 15 feet are rented on a daily basis. Said parks shall provide for camping amenities, have access roads approved by the Fire Department, and have a plan for the elimination of sewage from individual units. Parks are subject to site plan review.

Car Wash. The use of a site for washing and cleaning of passenger vehicles, recreational vehicles, or other light duty equipment.

Cemetery. Land used for the burial of the dead, and dedicated for cemetery purposes, excluding a columbarium, crematories, mausoleums, and mortuaries.

Child Care Center. A building in which daycare and educational programming for children up to kindergarten age is provided. Such a facility shall be considered a commercial operation and shall not be located in a building containing one or more dwelling units. Such a facility may provide for the care of older children in after school programs and shall be consistent with Maine licensing statutes. (Ord. of 4-5-10; 9-14-15)

Church. Any structure used for worship or religious instruction, including social and administrative rooms accessory thereto.

Club or Lodges. An association of people for social or recreational purposes, or for the promotion of some common objective. The use of common property owned by the association, which can include the serving of food or alcohol.

Coastal Wetlands. Any swamp, marsh, bog, beach, flat or other land above extreme low water which is subject to tidal action or as otherwise identified on the basis of soils, vegetation or other similar criteria.

Collective. An association, cooperative, affiliation or group of primary caregivers who physically assist each other in the act of cultivation, processing or distribution of marijuana for medical use for the benefit of the members of the collective.

Commercial Message. Any wording, logo or other representation that directly or indirectly names, advertises or calls attention to a business, a primary product or service, or other commercial activity. (Added 8/3/2020 by Ord. 2020-78)

Commercial Service Business. An establishment or place of business primarily engaged in selling and/or distributing merchandise to retailers and not to the general public; to industrial, commercial, institutional, or professional business users, or to other wholesalers; or acting as agents or brokers and buying merchandise for, or selling merchandise to, such individuals or companies. This use may involve the repair of such merchandise. This is not considered a general commercial use. (Ord. of 6-7-10 (effective as of 3-24-08)) *This term does not include the growing or dispensing of medical marijuana by medical marijuana dispensaries, caregivers, or patients.*

Community-Based Residential Facilities (CRF) – Dwelling units providing communal domiciliary arrangements for a group of unrelated persons for the transition of formerly institutionalized persons back into “main-stream” community living and participation; a “halfway house”;

Community-Based Residential Facilities, Performance Standards:

1. The minimum distance between any two such facilities shall be 1,500 feet, measured from the closest property line to closest property line in an offset.
2. Any such facility shall house no more than eight persons. (8 total, including live-in staff, if any)
3. Staffing is required 24 hours a day.
4. Property must be serviced by Public Sewer and Public Water.
5. Transit accessible or means of transportation provided by facility.
6. Provide the Codes Office with documentary evidence in letter form that the structure meets current fire codes for the designated use under NFPA. This evidence/certification will be provided from an engineer or architect and must be reviewed by the appropriate City official. State Fire Marshall review may also be required.

Community Center. A common building, place, area or other facility, publicly managed, which provides a focus for the recreational, educational, social or cultural needs of the community. Services may be provided by for-profit entities. (Ord. of 11-19-12)

Community Living Arrangement – means a housing facility for 8 or fewer persons with disabilities that is approved, authorized, certified or licensed by the State. A community living arrangement may include a group home, foster home or intermediate care facility.

1. **“Single-Family Use”** – a community living arrangement is deemed a single-family use of property for the purposes of zoning.

2. **“Disability”** – has the same meaning as the term “handicap” in the federal Fair Housing Act, 42 United States Code, Section 3602.

Conditional Use. A use which is by policy permitted in a particular zoning district and consistent with the most recently adopted comprehensive plan; which is by policy considered to be of an essential or desirable nature for the general welfare of the community, and at the same time is not essentially incompatible with existing uses in the district, provided that it meets the standards established for the use, and any conditions of approval imposed by the Planning Board. (Ord. of 04-03-17)

Congregate Care Facility. A multiple family dwelling occupied by people in a shared living environment. Such facilities shall consist of individual apartment units, shared community space, shared dining facilities, appropriate recreational facilities and required care services based on individual need.

Contract Zoning. “Contract Zoning” means the process by which the municipal legislative body may rezone property to permit the use of that property subject to conditions not generally applicable to other properties similarly zoned. (Ord. 08-21-06)

Convention Center. A large venue designed and built to host conferences, exhibitions, large meetings, seminars, training sessions, etc. as its principle use. A convention center may also provide office facilities and leisure activities.

Cutoff luminaire. A complete lighting unit with elements such as shields, reflectors, or refractor panels which direct and cut off the light at an angle of less than 90 degrees. The angle is formed by a line perpendicular to the ground moving up 90 degrees to the point of cutoff.

Day Care Center. A dwelling or facility in which day care is provided for between 4 and 12 children under the age of 16, licensed in accordance with state statute. (Ord. of 9-14-15)

Data Center. A facility used to store computer systems and associated components, such as telecommunications and storage systems.

Dwelling; Manufactured Housing. A structural unit designed for occupancy, and constructed in a manufacturing facility and then transported by the use of its own chassis, or placed on an independent chassis, to a building site. For purposes of this definition only, the following two (1) types of manufactured housing are permitted:

(1) Those units constructed after June 15, 1976, commonly called "newer mobile homes", which the manufacturer certifies are constructed in compliance with the United States

Department of Housing and Urban Development standards. These standards mean structures transportable in one or more sections, which, in the traveling mode, are fourteen (14) body feet or more in width and seven hundred and fifty (750) or more square feet in area, and which are built on a permanent chassis and designed to be used as dwellings, with or without permanent foundations, when connected to the required utilities, including the plumbing, heating, air conditioning, and electrical systems contained therein; except that the term shall include any structure that meets all the requirements of this paragraph, except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the United States Department of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, United States Code, Title 42, Section 5401, et seq. as amended.

(2) Those units commonly called "modular homes," which the manufacturer certifies are constructed in compliance with Maine's Manufactured Housing Act and regulations. Meaning structures, transportable in one or more sections, which are not constructed on a permanent chassis and are designed to be used as dwellings on foundations when connected to required facilities, including the plumbing, heating, air conditioning or electrical systems contained therein.

Dwelling, Multiple Family. A structure consisting of three (3) or more attached dwelling units.

Dwelling, Single Family. A detached structure consisting of one (1) dwelling unit.

Dwelling, Two Family. A detached structure consisting of two (2) dwelling units.

Dwelling Unit. A room or group of rooms providing, or intending to provide, living quarters containing independent cooking, sleeping, and bathroom facilities for one (1) household.

Education Facility. A public, private or church-affiliated establishment for the education at all levels of children and/or adults in subjects or skills.

Emergency Operations. Operations conducted for the public health, safety or general welfare. These include protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings and livestock from the threat of destruction or injury.

Extractive Industry. Industry engaged in the extraction of soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material from its natural location and the transport of the product away from the site of extraction.

Farm. The definition of 'Farm,' 'Farm operation,' and 'Farm product' is determined by the most current definition in 17 M.R.S.A. Section 2805.1.A-C or any successor statutes or provisions. (Ord. of 9-14-15) *This term does not include the growing or dispensing of medical marijuana by medical marijuana dispensaries, caregivers, or patients.*

Flag Lot. A lot so shaped and designed that the main building site area is set back from the public street on which it fronts and includes an access strip connecting the main building site with the frontage street. The creation of flag lot is only permitted on public streets. (Ord. of 4-5-10)

Floodway. The channel of a river, or other watercourse, and 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.

Floor Space. Area used for retail sales, not including storage space.

Florist. A retail business whose principal activity is the selling of plants which are not grown on the site and conducting business within an enclosed building. *This term does not include the growing or dispensing of medical marijuana by medical marijuana dispensaries, caregivers, or patients.*

Food Cart Vendor. An outdoor vendor operating from a portable facility located on a given site, licensed with the City, and selling products including, but not limited to, prepared or unprepared food. This definition does not including flea markets or the sale of general merchandise.

Footprint. The area within the exterior limits of the base of a structure.

Freshwater Wetland. "Freshwater wetland" means freshwater swamps, marshes, bogs and similar areas which are:

- A. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and
- B. Not considered part of a great pond, coastal wetland, river, stream or brook.

These areas may contain small stream channels or inclusions of land that do not conform to the criteria of this subsection.

Front Lot Line. That line which separates the lot from a public or private right-of-way. On a corner lot, the front lot line is the line along the most traveled way as determined by the Code Enforcement Officer.

Funeral Home. A building used for the preparation of the deceased for burial and display of the deceased and rituals connected there with before burial or cremation. A funeral home, as defined for purposes of this code, includes a funeral chapel.

Golf Course. A tract of land laid out with at least nine holes for playing a game of golf and improved with tees, greens, fairways and hazards. A golf course may include a club house, restrooms, driving range, and shelters as accessory uses.

Greenhouse. A building inside which plants are grown, all or part of which are sold at retail or wholesale. *This term does not include the growing or dispensing of medical marijuana by medical marijuana dispensaries, caregivers, or patients.*

Hazardous Matter. Substances identified by the Maine Board of Environmental Protection under Title 38 M.R.S.A., Section 1319, as amended.

Height of Structure. The vertical distance measured from the average ground elevation at the base of a structure to average height of the highest roof surface.

Home Day Care Provider. A person who provides day care in that person's primary residence, on a regular basis, for 3 to 12 children under 13 years of age who are not the children of the provider. Such a facility is allowed only in one- or two-family dwellings. (Amended by Ord. of 11/17/14; 9-14-15)

Hospital. An institution providing primary health services and medical or surgical care to persons, primarily inpatients, suffering from illness, disease, injury, deformity, and other abnormal physical or mental conditions and including as an integral part of the institution related facilities, such as laboratories, outpatient facilities, training facilities, medical offices, and staff residences.

Hotel. A structure providing lodging, for a fee. Accessory uses may include restaurants, meeting rooms, function halls, and associated recreation facilities. For purposes of this ordinance, a Hotel shall include any lodging structure consisting of then (10) units or more per lot. Hotel units that have cooking and sleeping facilities, commonly referred to as efficiency units or suites, shall be rented for short-duration lodging.

Household. A family or a group of unrelated person(s), who live in a dwelling unit that meets the standards and codes of the City of Westbrook.

Impervious Surface. A surface which does not absorb water including, but not limited to, buildings, parking areas, driveways, roadways, sidewalks, and any areas of concrete or asphalt. Land used for outside storage, unless the ground surface is of sufficient porosity to minimize surface water runoff, shall be deemed to be impervious surfaces.

Indoor or Outdoor Performing Arts Venue. An area designed and arranged so that it may be used for outdoor concerts or performances, including live or multimedia performances or showing of films or videos. It may include a bandstand, band shell, stage or other shelter for performers, and seating or seating areas for audiences, any of which may be permanent or temporary. This use category does not include drive-in theaters.

Industry. For-profit or commercial enterprises engaged in the production and sale of goods, generally manufactured, and services which must operate within the minimum performance standards outlined for the appropriate zoning district. (Ord. of 03-07-05) *This term does not include the growing or dispensing of medical marijuana by medical marijuana dispensaries, caregivers, or patients.*

Intermodal Passenger Transportation Facility. A building, structure or location where two or more modes of transportation intersect, and passengers can transfer between modes.

Junkyard. A facility that meets the definition set forth in 30-A M.R.S.A. Sec. 3752. (Ord. of 6-7-10 (effective as of 3-24-08))

Landscaping. Grass, shrubs, trees, flowers, or other comparable surface cover, and any existing vegetative land.

Landscaping Factor. Required landscaping as a percentage of the base site area.

Leachable materials. Liquid or solid materials including solid wastes, sludge, and agricultural wastes that are capable of releasing water-borne contaminants into the ground or existing water bodies.

Level of Service. A technical measure assessing the impact of traffic, generated from new or expanded uses, on the transportation network.

Library. A public and/or non-profit facility in which literary, musical, artistic or reference materials are kept for use but not normally for sale. Community events and social services may also be offered.

Light Manufacturing. A use engaged in the manufacture, predominately from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales, and distribution of such products, but excluding basic industrial processing. For the purpose of the Manufacturing District, light manufacturing includes commercial kitchens or other food preparation operations.

Lot Frontage. The horizontal, straight-line distance between the intersection of the side lot lines with the road right-of-way of a publicly or privately maintained road which is a commonly traveled thoroughfare open to the public but not including private driveways. Frontage for lots fronting on a cul-de-sac shall be the straight line distance between the intersection of the side lot lines with the right-of-way, measured from a point equal to the required setback from the right-of-way and parallel to the right-of-way.

Marijuana. The leaves, stems, flowers and seeds of all species of the plant genus cannabis, whether growing or not.

Maximum Footprint Factor. A measure of the intensity of land use measured in square feet by dividing the footprint of a building by the base site area.

Maximum Gross Density Factor. Intensity of use measured in square feet by dividing building footprint and impervious surface by the base site area.

Maximum Residential Density Factor. Intensity of use measured in square feet by dividing lot size by the number of dwelling units situated within the lot's boundaries.

Media Studio Class 1. A business engaged in the production of live or recorded analog or digital media, included but not limited to podcast, radio, television, or cable casting, where there is no sale of retail goods.

Media Studio Class 2. A business engaged in the production of, or recording of, sound where no broadcasting is permitted and where sale of retail goods is secondary to the business.

Medical Marijuana. Marijuana that is acquired, possessed, cultivated, manufactured, used, delivered, transferred or transported to treat or alleviate a qualifying patient's debilitating medical condition as defined by State law or symptoms associated with the qualifying patient's debilitating medical condition.

Medical Marijuana Caregiver. A person, licensed hospice provider or licensed nursing facility that is designated by a qualifying patient to assist the qualifying patient with the medical use of marijuana in accordance with state law. A person who is a medical marijuana caregiver must be at least 21 years of age and may not have been convicted of a disqualifying drug offense as defined by State law.

Medical Marijuana Dispensary. A not-for-profit entity registered pursuant to state law that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana, or related supplies and educational materials to qualifying patients and the primary caregivers of those patients. Note that a dispensary may be either a single facility, or it may be divided into two separate but related facilities where growing is done at only one of the facilities. This shall be considered a commercial land use.

Medical Marijuana Caregiver Cultivation Facility. An enclosed, locked facility used for cultivating, processing, and/or storing medical marijuana by one or more medical marijuana caregiver(s) at a location which is not the medical marijuana caregiver's residence or his or her patient's residence. This shall be considered a commercial land use.

Medical Marijuana Home Cultivation. Cultivating, processing and/or storing of medical marijuana by a qualifying patient at his or her own residence or a medical marijuana caregiver at his or her own residence for use by a qualifying patient. This use shall be considered an accessory land use.

Medical Office A building or portion of a building containing offices for providing medical services, including, but not limited to dental, psychiatric, physical therapy or chiropractic for out-patients only, but not including the sale of drugs. (Ord. of 03-07-05) *This term does not include the growing or dispensing of medical marijuana by medical marijuana dispensaries, caregivers, or patients.*

Mobile Home Park. See Maine Title 30A MRSA Section 4358 Subsection 3 (Mobile Homes) and subsequent amendments. (Ord. of 11/17/14)

Municipal Facility. Any City facility provided to meet a municipal need. A municipal facility must meet district performance standards and is subject to the Site Plan Review process in Chapter V of this Ordinance.

Museum. A building having public significance due to its architecture or former use or occupancy or a building serving as a repository for a collection of lasting interest or value arranged, intended and designed to be used by members of the public for viewing with or without an admission charge. This term includes aquariums.

Neighborhood Grocery. Commercial enterprise engaged in production, preparation and sale of

staple foodstuffs and household supplies having not more than 3,000 S.F. of total floor space. In permitting a neighborhood grocery, the Code Enforcement Officer shall determine if the facility has adequate parking (on or off site), is screened from residential neighbors, has screened exterior storage, meets minimum sign requirements and does not create negative traffic impacts.

Nonconforming Lot. A single lot of record which, at the effective date of adoption or amendment of this Ordinance, does not meet the area, frontage, or width requirements of the district in which it is located.

Nonconforming sign: Any sign that was lawful prior to the adoption, amendment, or revision of this Ordinance but that does not conform to the current requirements of this Ordinance. (Added 8/3/2020 by Ord. 2020-78)

Nonconforming Structure. A structure which does not meet the standards of the district in which it is located, but which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.

Nonconforming Use. A use of buildings, structures, premises, land or parts thereof which is not allowed in the district in which it is situated, but which is allowed to remain solely because it was lawful existence at the time this Ordinance or subsequent amendments took effect.

Normal High Water Mark of Coastal Waters. That line on the shore at tidal waters reached by the shoreward limit of the rise of the median tides between the spring and the neap.

Normal High Water Mark of Inland Waters. That line on the shore and banks of non-tidal waters which is apparent because of the contiguous different character of the soil or vegetation due to the prolonged action of the water.

Nursing Home. A facility established for profit or non-profit, which provides nursing care and related medical services on a 24-hour per day basis to individuals due to illness, disease, or physical or mental infirmity. Provides care for those persons not in need of hospital care. For the purposes of this Ordinance, a nursing home shall include only those facilities which have been certified, or which will be certified prior to the issuance of any use permits, by the State of Maine Department of Health and Human Services as meeting all licensing and operation regulations for skilled nursing facilities or intermediate care facilities.

Parking Facility. A surface lot, multi-story building or structure or a portion thereof in which motor vehicles or equipment are housed. Parking facilities may be public or private, but may not be used for commercial repair, sale or lease of motor vehicles.

Principal Structure. A structure in which the principal use of the lot on which it is located is conducted, or intended to be conducted.

Principal Use. The primary purpose for which land is used or intended to be used.

Private Recreation Facility. A non-municipal indoor or outdoor recreation or fitness facility, not including water slides, outdoor amusement centers, spectator sports facilities, race tracks, or other similar facilities.

Private Right of Way; Private way – A privately owned and maintained right-of-way meeting the City's street construction standards as set forth in Section 207 and Chapter V Subdivision and Site Plan Standards (regardless of whether the lots being served are part of a subdivision).

Qualifying Patient. "Qualifying patient" or "patient" means a person who has been diagnosed by a medical provider as having a debilitating medical condition and who possesses a valid written certification regarding medical use of marijuana in accordance with section 2423-B.

Research and development. A laboratory or similar facility for investigation into the natural, physical or social sciences, which may include engineering and product development. Such use may not involve the mass manufacturing, fabrication, processing or sale of products. *This term does not include the growing, dispensing or manufacturing of medical marijuana by medical marijuana dispensaries, caregivers, or patients.* (Ord. of 6- 7-10 (effective as of 3-24-08))

Restaurant Class 1. A restaurant whose principal business is the sale of food or beverages ready to consume where a drive-in window is permitted.

Restaurant Class 2. A restaurant where a drive-in window is not permitted, where food is the primary product and is served on the premises, and where alcoholic beverages may be served.

Restaurant Class 3. Drinking establishment: This means bars, bottle clubs, pubs, clubs, lounges, taverns, and other premises whose primary purpose is the sale or consumption of spirits, wine or malt liquor to be consumed on-premise. Typically, in serving primarily spirits, any such establishment offers few or limited food options. This term includes that portion of any restaurant where a room(s) is maintained separate from the main restaurant space, in which full course meals are not regularly served and where alcoholic beverages are sold at tables, booths, and counters and where the primary purpose of the separate room is for the sale of said spirits.

Retail Class 1. A business whose principal use is the retail sale of consumer goods, except for those listed in Retail Class 2 and Retail Class 3. (Amended by Ord. of 11/17/14)

Retail Class 2. A business that is primarily agricultural in nature, selling goods, products, and services which are essential to the economic vitality of the farm.

Retail Class 3. A business whose principal use is the wholesale or retail sale of building materials including, but not limited to, hardware, lawn and garden, fuel products other than gasoline, and small engine and appliance repair.

Retail Class 4. A business whose principal use is the retail sale of fuel with or without the retail sale of goods (e.g. Cumberland Farms, Big Apple). (Amended by Ord. of 11/17/14)

Right-of-Way. Either an existing city street, accepted and maintained by the City of Westbrook, an existing full access State road, a private way, owned in fee simple, or a proposed way within a previously platted subdivision that has been brought up to the standards for either a public street or private way in section 502.5C and thus established for the purposes of providing access and creating a front lot line. A private right of way shall be left as such unless the owner of that private right of way brings it to the level of City standards and the City Council votes to accept the private way as public. In building the private way, the minimum standards for the construction of the gravel base of a public road shall be used. (Ord. of 03-07-05)

River. A free-flowing body of water from a point providing drainage for a watershed of 25 square miles to its mouth.

Service Business. A business whose principal use is the provision of services on a fee or contract basis. This term does not include automobile repair service. (Amended by Ord. of 8/20/18)

Sign. Any device, fixture, placard or structure that uses any color, form, graphic, illumination, symbol or writing to advertise, announce the purpose of, or identify the purpose of a person or entity, or to communicate information of any kind to the public. (Added 8/3/2020 by Ord. 2020-78)

Solid waste. Useless, unwanted, or discarded solid material with insufficient liquid content to be free flowing. This includes, but is not limited to, rubbish, garbage, scrap materials, junk refuse, inert fill material, recyclable goods, and landscape refuse. This definition does not including septic tank sludge and agricultural waste.

Special exception. [See Conditional Use]

Structure. 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, including, but not limited to, buildings, mobile homes, retaining walls, billboards, signs, piers and floats.

Subdivision. “Subdivision” means the division of a tract or parcel of land into 3 or more lots within any 5-year period that begins on or after September 23, 1971. This definition applies whether the division is accomplished by sale, lease, development, buildings or otherwise. The term “subdivision” also includes the division of a new structure or structures on a tract or parcel of land into 3 or more dwelling units within a 5-year period, the construction or placement of 3 or more dwelling units on a single tract or parcel of land and the division of an existing structure or structures previously used for commercial or industrial use into 3 or more dwelling units within a 5-year period.

- A. In determining whether a tract or parcel of land is divided into 3 or more lots, the first dividing of the tract or parcel is considered to create the first 2 lots and the next dividing of either of these first 2 lots, by whomever accomplished, is considered to create a 3rd lot, unless:

- (1) Both divisions are accomplished by a subdivider who has retained one of the lots for the subdivider's own use as a single-family residence that has been the subdivider's principal residence for a period of at least 5 years immediately preceding the second division; or
 - (2) The division of the tract or parcel is otherwise exempt under this subchapter.
- B. The dividing of a tract or parcel of land and the lot or lots so made, which dividing or lots when made are not subject to this subchapter, do not become subject to this subchapter by the subsequent dividing of that parcel. The municipal reviewing authority shall consider the existence of the previously created lot or lots in reviewing a proposed subdivision created by a subsequent dividing.
- C. A lot of 40 or more acres must be counted as a lot. (Amended by Ord. of 11/17/14)
- D-1. A division accomplished by devise does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.
- D-2. A division accomplished by condemnation does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.
- D-3. A division accomplished by order of court does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.
- D-4. A division accomplished by gift to a person related to the donor of an interest in property held by the donor for a continuous period of 5 years prior to the division by gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. If the real estate exempt under this paragraph is transferred within 5 years to another person not related to the donor of the exempt real estate as provided in this paragraph, then the previously exempt division creates a lot or lots for the purposes of this subsection. "Person related to the donor" means a spouse, parent, grandparent, brother, sister, child or grandchild related by blood, marriage or adoption. A gift under this paragraph can not be given for consideration that is more than 1/2 the assessed value of the real estate.
- D-5. A division accomplished by a gift to a municipality, if that municipality accepts the gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.

- D-6. A division accomplished by the transfer of any interest in land to the owners of land abutting that land that does not create a separate lot does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. If the real estate exempt under this paragraph is transferred within 5 years to another person without all of the merged land, then the previously exempt division creates a lot or lots for the purposes of this subsection.
- E. The division of a tract or parcel of land into 3 or more lots and upon each of which lots permanent dwelling structures legally existed before September 23, 1971 is not a subdivision.
- F. In determining the number of dwelling units in a structure, the provisions of this subsection regarding the determination of the number of lots apply, including exemptions from the definition of a subdivision of land.
- G. Notwithstanding the provisions of this subsection, leased dwelling units are not subject to subdivision review if the municipal reviewing authority has determined that the units are otherwise subject to municipal review at least as stringent as that required under this subchapter.
- H-1. Reserved. (Amended by Ord. of 11/17/14)
- I. The grant of a bona fide security interest in an entire lot that has been exempted from the definition of subdivision under paragraphs D-1 to D-6 or subsequent transfer of that entire lot by the original holder of the security interest or that person's successor in interest, does not create a lot for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.

For the purposes of this section, a tract or parcel of land is defined as all contiguous land in the same ownership, provided that lands located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof.

Substandard Lot of Record. A lot of record as defined by this Ordinance that was lawfully established prior to the effective date of this Ordinance which does not conform to one or more of the minimum lot size or dimensional requirements of this Ordinance.

Telecommunications Facility. Any system of antennas, wires, poles, rods, reflecting devices, or similar devices for the wireless transmission and reception of voice or data, attached to the exterior of a building or structure. (Ord. of 3/3/14)

Telecommunications Tower. Any structure designed and constructed primarily for the purpose of supporting one or more telecommunications antenna, including but not limited to monopoles, guyed towers, and lattice towers. (Ord. of 3/3/14)

Temporary Signage. A sign that is intended to be used for a brief period of time and in compliance with the ordinance standards. (Added 8/3/2020 by Ord. 2020-78)

Theater. A building, or part of a building, used to show motion pictures or for drama, dance, musical or other live performances.

Timber Harvesting. The cutting and removal of trees from their growing site and the attendant operation of cutting and skidding machinery, but not the construction or creation of roads or the clearing of land for approved construction.

Unusable Land. An environmentally sensitive area which if disturbed or destroyed, can adversely affect unique ecological balances in the environment. Although specific areas require a case-by-case analysis, the following factors may be included in the determination of unusable land:

- A. Areas of slope in excess of 25%,
- B. Areas of very poorly drained soils, experiencing year-round water within 15" of the surface as identified by the most current version of the "Soil Survey: Cumberland County, Maine", Soil Conservation Service,
- C. Any area identified as a wetland. The wetland area has been identified as having one or more critical purposes as determined by a licensed soil scientist of the State of Maine during a site evaluation,
- D. Any area within the 100-year flood boundary, as delineated on the Flood Insurance Rate Map of the National Flood Insurance Program,
- E. Unique wildlife areas as identified in the review process,
- F. Unique wildlife areas as identified in the review process or by the State of Maine's botanical or natural areas programs.

Utilities. All facilities, public or private, related to the provision, distribution, collection, transmission, or disposal of water, storm and sanitary sewage, oil, gas, heat, steam, power, information, telecommunications and telephone cable, and includes facilities for the generation of electricity. (Ord. of 6-7-10 (effective as of 3-24-08))

Veterinary Clinic. A place where animals or pets are given medical or surgical treatment and are cared for during the time of such treatment. Use as a kennel shall be limited to short-time boarding and shall be only incidental to such hospital use.

Vocational Educational Facility. A public or private facility providing educational instruction in skilled trades such as mechanics or carpentry. (Ord. of 6-7-10 (effective as of 3-24-08))

Warehousing. A use engaged in the storage and transport of products manufactured elsewhere. (Ord. of 6-7-10 (effective as of 3-24-08)) *This term does not include the growing or dispensing of medical marijuana by medical marijuana dispensaries, caregivers, or patients.*

Water Park. A commercial recreation facility that features water play areas such as swimming pools, water slides, splash pads, and water playgrounds, as well as areas for bathing and swimming.

Yard. A space which may be occupied only by steps into or out of a principal structure, a fence,

wall, or other yard accessories, landscaping for screening purposes, and by a driveway.

Yard Setback. The minimum space in which a primary or accessory structure must be placed away from the appropriate lot line.

Yard Setback, Front. An open space extending the width of a lot, from sideline to sideline, between the front lot line and the nearest part of a building on the lot.

Yard Setback, Rear. An open space in the rear of the yard extending the width of a lot from sideline to sideline, between the rear lot line and the nearest part of a building on the lot. A corner lot has no rear yard.

Yard Setback, Side. An open space extending along a sideline of a lot from the front yard to the rear yard between the sideline and the nearest part of a building on the lot.

202 General Provisions.

The following general regulations apply to this Ordinance.

202.1.1 **Accessory Dwelling Unit.** Accessory Dwelling Units are accessory uses and are only permitted for single family dwelling units and must adhere to the following standards:

- A. The owners of the principal structure must reside in the principal dwelling unit or the accessory dwelling unit. This restriction shall be included in the Certificate of Occupancy.
- B. The number of occupants of the accessory dwelling unit is limited to two.
- C. The accessory dwelling unit shall contain a maximum of 800 square feet of habitable (as defined by the building codes) floor area. The floor to ceiling height of all habitable floor area shall be a minimum of 7 feet.
- D. The accessory dwelling unit must be attached to or part of the principal structure on the lot. For the purpose of this definition, “attached” means an enclosed habitable (as defined by the building codes) space.
- E. If on septic, the septic system on the property in question shall be functioning properly at the time of application for building permit approval. In addition, the applicant must submit a new HHE-200 form as documentation that another area of suitable soil exists on the property to be used for septic system repair in the event of failure of the original system. The HHE-200 form, after review and approval by the Code Enforcement Officer, shall be recorded at the Cumberland County Registry of Deeds.
- F. The parking requirements of the Westbrook Land Use Ordinance Section 505 shall be adhered to for each dwelling unit.
- G. Only one accessory dwelling unit per principal structure shall be permitted on a lot.
- H. Proper ingress and egress shall be provided to the accessory dwelling unit.
- I. An accessory dwelling unit which complies with the requirements of this subsection shall not be considered an additional dwelling unit when calculating Residential Density Factor under the space and bulk regulations of this Code.
- J. Should the owners of the principal structure be found in noncompliance with the standards contained in this section, the noncompliance shall be considered a violation of this code and subject to the fines and penalty section, and the accessory dwelling unit shall be discontinued, and the structure shall revert to a single-family dwelling unit.
(Ord. of 11/17/14; Ord. of 4/23/18)

202.1.2 **Artisan Food and Beverage**

- a. Only products produced at the facility or products that are incidental to those produced at the facility may be sold for on-site consumption
- b. Life Safety measures (including but not limited to sprinklers, smoke alarms, etc.) may be required at the discretion of the Fire Department depending on size or condition of the structure containing the use.
- c. Parking will be held to the following standards
 - a. City Center District – no off street parking is required
 - b. All other Zones will comply with the following off street parking standards as stated in Section 505.A, Off-Street Parking:
 - i. Businesses with no customer seating provided: General Retail

ii. Businesses with customer seating provided: Restaurant

202.1.3 **Automobile Dealership.** Automobile dealerships are a permitted use in the Gateway Commercial District north of the Westbrook Arterial. (Ord. of 1/5/15)

202.1.4 **Boarding Kennel.**

- a. The premises shall be kept in a clean and sanitary manner by the daily removal of waste and by the use of spray and disinfectants to prevent the accumulation of flies, the spread of disease or offensive odor.
- b. Temporary storage containers for any kennel wastes containing or including animal excrement shall be kept tightly covered at all times. Such containers shall be made of steel or plastic to facilitate cleaning.
- c. Animal odors shall not be detectable beyond the lot lines of the property wherein the kennel is located
- d. Dust and drainage from the kennel enclosure shall not create a nuisance or a hazard to adjoining property or uses
- e. All outdoor areas accessible to the boarded animals shall be screened with a stockade or similar style privacy fence. Such fence must be a minimum of 6-feet in height.
- f. Grooming services for the animals being boarded may be allowed as an incidental use provided the grooming services are conducted indoors and the grooming area is limited to 500 square feet in area
- g. No more than 20 animals may be kept on the premises on an overnight basis. In no instance shall the overnight boarding of an animal exceed 21 consecutive nights.

202.1.5 **Bottle Club.** Bottle clubs are allowed as a permitted use in the Industrial Park District where it exists south of the Presumpscot River and along Warren Avenue. No bottle club shall be located within three hundred (300) feet of any residence, public or private school, school dormitory, church or parish house in existence at the time that the bottle club license application is submitted. For purposes of this section, the distance shall be measured from the main entrance of the residence, school, school dormitory, church or parish house by the ordinary course of travel.

The bottle club premises shall be closed and vacated by members and guests each day from 1:00am to 9:00am. During the hours that the bottle club must remain closed, no member, guests or other persons may be on, or remain in, the premises, except for regular employees of the bottle club. The drinking of alcoholic beverages on the bottle club premises during such hours is prohibited. (Added by Ord. of 4/6/15)

202.1.6 **Clustering.** The clustering of housing subdivisions is permitted in all districts where residential housing is permitted. As part of the clustering design, the Planning board is permitted to reduce minimum lot frontage, minimum yard depths and lot sizes. The Board may provide for zero lot lines where the units being created within the project are to be attached, provided that multiple family units are permitted in that district. While internal setbacks may be reduced, the setbacks for the zoning district must be maintained from abutting property owners. The reduction of setback requirements shall be part of the subdivision or site plan review process before the Planning Board. Maximum Residential Density Factors provided for each residential zone, as well as all other performance

standards, must be adhered to. All other applicable requirements of the subdivision and site plan review processes in Chapter V shall be followed.

202.1 **Congregate Care Facilities.** Congregate care facilities shall meet the following requirements:

A. Age. All facilities shall house persons of 55 years of age or older or in accordance with one of the following exception:

(1) Where at least one living mate is at least 55 years old or more,

(2) Where a person less than 55 years of age has a physical disability which necessitates congregate care living.

B. Typical Dwelling Unit. The typical dwelling unit in a congregate care facility shall have a minimum habitable space of 500 S.F.

- C. Residential Density Factor. A congregate care facility shall have a density factor of at least one (1) dwelling unit per 5,000 S.F.
- D. Shared Dining Services. The facility shall have a central dining facility for all residents, providing at least one (1) meal per day per person.
- E. Personal Care and Housekeeping. Limited personal care and assistance as well as housekeeping services may be made available to all residents upon request.
- F. Medical Services. Specialized shared services related to medical support and physical therapy shall be made available to all residents. At least one registered or licensed nurse shall be available 24 hours per day.
- G. Parking. One and one-fourth spaces shall be provided for each dwelling unit.
- H. Services and Shops. Any service and retail shops shall be designed as an integral part at the building. Such facilities shall be designed for use by the residents and not to serve those living outside the facility.
- I. Recreation Areas. A recreation plan, incorporating indoor and outdoor activities, shall be included as part of the congregate care facility. Such a plan shall include both passive and active recreation and may be incorporated into any open space or landscape factor.

2022 **Dwelling Unit Ownership.** Nothing in this Ordinance precludes the subdivision of buildings into units, either attached or detached, on a single lot, provided that the performance standards of the zone are met and that the application receives subdivision and/or site plan review. An applicant must submit to the Westbrook Planning Board for approval all legal documents related to unit associations, ownership in common and appropriate by-laws, deeds and covenants. The applicant shall record all such documents, along with the subdivision and/or site plan, in the registry of deeds.

2023 Reserved. (Removed by Ord. of 11/17/14)

2024 **Exceptions to Height Limitations.** Height restrictions do not apply to chimneys, air conditioning systems, skylights, and other necessary appendages to a permitted use which are usually constructed above the roof line, except that their height is restricted to 10 feet above the roofline.

2025 **Extractive Industry.** Industry engaged in the extraction of soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material from its natural location and the transport of the product away from the site of extraction must meet the following requirements:

- A. Top soil, rock, sand, gravel and similar earth materials may be removed from locations where permitted under the terms of this ordinance only after a special permit for such operations has been issued by the building inspector upon approval by the Planning Board and review of plans by the Planning Board in accordance with the provisions of this ordinance, and provided that:
 - (1) Specific plans are established to avoid hazards from excessive slopes or standing water. Where an embankment must be left upon the completion of operations, it shall be at a slope of not steeper than one-foot vertical to two (2) feet horizontal,
 - (2) The operation is shielded from surrounding property with adequate screening and creates no disturbance of a water source, and when terminated shall not detract from the appearance or value of nearby property,

- (3) No excavation shall be extended below the grade of adjacent streets unless one hundred (100) feet from the street line or unless provision has been made for reconstruction of the street at a different level, and the edge of all workings shall be set back from the property line a minimum of one hundred (100) feet,
- (4) Sufficient topsoil or loam shall be retained to cover all areas, so that they may be seeded and restored to natural conditions,
- (5) A surety bond is posted with the treasurer of the city by the applicant in an amount recommended by the city engineer and approved by the Planning Board as sufficient to guarantee conformity with the provisions of the grant of approval.

B. The plan review by the Planning Board shall take into consideration the following items. The Board may impose such conditions as necessary to safeguard the health, safety and welfare of the community:

- (1) Fencing, landscaped buffer strips, public safety,
- (2) Advertising signs, lighting,
- (3) Parking space, loading and unloading areas,
- (4) Entrances and exits,
- (5) Time period for operation,
- (6) Hours of operation,
- (7) Methods of operation,
- (8) Weight and loading limit of trucks,
- (9) Sand and gravel spillage upon public streets,
- (10) Rehabilitation proposals,
- (11) Ecological and other natural considerations.

C. Blasting must be conducted in compliance with the requirements of Title 38 M.R.S.A. §490-Z(14).

20261 **Flaglots.** To permit the construction of no more than one principal building on flaglots, as defined herein, subject to the following:

- (1) Such lots, exclusive of the minimum 50' wide access strip shall have at least the minimum lot area required for the zoning district in which it is located.
- (2) A building shall not be so located on the property as to preclude future dedication and/or construction of a street according to city specifications as set forth in the Westbrook Code of Ordinances to service the subject flaglot, abutting parcels and other nearby inaccessible parcels.
- (3) No additional development shall be allowed on the subject flaglot until a street or public way is constructed to specifications as provided in the Westbrook Land Use Ordinances to meet the street frontage requirements of that zoning district.
- (4) Any construction shall meet the performance standards of the underlying zoning district. Setbacks shall be measured from the edge of the buildable area of the lot.
- (5) All flaglots must have a minimum width of 50' on a public street. The 50' wide minimum access strip must be maintained the entire depth of the lot and no structure may be constructed within the access strip. No variance shall be granted from this requirement.
- (6) The Code Enforcement Officer may approve a shared driveway with an abutting lot with frontage on the same public street as the flaglot. Lots with shared

driveways must separately meet the 50-foot width requirement established in subsection 6 of this Section and approval of a shared driveway shall not constitute a waiver of this requirement. An applicant for a flaglot who seeks approval of a shared driveway shall show evidence of a permanent easement creating the shared driveway.

- (7) If the creation of the flaglot creates a subdivision as defined in Section 201.87 of this Ordinance, the application must receive subdivision approval from the Planning Board in accordance with Chapter V of the Westbrook Land Use Ordinances. (Ord. of 4-5-10)

202.7 **Foundation.** A wall below the floor near or at grade which serves as a structural support for a wall, pier, column or other part of a building, or the wall of a basement that resists lateral soil load. (Ord. of 03-07-05)

202.8 **Greenhouse or Florist.** A horticultural business where products may be grown on the premises, within greenhouses, and where the products may also be sold on the premises.

202.9 **Home Day Care Provider, Day Care Center and Child Care Center Review.** For zoning districts in which a conditional use review is not required, the Code Enforcement Officer must approve all applications for Home Day Care Providers and Day Care Centers, as defined in this Ordinance. Code Enforcement Officer approval is also required whenever a Home Day Care Provider, Day Care Center or Child Care Center expands its enrollment beyond the enrollment number for which it was approved. In addition to the zoning district, conditional use and/or Site Plan Review criteria, the following additional criteria shall be used:

- A. A minimum of 50 S.F. of dedicated outdoor play area shall be required for each child and such play area shall not be located in the front yard facing a public right-of-way. (Amended by Ord. of 11/17/14; 9/14/15)
- B. All play areas shall be enclosed by a minimum of four (4) foot fencing,
- C. When a facility is located in a two-family dwelling then at least an equal amount of outdoor play area shall be maintained for the second unit, also not located in the front yard facing a public right-of-way. (Ord. of 9/14/15)
- D. One (1) off street parking space shall be provided for each employee or volunteer, and one (1) off street parking space for every 6 children shall be provided,
- E. The parking area shall be in a safe location, shall include an area for snow storage, and shall permit the parent to move directly to the entrance for the loading and unloading of children without affecting the movement of other vehicles,
- F. The proposed facility shall not burden on-site septic or offsite waste disposal.
- G. There shall be toilet facilities on every floor of the facility. Where the facility is a Home Day Care Provider separate toilet facilities shall be provided for the residential and facility uses.
- H. All facilities shall demonstrate that they meet the requirements for licensing by the state and shall provide proof of state licensure prior to issuance of a Certificate of Occupancy and shall meet all sanitary, plumbing code, fire code, and building code requirements, as identified by the Code Enforcement Officer
- I. Based on location, area traffic, and neighboring uses, the Code Enforcement Officer or Planning Board may set the hours of operation, and

- I. If the operator of the facility is not the owner of the property on which the facility will be located, the operator shall provide evidence of the property owner's consent to the facility. The operator shall also provide proof of interest in the property, such as a deed or lease.

(Ord. of 01-08-07; 4-5-10; 11/17/14; 9/14/15)

202.10 Home Occupation. An occupation carried on by residents of a dwelling unit where:

- A. The occupation is clearly secondary to the principal use of the dwelling unit,
- B. Only two people other than family members residing on the premises may be employed,
- C. There must be no change to the outside appearance of the building or premises, other than one non-illuminated sign of not more than four square feet,
- D. The home occupation use is limited to 500 S.F. of the enclosed building area,
- E. Any parking provided by the owner must be off-street, exclusive of any yard setback, and be screened from any neighbor,
- F. If renting or leasing, tenant must have permission from the owner, and
- G. No more than two (2) pieces of commercial equipment shall be permitted, and this equipment must be able to meet the performance standards of the particular zoning district within which the structure exists. The commercial equipment must be contained and used entirely within the dwelling unit or accessory structure.

(Ord. of 03-07-05)

202.11 Land Partially in other Municipalities. When a lot is situated partially in the City and partially in another municipality, this Ordinance must be applied to the part of the lot in Westbrook without regard to the spatial impact of the municipal boundary.

202.12 Land Surveyors. Where this Ordinance requires a land surveyor, he/she must be registered and licensed in accordance with Maine law.

202.13 Lot. A lot is a parcel of land of at least sufficient size to conform to minimum zoning requirements for use, coverage, and associated factors, and to provide such yards and other open spaces as are herein required. The lot must have the minimum lot frontage for its particular zoning district fronting on a public or private right-of-way, and may consist of:

- A. A single lot of record,
- B. A portion of lot of record,
- C. A combination of lots of record, or portions of lots of record,
- D. A parcel of land described by metes and bounds, or
- E. A parcel of land divided by a private or public right-of-way, provided that in the case of a subdivision or combination of lots no remaining lot or parcel shall be created which does not meet the requirements of this Ordinance.

202.14 Lot Partially in Two Districts. When a lot is bisected by a district boundary, the following regulations apply:

- A. The provisions of the zoning district in which the larger portion of the lot lies, to be known as the primary district, govern the use of the lot.

- B. In the determination of the base site area, land in both zones may be used in arriving at an appropriate maximum footprint factor, maximum gross density factor, and landscape factor, provided that uses permitted in the primary district extend no more than thirty (30) feet into the adjacent zoning district.

202.15 **Lot of Record.** A parcel of land with ascertainable boundaries described in a recorded deed in a subdivision plan approved by the Planning Board, and meeting prior zoning requirements at the time this Ordinance was adopted.

202.16 **Lots Under Common Ownership.** Adjacent lots owned by the same person are deemed to be separate lots for the purpose of this ordinance, provided that they were pre-existing lots prior to this ordinance, and unless the owner chooses to legally combine them in one deed.

202.17 **Manufactured Housing on Individual Lots.** Before manufactured housing may be located on an individual lot outside of a manufactured housing park, it must have a conventional pitched roof consistent with the surrounding neighborhood, a permanent foundation, and exterior siding that is consistent with the appearance of dwelling units in the neighborhood. The construction must be in conformance with all applicable state and local codes.

202.18 **Multiple-Family Structures and Conditional uses.** In addition to the performance standards of Section 204, the following standards are required to be met in granting a conditional use for a multiple-family structure:

- A. Entryways shall be located and consolidated in such a manner so as not to impact surrounding residential properties. One driveway access point shall be used unless, for safety reasons, multiple points of entry are deemed necessary,
- B. No deck, entryway, patio area, or recreational area for a multiple-family structure shall be within 8 feet of a single-family structure property line,
- C. Where adjacent to existing residential structures, there shall be no exterior stairs, decks, or porches above the second story of the structure,
- D. When adjacent to existing single-family structures, all parking, exterior storage and recreation areas shall be screened,
- E. No exterior lighting from the multiple-family structure shall extend across the property line into an adjacent neighbor's yard.

202.19 **Net Residential Acreage.** The net area of any site suitable for residential development. The net residential density shall be determined by subtracting the unusable land defined in Section 201.87 from the gross acreage of the site.

- A. Cluster Subdivisions. In the case of cluster subdivisions, buildable land dedicated as open space may be used in determining the net residential density of the site.
- B. Site Plan. In the case of projects in the site plan review process, buildable land dedicated as open space may be used in calculating the net residential density of the site.

- 202.20 **Odor Threshold.** When addressing odor impact relative to zoning district restrictions, odor measurement will be described as the odor threshold. Odor threshold may be described as the concentration in air of a gas or vapor which will evoke a response in the human olfactory system.
- 202.21 **One Unit, One Household.** In dwellings, the number of households in residence shall not exceed the number of dwelling units provided.
- 202.22 **Only Permitted Uses Allowed.** A structure may not be constructed or used, and land may not be used or divided, except in accordance with this Ordinance. All other construction, use or division of land or buildings is expressly prohibited except that which is already lawfully existing at the time this Ordinance is enacted.
- 202.23 **Owner/ Lessee.** The regulations pertaining to an owner of property also pertain to a lessee.
- 202.24 **Person.** The regulations pertaining to a person apply also to a partnership, corporation, or any other legal entity.
- 202.25 **Provisions Applicable to All Zones.** The following provisions, apply in all districts:
- A. Road Construction Standards. Street construction as required by this Ordinance must meet the standards stated in 502.5.
 - B. Parking and Loading. Unless otherwise specified for a particular district, the parking and loading standards required by this Ordinance must meet the standards set forth in Sections 505.1-2.
 - C. Recreation or Open Space. The requirements for recreation and open space for new housing construction must meet the standards set forth in Section 502.6 of this Ordinance.
- 202.26 **Public Records.** All documents and records required by this Ordinance are public records, according to state statute.
- 202.27 **Conditional Use or Variance-Order of Precedence.**
- A. Where permission to exercise a use requires a conditional use as well as site plan or subdivision review, the applicant may receive review from the Planning Board for the conditional use at the same time as the application is reviewed for subdivision or site plan approval, unless specifically stated otherwise in this ordinance.
 - B. Where permission to exercise a use requires a variance, as well as site plan or subdivision review, the applicant must receive approval from the Zoning Board of Appeals for the variance before application is made for subdivision or site plan approval, unless specifically stated otherwise in this ordinance.
- 202.28 **Structure.** The regulations pertaining to buildings apply also to all other structures except where the application would be unreasonable, as determined by the Code Enforcement Officer. However, a structure of 140 square feet or less must be set back at

least 5' from the nearest lot line. All structures require a building permit. (Ord. of 11/17/14)

202.29 Reserved.

202.30 **Telecommunications Facilities.** Telecommunications facilities shall meet the following requirements:

- A. **General Review Requirements.** All proposals for the addition of telecommunications facilities to existing towers, or alternative structures, shall seek building permit approval from the Code Enforcement Officer upon satisfactory completion of the requirements of this section.
- B. **Height.** No part of the telecommunications facility shall be more than ten (10) feet above the height of the existing structure to which it is attached and in no case shall it exceed the maximum height for the applicable zoning district. For telecommunications facilities co-locating on existing telecommunications towers, standards in section 202.31-1.O shall apply.
- C. **Aesthetics.** Unless otherwise required by the FAA, FCC, or other Federal or State authority, telecommunications facilities shall be placed and designed in such a way as to minimize visual impact from public rights of way and abutting residential uses. Telecommunications facilities may not be ground mounted. Telecommunications facilities may be flush mounted to an exterior building wall or located on top of buildings and must be set back from the roof line at least the height of the telecommunications facility.
- D. **Structural.** To ensure the structural integrity of telecommunications facilities, they shall be designed, constructed, and maintained in conformance with applicable Federal, State, and Local building, electrical and safety codes and designed and installed in accordance with the current standards of the Electronic Industries Association (EIA) *Structural Standards for Steel Antenna Towers and Antenna Supporting Structures*.
- E. **Exemptions.** The following are exempt from the provisions of this section:
 - 1) Emergency Wireless Telecommunication Antennas solely for emergency communications by public officials.
 - 2) Antennas on property owned, leased or otherwise controlled by the City of Westbrook for the sole purpose of municipal use.
 - 3) Amateur ham radio stations licensed by the Federal Communications Commission.

(Added per Ord. of 3/3/14)

202.31 **Telecommunications Tower.** Telecommunications towers shall meet the following requirements:

- A. General Review Requirements. All proposals for the construction and expansion of telecommunications towers shall first receive Site Plan approval. In addition to the standards of Site Plan review, all such proposals shall be in conformance with this Ordinance. Proposals for co-location of a telecommunications facility on an existing telecommunications tower which do not result in the expansion of existing towers shall receive approval from the Code Enforcement Officer under the Special Provisions for Telecommunications Facilities.
- B. Design for co-location. Telecommunications towers and related equipment shall be designed and constructed to accommodate future co-location of at least two (2) additional telecommunications antennas or providers.
- C. Height. Notwithstanding any other height limits established by this Ordinance, the following height limitations are applicable to telecommunications towers. No telecommunications tower shall exceed two hundred twenty-five (225') feet in height, measured from the tower base to the highest point of the tower and any attached receiving or transmitting device. Towers may not exceed one hundred (100') feet if located within five hundred (500') feet of a dwelling unit.
- D. Setbacks. The tower shall maintain a minimum setback distance between abutting properties and the base of the tower equal to one hundred twenty (120%) percent of the tower's total height, including any attached transmitting or receiving devices, unless the applicant can demonstrate that the design of the tower will insure that in a collapse, the tower will drop vertically into the ground. In no case shall the minimum setback distance from the property line to the base of the tower be lesser than one hundred (100%) percent of the tower's total height, including any attached transmitting or receiving devices. Accessory structures and guy wire anchors shall meet the minimum setback of the zoning district in which the tower is located. Any tower shall be setback from other on and off-site towers and supporting structures so that one tower will not strike another in case of collapse.
- E. Structural. To ensure the structural integrity of towers, the owner shall ensure that the construction of a new tower or any alteration of a tower, including the addition of antennas or other attachment, is designed, constructed, and maintained in conformance with applicable Federal, State, and Local building, electrical and safety codes and designed and installed in accordance with the current standards of the Electronic Industries Association (EIA) *Structural Standards for Steel Antenna Towers and Antenna Supporting Structures*.
- F. Aesthetics. Unless otherwise required by the FAA, FCC, or other Federal or State authority, telecommunications towers shall have a galvanized finish.
- G. Lighting. Towers shall not be artificially lighted, unless required by the FAA, FCC, or other Federal or State authority. If lighting is required, the Planning Board may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding properties and views. Light from artificial sources shall be focused down and may not trespass beyond the lot lines.
- H. Advertising. No advertising or signage is permitted on telecommunications towers, except for safety or other signage required by the FCC.
- I. Fencing. A security fence or wall not less than eight (8) feet in height from the finished grade shall be provided around the tower. Access to the tower shall be through a locked gate.
- J. Landscape and Buffering. All existing on-site vegetation shall be preserved to the maximum extent practicable. Evergreen trees shall be maintained where a tower

- exceeds one hundred (100') feet in height. Landscaping shall be added so as to minimize views from public ways and abutting dwelling units.
- K. Vehicle Access. Circulation and vehicle access shall be provided. Road access shall be the minimum size necessary to allow safe access.
 - L. Parking. Two (2) parking spaces and one (1) additional space for each tower on-site personnel shall be provided.
 - M. Technical Assistance. The Planning Board may obtain or require the applicant to obtain the services of Professional Engineers registered in the State of Maine and other consultants to review and inspect the applicant's proposal, or any portion thereof. Such services are permitted to include, but not be limited to, engineering and technical review, planning review, environmental assessment review, soils review, mechanical and structural engineering review, and the investigation of possible alternative tower systems, designs and/or locations. The costs of said services shall be borne by the applicant.
 - N. Approvals and Permits. Where FAA, FCC, or other agency approval is necessary for siting, all documentation shall be made a part of the application.
 - O. Existing Towers. All telecommunications towers legally existing at the effective date of this ordinance shall be considered legal non-conforming uses and will be allowed to continue their usage as they presently exist. Notwithstanding the provisions of Section 203.6, existing towers may exceed their current height by up to twenty-five (25%) percent, provided that any modifications shall comply with this Ordinance. In no case shall the tower's modified height exceed two hundred twenty-five (225') feet.
 - P. Performance Guarantee. A performance bond, or other acceptable form of guarantee, approved by the City Planner as to form and sufficiency, to pay for the costs of removing the entire facility, if it is abandoned, and reclaiming the site to a pre-construction condition, shall be provided. For purposes of this section, a tower shall be deemed abandoned when there are not telecommunications facilities in operation on the tower for a period of greater than 90 days, unless an extension is granted by the Code Enforcement Officer due to damage to the structure by fire, weather or other similar cause. The amount of this performance guarantee shall be in an amount equal to one hundred twenty-five (125%) percent of the projected total cost of removing the entire facility, and reclaiming the site to its pre-construction condition. Should the operation of the facility cease in the future, and the facility is dismantled and the site reclaimed by the owner and/or operator, the performance guarantee shall be returned to the owner and/or operator. The accepted form of surety shall be reviewed by the City Planner every five (5) years, and renewed or increased when necessary.
 - Q. Discontinuance of Use. In the event that the use of a telecommunications tower is discontinued, the telecommunications tower owner shall provide written notice to the City of its intent to discontinue use and the date when the use shall be discontinued and a plan, including timeline, for its reuse or reclamation.

(Added per Ord. of 3/3/14)

203 Nonconformance.

203.1 Purpose. The intent of this Ordinance is to regulate nonconforming lots, uses and structures. This ordinance intends to be realistic so that: nonconforming vacant lots of record can be

reasonably developed; nonconforming existing structures can be properly maintained or repaired; and nonconforming uses can continue to be changed to other less nonconforming uses or to conforming uses. When nonconforming uses cease operation, the intent of these regulations is not to allow them to be reestablished after a twelve-month period of dormancy. These regulations are designed for the betterment of the community and for the improvement of property values.

203.2 General.

- A. Continuance, enlargement, reconstruction. Any use of land, or any structure, or parts thereof, legally existing at the time of the adoption of this ordinance, or at any time a zone is changed by amendment hereafter, which does not conform to the requirements of this ordinance or its amendments, may continue, but may not be extended, reconstructed, enlarged, or structurally altered except as specified by this Ordinance.
- B. Transfer of ownership. Ownership of lots, structures and uses which remain lawful but become nonconforming by the adoption or amendment of this ordinance 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 ordinance.
- C. In addition to the standards outlined below, nonconforming structures, lots and uses located within the Shoreland Protection Overlay Zone shall conform to the standards outlined in Section 401.12 of this Ordinance. Whenever a provision of this section conflicts with or is inconsistent with a provision in Section 401.12 the provisions of Section 401.12 shall prevail.

203.3 Nonconforming Use

- A. Existing nonconforming use.
 - 1. A residential nonconforming use may be extended, altered or expanded without a variance. Any increase in building footprint must conform to the performance standards of the zoning district in which it is located. The expansion or creation of one accessory structure to a nonconforming residential structure shall be permitted.
 - 2. Unless otherwise stated in this section, a nonresidential nonconforming use of a building or structure shall not be extended throughout other parts of the building or structure unless those parts of the building or structure were manifestly arranged or designed for such use prior to the adoption of this ordinance or of any amendment making such use nonconforming.
- B. Change of a nonconforming use.
 - 1. An existing nonconforming use may be changed to another nonconforming use if the Code Enforcement Officer determines that the proposed use is less intrusive than the current use.
 - 2. If a nonconforming use is changed to a conforming use by this Ordinance, it must remain a conforming use thereafter.
- C. Discontinuance of a nonconforming use.
 - 1. If a nonconforming nonresidential use is discontinued for 12 consecutive months, as determined by the Code Enforcement Officer, it shall thereafter be utilized as a

permitted use or conditional use, in accordance with the performance standards in the zoning district in which it is located.

D. Nonconforming Use – Extractive Industry.

1. Where the nonconforming use is an extractive industry, it shall be considered a prohibited extension or enlargement of the use to do any of the following:
 - a. Increase the amount of materials lawfully extracted from the site on a monthly basis. This increase shall be determined based upon an average of the amount of materials lawfully extracted on a monthly basis during the operating months of the extractive industry over the immediate prior (5) years.
 - b. Move lawfully existing processing operations to another location on the property.
 - c. Increase the amount of truck traffic generated on a daily basis. The increase shall be determined based upon an average of the number of truck trips generated on a daily basis during the operating months of the extractive industry over the immediate prior five (5) YEARS.
 - d. Establish any type of extractive industry use on adjacent property that was not part of the parcel on which excavation occurred on the date of the adoption of the ordinance, ordinance amendment or map amendment that made the extractive industry a nonconforming use.
 - e. Relocate to another location on the site extraction activities in lawful existence at the time of the adoption of the ordinance, ordinance amendment or map amendment that made the use nonconforming unless the operator of the extractive industry demonstrates to the Code Enforcement Officer the following:
 - i. The area proposed for extraction activities was clearly intended to be excavated before the adoption of the ordinance, ordinance amendment or map amendment that made the use nonconforming, as measured by objective manifestations and not by subjective intent; and
 - ii. The relocated operations will not have a substantially different and adverse impact on the adjacent neighborhood, including but not limited to traffic generation, dust, noise and vibrations.
2. For the purposes of this section, evidence of objective manifestations of intent to excavate an area may include, but is not limited to, Planning Board approval of a plan for an extractive industry for the site, including the area where the relocation is proposed, regardless of whether extraction has commenced in that area before the adoption of the ordinance, ordinance amendment or map amendment that made the extractive industry a nonconforming use.

203.4 Nonconforming Structure

A. Expansions of a nonconforming structure.

1. A nonconforming structure may be expanded provided that the expansion does not increase the nonconformity of the structure, as determined by the Code Enforcement Officer. Expansions of a nonconforming structure that meets the standards of the zone in which it is located are permitted.
2. The placing of a foundation below a lawfully existing nonconforming structure shall not constitute the expansion of the structure, provided that the first-floor space of the structure is not increased, and provided that the maximum height limit within the zone is not exceeded.

- B. Restoration or replacement of a nonconforming structure.
 - 1. The normal upkeep and maintenance of nonconforming structures including repairs, renovations and modernizations which do not involve expansion of the nonconforming structure or any other changes in the structure as required by federal, state or local building and safety codes is permitted.
 - 2. Any nonconforming structure which is hereafter damaged or destroyed by fire or any cause other than the willful act of the owner or their agent, as determined by the Code Enforcement Officer, may be restored or reconstructed within one year of the date of said damage or destruction, or two years within the date of fire damage, provided that restoration or replacement structure does not increase in nonconformity.

203.5 Nonconforming lots

- A. Except in the Shoreland Zone, where a nonconforming lot of record was part of a subdivision approved in conformance with City and State subdivision regulations and statutes, said lot may be constructed upon in accordance with the zoning requirements in effect at the time the lot was lawfully established, provided the proposed use is a permitted one. However, such zoning requirements shall apply only to new construction upon a vacant lot.
- B. A single lot of record which, at the effective date of this chapter, does not meet the minimum lot size or minimum road may be built upon without a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership and provided further that all other provisions of this chapter are met.
- C. Where a nonconforming lot cannot meet the yard setback requirements of this ordinance, the Zoning Board of Appeals may grant a variance in accordance with provisions of Chapter 7. No variance shall be granted if the lot is by deed connected to an adjacent lot, and their combination meets the requirements of the Ordinance.
- D. If two or more contiguous lots or parcels are in single or joint ownership of record at the time of the adoption of this chapter, or any time thereafter, and if any of said lots or parcels does not individually meet the dimensional requirements of this chapter or subsequent amendments, and if one or more of the lots are vacant or contain only an accessory structure, the lots or parcels shall be combined to the extent necessary to meet all dimensional standards. This provision does not apply to a nonconforming lot of record that was part of a subdivision approved in conformance with City and State subdivision regulations and statutes.

203.5.1 Nonconforming Lot Design Standards - The following design standards must be used when new construction is proposed for a lot as established in Sections 203.5.A and 203.5.B above. The purpose of these standards is to ensure that increased density in established neighborhoods makes a positive contribution to the character of the City's urban neighborhoods, while continuing to provide housing for all members of the community. Architectural similarity, not sameness, together with similarity in scale and massing are the key focus of these standards.

- A. The measurement of the immediate neighborhood is as follows:

1. On the same side of the street, by counting six houses to the left, and six houses to the right of the proposed building, and
 2. On the opposite side of the street, by counting the house most directly opposite the proposed building, and then counting six houses to the right and six houses to the left.
- B. Building Construction Material - Buildings must be constructed on a foundation and framed on the site, unless the building meets the State modular home guidelines.
- C. Building Design:
1. Porches - There must be a porch at all main entrances that face the street or private way. In the case of corner lots, the main entrance that faces the most traveled way shall be used. New homes are required to have a porch if either of the following situations exists: a) if an existing home on either side of the building lot has a porch, or b) 50% or more of the homes in the immediate neighborhood of the proposed building have porches.
 - a. Single Story Buildings – The porch or deck of a single-story building is not required to have a roof but must be at least three (3) feet wide and (3) feet deep.
 - b. Two- or more Story Buildings
 - i. If the porch projects out from the building it must have a roof.
 - ii. If the roof of a required porch is developed as a deck or balcony, it may be flat, otherwise the roof must have a similar pitch to the main building.
 - iii. If the main entrance is to a single dwelling, the covered area provided by the porch must be designed in a similar style and dimension to an existing porch in the immediate neighborhood. The style chosen shall be approved by the Code Enforcement Officer.
 - iv. If the main entrance is to more than one dwelling unit, the covered area provided by the porch(s) must at least cover the main entrances to the building and be designed in a similar style and dimension to an existing porch in the immediate neighborhood. The style chosen shall be approved by the Code Enforcement Officer.
 - c. In all cases, if no applicable porch designs are available in the immediate neighborhood, the Code Enforcement Officer may approve an alternate design that best matches the roof slopes and design of the proposed building.
 2. Columns – If the front porch at a main entrance provides columns as supports, the columns may not be unadorned 4x4 posts or wrought iron.
 3. Windows and Doors – Street facing windows must be vertical. Where abutting properties have sash that are divided, then new buildings shall have complimentary window designs. Windows in rooms with a finished floor height four (4) feet or more below grade are exempt from this standard.
 4. Roofs
 - a. Pitch – Primary structures must have a sloped roof with a pitch that is similar to abutting properties. The use of flat roofs must use the following:
 - i. The cornice meets the following conditions:
 - a) There must be two parts to the cornice. The top part of the cornice must project at least 6 inches from the face of the building and be at least 2 inches further from the face of the building than the bottom part of the cornice; and

- b) The height of the cornice is based on the height of the building as follows: buildings 10 feet tall or less must have a cornice at least 6 inches high.
 - b. Buildings greater than 10 feet and less than 35 feet in height must have a cornice at least 12 inches high.
 - c. Eaves – Roof eaves must project from the building wall at least 12 inches on all elevations. Buildings that take advantage of the cornice option are exempt from this standard.
5. Landscaping – Landscaping must be provided as follows:
- a. At least one tree, of a 2-inch minimum caliper, must be provided in front of each residential structure. On corner lots, there must be one tree for each 50 feet of frontage on the side street. Such tree(s) shall be guaranteed by the landowner for a minimum of 1-year.
 - b. Screening shall be provided in the non-driveway side yard in order to provide a buffer to the adjacent lot. The Code Enforcement Officer shall determine that such screening meets the intent of this requirement.
6. Vehicle Areas
- a. Parking areas and driveways must be located to the side of the primary structure's street-facing façade.
 - b. Attached garages must be set back at least 4 feet further from the property's front lot line than the primary structure's street facing façade is set back from the property's front lot line.
7. The following additional standard shall apply to lots subject to section 203.5.1 located in the RGA-1 Zoning District:
- a. Height. Building height shall no exceed the average height of houses in the immediate neighborhood in existence prior to the proposed subdivision or individual home.
 - b. Yard Setbacks. Front and rear yard setbacks shall be no less than 15'.

A.
204 Conditional Use

204.1 **Planning Board.** The Planning Board shall be responsible for conditional use reviews in accordance with this Ordinance. Where the Home Day Care Provider, Day Care Center or Child Care Center use is proposed and where that use requires approval of a conditional use, the requirements of Section 202.9, Home Day Care Provider, Day Care Center and Child Care Center Review, shall supersede all requirements below, except those of 204.5 Notice of Conditional Use Application. An applicant who seeks a use by conditional use shall submit to the Board diagrams or photographs, which become part of the record, illustrating the proof required by this section. He/She must prove the following:

- A. Certain Requirements Met. That the use requested meets the dimension, parking, loading, and sign requirements of this Ordinance. Otherwise, the applicant must also request an appropriate variance. Applications for conditional use permits must also meet the standards of subdivision or site review, depending on the applicability of the application.
- B. Value. That the use requested will not significantly devalue abutting property or property across public or private way. In making its determination, the Board shall take into consideration the type of structure proposed, the topography of the area, the market value of the surrounding real estate, the availability of utilities, traffic conditions, and other relevant factors.
- C. Effects of Land Use. That the use granted will:
 - (1) Maintain safe and healthful conditions,
 - (2) Not cause water pollution, erosion, or sedimentation
 - (3) Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat,
 - (4) Conserve shared tree cover and visual, as well as actual, access to water bodies,
 - (5) Not burden on-site septic or off-site waste disposal,
 - (6) Not burden existing public ways.
- D. Performance Standards. That the use granted is compatible with adjacent land uses and that it meets the following performance standards:
 - (1) Landscape Environment and Enhancement. The landscape must be preserved in its natural state insofar as practicable. It must be designed so as to stabilize the slopes and buffer the site, where necessary,
 - (2) Surface Water Drainage. Surface water drainage must not have an adverse effect on surrounding properties, downstream water quality, soil stability, or the storm drainage system,
 - (3) Water, Air, Soil Pollution. The development will not cause unreasonable water, air, or soil pollution,

- (4) Soil Integrity. The development will not cause unreasonable soil erosion or reduction in the capacity of the soil to hold water,
- (5) Natural Environment. The development must not have an unreasonably adverse effect on a historic site or irreplaceable natural areas,
- (6) Nuisance Factor. The development must not cause unreasonable noise, odors, dust, gas, fumes, smoke, light or other annoying or dangerous emissions,
- (7) Special Features. Exposed storage areas, machinery installation, service and loading areas, and similar facilities must be set back, screened, or buffered so as to minimize any possible adverse effect on the surrounding uses,
- (8) Vehicular Access. The site layout must provide for safe vehicular access and egress, including that for emergency vehicles,
- (9) Parking and Circulation. The layout of vehicular and pedestrian traffic patterns must provide for safe interior circulation, separation of pedestrian and vehicular traffic, and storage of plowed snow and the parking shall comply with the parking requirements set forth in Section 505.1 A-D, regardless of whether the conditional use requires site plan review, and

- (10) **Public Services.** The development must not impose an unreasonable burden on the water supply and sewage disposal systems, fire or police services, public ways, schools, recreational facilities, and other public services or facilities.

The applicant must present detailed information in the form of diagrams, photographs and drawings and such engineering data as deemed necessary by the Board. If the Board finds that the applicant can construct the building in such a manner as to not endanger the health or safety of the occupants, it shall grant him a building permit, subject to such condition as it deems necessary.

(Ord. of 4-5-10; Ord. of 04-03-17)

204.2 Special Conditions. In granting a conditional use permit, the Planning Board may impose special conditions consistent with the purposes of this Ordinance and with the Comprehensive Plan, with which the applicant must comply. The conditions shall be stated specifically in a copy of the decision and the copy shall be mailed to the applicant. (Ord. of 04-03-17)

204.3 Time Limitations of Rights Granted by the Planning Board.

A conditional use granted by the Planning Board expires unless the work necessary to accomplish the purpose for which it was requested is commenced within one (1) year and completed within two (2) years after it was granted, or is completed in accordance with a phased completion schedule proposed by the applicant and approved, or modified and approved, by the Board and incorporated in its decision granting the exception. In determining whether work has been completed in accordance with an approved schedule, allowances may be made for delays in scheduled completions caused by inclement weather, strike, or acts of a natural nature.

204.4 Appeal.

The applicant, abutting landowner, or aggrieved party may appeal a Conditional Use decision of the Planning Board to the Superior Court of the State of Maine within thirty (30) days of the Planning Board decision. (Ord. of 04-03-17)

204.5 [Reserved. 04-03-17]

204.6 [Reserved. 04-03-17]

204.5 Notice of Conditional Use Application.

Notice of conditional use applications shall be mailed to property owners within 500 feet of the property submitting for a conditional use. (Ord. of 5-19-08; Ord. of 04-03-17)

Section 205. Medical Marijuana - Dispensaries & Caregiver Cultivation Facilities.

A. State Authorization required.

1. Before submission of a conditional use application for a Medical Marijuana Dispensary or a Medical Marijuana Caregiver Cultivation Facility, the applicant must demonstrate his or her

authorization to cultivate, process and store medical marijuana pursuant to the Maine Medical Use of Marijuana Program.

B. Location criteria/buffer zones.

1. No medical marijuana dispensary or medical marijuana caregiver cultivation facility shall be closer than 500 linear feet, measured in a straight line from the dispensary or facility building entrance, to the nearest point on the boundary of any property which is occupied by any of the following sensitive uses:
 - i. A licensed child day care facility;
 - ii. a church, synagogue or other house of religious worship;
 - iii. a public or private school; public library
 - iv. a lot zoned residential or used as a residence;
 - v. an athletic field, park, playground or recreational facility;
 - vi. any juvenile or adult halfway house, correctional facility, or substance abuse rehabilitation or treatment center;
2. The City will only verify distance of the proposed premises from existing uses listed in (1) through (6) above; A medical marijuana dispensary or medical marijuana caregiver cultivation facility may continue to operate in its present location as a preexisting use if a sensitive use listed in (1) through (6) above later locates within the applicable buffer zone; however, the medical marijuana dispensary or medical marijuana caregiver cultivation facility does so at its own risk, and City-issued licenses, permits or approvals provide no protection or indemnification against enforcement of federal or other applicable laws that may prohibit operation of a medical marijuana dispensary or medical marijuana caregiver cultivation facility near a sensitive use listed in (1) through (6) above.

C. Signage.

1. No signs containing the word "marijuana," or a graphic/image of any portion of a marijuana plant or otherwise identifying medical marijuana shall be erected, posted or in any way displayed on the outside of a medical marijuana dispensary or a medical marijuana caregiver cultivation facility. This regulation shall not apply to (1) any advertisement contained within a newspaper, magazine or other periodical of general circulation within the City or on the Internet; and (2) advertising which is purely incidental to sponsorship of a charitable event not geared to or for the benefit of children or youth.

D. Hours of operation.

1. Medical marijuana dispensary or medical marijuana caregiver cultivation facility may be open to the public for business only between the hours of 8:00 a.m. and 8:00 p.m., locally prevailing time. If other hours of operation apply in State law or local ordinance, the more restrictive hours shall control.

E. Security requirements.

1. All security recordings shall be preserved for at least 30-days by the medical marijuana dispensary or medical marijuana caregiver cultivation facility. The medical marijuana dispensary or medical marijuana caregiver cultivation facility shall provide the Police Chief or their designee with the name and functioning telephone number of a 24-hour on-call staff person to whom the City may provide notice of any operating problems associated with the medical marijuana dispensary or medical marijuana caregiver cultivation facility.
2. No approval for a medical marijuana dispensary shall be granted by the Planning Board until the Police Chief or their designee has made a positive recommendation on the applicant's proposed security measures, which must be in compliance with State

requirements. Security measures at a medical marijuana dispensary shall include, at a minimum, the following:

- i. Security surveillance cameras installed and operating 24 hours a day, 7 days a week, to monitor all entrances, along with the interior and exterior of the premises, to discourage and facilitate the reporting of criminal acts and nuisance activities occurring at the premises;
- ii. Door and window intrusion robbery and burglary alarm systems with audible and Police Department notification components that are professionally monitored and maintained in good working condition;
- iii. A locking safe permanently affixed to the premises that is suitable for storage of any cash stored overnight on the licensed premises;
- iv. Exterior lighting that illuminates the exterior walls of the licensed premises and complies with applicable provisions of the Code of Ordinances; and
- v. Deadbolt locks on all exterior doors and locks or bars on any other access points (*e.g.*, windows).

F. Performance Standards – Medical Marijuana Dispensary and Medical Marijuana Caregiver Cultivation Facility.

1. Visibility of activities

- i. All activities, including, without limitation, cultivating, growing, processing, displaying, selling and storage, shall be conducted indoors. Medical marijuana dispensary or medical marijuana caregiver cultivation facility are not permitted to have outdoor sales or services of any kind.
- ii. Under no circumstances shall activities related to the cultivation, production, processing, distribution, storage, display, or sales of marijuana and marijuana-infused products be visible from the exterior of the business.

2. Odor/Emissions management.

- i. The odor of marijuana must not be perceptible at the exterior of the building at the premises or at any adjoining boundary to the property.
- ii. The use must implement appropriate ventilation and filtration systems to satisfy the odor standard contained herein. This can be achieved through technologies, such as but not limited to air scrubbers and charcoal filtration systems.
- iii. Sufficient measures and means of preventing smoke, debris, dust, fluids and other substances from exiting a medical marijuana dispensary or caregiver cultivation facility must be provided at all times.

3. Disposal Plan

- i. The use shall have in place an operational plan for proper disposal of marijuana and related byproducts in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations.
- ii. Dumpsters and trash containers must not be overflowing, and the surrounding area must be kept free of litter and trash.
- iii. All dumpsters and containers shall be screened from public view.
- iv. All trash receptacles on the premises used to discard marijuana products must have a metal cover or lid that is locked at all times when the receptacle is unattended and security cameras must be installed to record activities in the area of such trash receptacles.

4. Life Safety

- i. Life Safety measures (including but not limited to sprinklers, smoke alarms, etc.) may be required at the discretion of the Fire Department depending on size or

condition of the structure containing the use, and if there are mixed uses within the structure.

5. Power needs.
 - i. An Ability to serve, (or authorization from the electric power company providing service to the use) needs to be provided in the application packet which states that the power needed for the use can be delivered to the property by the electric power company, which may involve a review of the power delivery system.
6. Parking:
 - i. For a medical marijuana dispensary, the parking requirement will be 1 space per 250 sq. ft. of space that patients have access to.
 - ii. For a medical marijuana caregiver cultivation facility, the parking requirements would be one space per employee on the largest shift.
7. Enclosed, locked facility
 - i. Any cultivation, manufacturing or testing of marijuana shall take place in an enclosed, locked facility. "Enclosed, locked facility" means a closet, room, building, greenhouse or other enclosed area that is equipped with locks or other security devices that permit access only by the individual authorized to cultivate, manufacture or test the marijuana.

G. Performance Standards – Marijuana Caregiver Cultivation Facility.

1. Size limitation
 - i. A facility shall not exceed 3,000 square feet in area.
2. A facility owner cannot be permitted for more than one location in the City of Westbrook.

H. Limitation on number of Medical Marijuana Dispensaries

1. Only one medical marijuana dispensary shall be allowed in the City of Westbrook.

I. Pesticides.

1. If a Medical marijuana caregiver cultivator plans to use any pesticides (including all conventional, organic, or 'natural' insecticides, rodenticides, weed-killers, fungicides, rooting hormones or other plant hormones), evidence of a Pesticide Applicators License from the Maine Board of Pesticides Control must be provided to the Code Enforcement Officer.

J. Other laws remain applicable.

1. A medical marijuana dispensary or caregiver cultivation facility shall meet all operating and other requirements of state and local law and regulation. To the extent the State of Maine has adopted or adopts in the future any stricter law or regulation governing medical marijuana dispensary or caregiver cultivation facility, the stricter law or regulation shall control.

Section 206. Adult-Use/Retail Marijuana

A. Definitions.

1. For purposes of this ordinance, adult-use/retail marijuana establishments, including but not limited to adult-use/retail marijuana stores, adult-use/retail marijuana cultivation facilities, adult-use/retail marijuana products manufacturing facilities and adult-use/retail marijuana testing facilities; and adult-use/retail marijuana social clubs are defined in this Ordinance.

B. Prohibition on Adult-Use/Retail Marijuana Establishments and Adult-Use/Retail Marijuana Social

Clubs.

1. Adult-Use/Retail marijuana establishments, including adult-use/retail marijuana stores, adult-use/retail marijuana cultivation facilities, adult-use/retail marijuana products manufacturing facilities, adult-use/retail marijuana testing facilities and adult-use/retail marijuana social clubs are expressly prohibited in the City of Westbrook as either a principal or an accessory use.
2. No person or organization shall develop or operate a business in the City of Westbrook that engages in retail or wholesale sales of an adult-use/retail marijuana product, as defined by this Ordinance, as either a principal or an accessory use.
3. Nothing in this ordinance is intended to prohibit any lawful use, possession or conduct pursuant to the Maine Medical Use of Marijuana Act, 22 M.R.S.A. c. 558-C.

C. Effective date; Duration.

1. This ordinance shall take effect immediately upon enactment by the municipal legislative body unless otherwise provided and shall remain in effect until it is amended or repealed.

Section 207. Review of Private Ways

207.1 **Purpose:** A person seeking a permit for the construction or improvement of a private way shall provide to the City a submission containing the items in this section.

207.2 **Private Way approval required**

- A. No building permit shall be issued to erect a structure on a lot lacking frontage on a public way unless a private way meeting the criteria stated in Section 207 has been approved and constructed within a deeded right-of-way, no less than 50 feet in width.

207.3 **Submission Process**

A. **Application** Submit a filled-out application form.

B. **Submission Requirements**

- i. Summary letter on the proposal.
- ii. Document(s) showing the applicant's right, title or interest in all properties under review.
- iii. Applicant shall submit a street name to the 911 coordinator to determine if the street name is acceptable for the 911 system. The name of the street shall be stated on the plan of the private way. Prior to final approval, the name must be approved by the E-911 coordinator.
- iv. Draft Homeowners Association Agreement & Maintenance Agreement: If the private way is to provide access to two or more lots, a Homeowners Association (HOA) shall be established for the lands contained within the Private Way Right of Way, which shall provide for the maintenance of the private way. Deeds for lots served by the private way must reference the HOA and shall require that the owners of the subject properties become and remain members of the HOA. Prior to issuance of any permits or conveyance of lots on the private way, these documents must be recorded in the Cumberland County Registry of Deeds, and a copy of the recorded documents provided to the City.
 - a. The declaration and other HOA documents shall specify the rights and responsibilities of each lot owner with respect to the maintenance, repair and plowing of the private way.
 - b. If the private way is in poor condition in the judgment of the Fire Department, the HOA shall be notified that the street needs repair and that the City may limit or

discontinue emergency services if repair is not provided within a reasonable period of time.

- C. **Survey Plans:** A plan or plans labeled “Plan of a private way”, signed and stamped by a State of Maine licensed surveyor. This standard boundary survey includes the lots created, and the right of way. The plan shall include the following:
- i. The name of all owners of property abutting the portion of the private way proposed to be developed or improved.
 - ii. Plan references stated on the plan.
 - iii. Scale, date, north point, and delineation of the entire area proposed to be developed or improved.
 - iv. Location map with assessor’s map and lot number.
 - v. The plan or plans must be drawn to a horizontal scale of no greater than one (1) inch equals twenty (20) feet and a vertical scale of no greater than one (1) inch equals five (5) feet with all elevations referred to U.S.G.S. data and appropriate GIS references as set forth in Section 502.4. subsection B.24.
 - vi. The location of all existing and proposed monuments for the private way(s) proposed to be developed or improved; monumentation of the roadway is required.
 - vii. The name(s) of the developer of the private way and the surveyor preparing the plan, together with the professional registration numbers of those who prepared the plan. Any plan submitted shall also bear the signed stamp of the professional who prepared the plan.
 - viii. Accurate dimensions of rights of way, length and bearing of lot lines, and length or radii of horizontal curves.
- D. **Engineering Plans:** A plan or plans labeled “Plan of a private way” prepared by a professional engineer, licensed in the state of Maine. The plan shall delineate the proposed way and each of the lots to be served by the private way and include the following:
- i. The name(s) of the developer of the private way and the engineer preparing the plan with the professional registration number of those who prepared the plan. Any plan submitted shall bear the signed stamp of the professional who prepared the plan.
 - ii. The location of all proposed improvements, the width of paving and rights-of-way, profile, cross-section dimensions, curve radii of all existing and proposed streets; profiles of centerlines of proposed streets, of a horizontal scale of no greater than one (1) inch equals twenty (20) feet and a vertical scale of no greater than one (1) inch equals five (5) feet with all elevations referred to U.S.G.S. data and appropriate GIS references as set for in Section 502.4. subsection B.24.
 - iii. Topography with contours at elevation intervals of not more than 2 feet.
 - iv. New grading, erosion control, and landscaping plan; proposed finish grades, slopes, swales and ground cover or other means of stabilization.
 - v. Existing and proposed location, size, profile and cross section of sanitary sewers proposed to be located within the street construction or improvement area
 - vi. Type, location, profile and cross-section of all existing and proposed stormwater drainage systems including best management practices, both within and adjacent to the area of any street construction or improvement, and a description of stormwater management plan.
 - vii. Location of features, natural and man-made, affecting the street, such as water bodies, streams, swamps, wetlands, vegetation, ditches, and areas of soils with severe or very severe limitations.
 - viii. Location of existing and proposed utilities including but not limited to water, street lights, hydrants, electrical lines/poles and telecommunications lines and profiles of all underground facilities.

- ix. Lighting. Intersections must be lit. For existing overhead power on the public street, the type and size of streetlights shall be determined by public works. For underground power along the private way, the applicant shall provide the cut sheets on the lighting poles/fixtures in the application.
 - a. A note on the plan shall state, "The City of Westbrook shall not be responsible for the cost of materials, installation, maintenance, or power for the street lighting associated with the Private Way. The homeowner's association shall assume all costs associated with the street lighting system."
- x. Location of all existing trees and vegetation within the proposed area of improvements.
- xi. Location of stop sign and street name sign meeting City specification at the intersection with the public street.
- xii. Location of mailboxes and associated structures
- xiii. An approval block for signatures of the reviewing authority.
- xiv. A plan note stating the City of Westbrook will not be responsible for the maintenance, repair, or plowing of the private way and that further lot divisions utilizing the private way are prohibited without prior approval of the City.

E. Fees:

- i. The applicant is responsible for the payment of the notification of all property owners within a five hundred (500) foot radius of the proposed private way construction or improvement. The names and addresses of such owners shall be determined by use of the most current records of the Assessor's Office.
- ii. See schedule of fees (located Appendix B of the Ordinance) for associated costs for private ways. Fees are required for review of plans and inspection of work.

F. Review Requirements:

- i. Any private way with a dead end shall provide a turnaround approved by the City Engineer and the Fire Department.
- ii. The private way entrance shall be constructed at a grade of +/-3.0% for a minimum of 25' from the edge of existing pavement of the road the new private way is intersecting.
 - a. The private way drainage design shall direct the newly generated stormwater flows into the drainage system and not sheet into the existing roadway, nor cause the existing drainage system to be blocked or overloaded.
- iii. Where the proposed construction or improvement involves the extension of public water or public sewer, the applicant shall demonstrate that the existing service is adequate to support the proposed extension of the service or shall upgrade the existing facilities as required to provide the service.
- iv. The proposed private way development will not cause unreasonable highway or public street congestion or unsafe conditions with respect to the use of the highways or public streets existing or proposed.
- v. A statement from a licensed engineer as to the adequacy of the stormwater management program to serve the watershed area within which the project is listed.
- vi. For roads and driveways within Shoreland and Resource Protection Areas, additional design standards apply to these projects. See Section 401, Shoreland Zoning for requirements.
- vii. Private ways shall be inspected by the City's engineering staff during the construction process.

207.4 Reviewing Authority

- A. The Private Way Review Committee (PWRC) is to consist of the City Planner, Code Enforcement Officer, City Engineer, and representative of the Fire Department, or their designee(s).

- B. The PWRC shall review and may approve the use of a private way in accordance with the requirements outlined in Section 207 and Section 502.5C in order to provide access and frontage to no more than three lots provided that the project does not entail a subdivision review.
- C. If PWRC is not unanimous in their approval of the proposed private way, the Planning Board shall review and may approve the proposed private way.
- D. The PWRC may refer a private way application to the Planning Board if there is substantial public interest in the application. This determination shall lie within the sole discretion of the PWRC. When a matter is referred to the Planning Board, it shall utilize the review criteria set forth in Section 207.

207.5 Review Process

- A. **Submission.** Upon receipt of any application for construction or development of a private way, the Planning Department shall indicate upon the application the date of its submission.
- B. **Notice.** Within twenty-one (21) days of the date of submission of the application, the Planning Department shall mail, by first class mail, postage pre-paid, notice to all residents and property owners within a five-hundred (500) foot radius from the perimeter limits of the project lot(s) as determine by the reviewing authority.
 - a. The notice shall include a brief description of the application and will notify the recipient of the right to provide comment to the City Planner within 14 days of the date of City mailing. In addition, the notice may include the date and time of any neighborhood meeting that is scheduled by the applicant.
 - b. The Planning Department shall keep a list of persons notified and shall indicate on the list the date that the notice was mailed.
 - c. Failure of a person to receive notice under this section will not invalidate any decision made by the PWRC or the Planning Board and will not require any rehearing of the application.
- C. **Determination of Completeness.**
 - a. After the receipt of an application, the City Planner shall commence review of the application under the standards in section 207.
 - b. The City Planner shall determine within twenty-one (21) days whether the application is complete and shall notify the applicant of any additional required information or submissions.
 - c. This twenty-one (21) day period may be extended by mutual agreement in writing by the City Planner and the applicant.
- D. **Application Review.**
 - a. Once the application is determined to be complete, the reviewing authority shall complete review of the application within thirty (30) days of the date of determination of completeness. This thirty (30) day period may be extended upon mutual agreement in writing by the City Planner and the applicant.
 - i. When reviewed by the Private Way Review Committee, the City Planner shall issue a written decision. Any approval granted may be subject to conditions required to ensure compliance with section 207. Any conditions will be included in the written decision. Any denial shall include the reasons for the denial of the application
 - ii. When reviewed by the Planning Board, the City Planner or their designee will forward to the Planning Board proposed findings and any proposed conditions of approval.

- E. **Other Reviews.** Review and approval under this section 207 are in addition to any other review and approval required under State law, federal law or any other provision of the City of Westbrook Code of Ordinances. Where there is any inconsistency between such review standards, the more stringent standard shall control.

207.6 Process Requirements

A. Lot Number Constraint/Construction Standards.

- i. A private way shall provide frontage and access to no more than three lots and must meet the construction standards for private ways in Section 502.5C.
- ii. Private ways in existence prior to May 1, 2007 shall be allowed to build per the current zoning standards for the district in which they are located provided that the private way either meets or is upgraded to the construction standards for private ways in Section 502.5C.

B. Area of Land/Conformance.

- i. The land within the right-of-way of an approved private way shall not be used to meet the area requirements of any lot.
- ii. The creation of a private way shall not reduce the frontage, lot area, or other dimensional requirements of an existing conforming lot below that required by the zone in which it is located nor reduce the frontage, lot area or other dimensional requirements of an existing nonconforming lot.
- iii. A new private way cannot make an abutting lot or structure nonconforming.

C. Maintenance.

- i. The Homeowner's Association shall be responsible for maintenance of the entire length of the private way beginning at the edge of the traveled way of the public street with which it intersects, as well as for any private sub-streets that run off the private way.

D. Driveways.

- i. Driveways to corner lots shall gain access from the street of lower classification when a corner lot has deeded access to streets of two different classifications. This restriction shall appear as a note on the plan and as a deed restriction. Also, the lot's frontage shall be determined by this requirement.
- ii. When a corner lot is bounded by streets of the same classification, a recommendation by the City Engineer is required in determining driveway location.

E. Performance Guarantee.

- i. Prior to the commencement of any construction related to the private way development or the issuance of any building permits associated with the private way development, the developer shall file a performance guarantee with the City.
- ii. The performance guarantee shall be a certified check payable to the City, a performance bond running to the City, or a letter of credit from a financial institution in an amount and form acceptable to the City.
- iii. The check, bond or letter of credit must be equal at least to the total cost of furnishing, installing and completing the private way construction and all related improvements within 2 years of its date. At the discretion of the Planning Department, a phased release of the performance guarantee may be implemented, as long as the phased release provides for the retention of a sufficient amount to complete all outstanding requirements.
- iv. Before the City releases a performance guarantee, the applicant shall obtain, at their expense, the following:

- a. A statement by the Public Services Department that all streets and storm drain systems have been constructed and completed in conformance with the approved plan.
- b. A statement by the City Engineer or their designee that all sewer lines and connections in the street have been constructed and completed in conformance with the approved plan.
- c. A statement by the Portland Water District that all water mains and hydrants have been installed and completed in conformance with the approved plan.
- d. A statement by a land surveyor, licensed in the State of Maine, that all permanent boundary monuments on street and lot lines have been installed in the locations designated on the approved plan.

207.7 Building Permit Issuances

- A. Prior to any Building Permits being issued on a private way, copies of all required recorded documents must be submitted to the City and the street must be constructed or a performance guarantee is provided in the full amount of all associated street work.
 - i. Required documents include but are not limited to:
 - a. Survey Plan and recording information if the plan is recorded in the Registry of Deeds
 - b. Homeowners Association Documents (Private ways shall be owned and maintained by a Homeowners Association if more than 1 lot is served). The Homeowners Association documents must provide for maintenance and repair of the private way and authorize the Association to assess fees for the costs of maintenance and repair. The Association documents shall include the articles of incorporation filed with the Secretary of State, the bylaws and any associated declaration or deed covenants requiring membership in the Homeowners Association.
 - c. Sample deeds for lots associated with the private way showing evidence of Homeowners Association.
- B. No building permits shall be issued if fees due under this Ordinance are unpaid.
- C. No building permits shall be issued until the road is constructed to a passable standard for safe egress as determined by the Code Enforcement Officer and/or Public Safety.

Chapter III – Zoning Districts

300 General

300.1 Prohibited Uses.

In all zoning districts in the City of Westbrook, if a use is not expressly enumerated herein as either a permitted use or a conditional use, said use is prohibited. (Amend 9/11/17 Order 2017-110)

300.2 Land Use Table

	City Center	RGA 1	RGA 2	RGA 3	Prides Corner S GA	Rural District	Highway Services District	Gateway Commercial District	Industrial Park District	Manufacturing District
Accessory Use	P	P	P	P	P	P	P	P	P	P
Adult Daycare Center		C	P	C		C		P		
Artisan Food and Beverage	C							P	P	
Automobile Dealership								P		
Automobile Repair Service					P			P		
Bank Class 1	C				P			C		
Bank Class 2	P				P			P		
Bed and Breakfast 1	P	C	P			P				
Bed and Breakfast 2	P	P	P							
Boarding Home for Sheltered Care	C									
Boarding House or Lodging House	C									
Boarding Kennel							C	C	C	
Bottle Club									P	
Business Office	P				P		P	P	P	P
Business Office 2			C					P		
Campgrounds						C				
Car Wash							P			
Cemetery			P	P		P				
Child Care Center	P				C		P	P	C	C
Church	C	C	C	C	C	C	C	C	C	C
Club or Lodge	P				C		C		C	
Commercial Service Business										P
Community Center	C	C	C	C	C					
Community-Based Residential Facilities	C									
Convention Center								P		
Congregate Care Facility	P	P	P	C	C					
Daycare Center	P	C	C	C	C	P	P	P		
Dwelling, Single-Family	P	P	P	P	P	P				
Dwelling, Two-Family	P	P	P	P	P	P				
Dwelling, Manufactured Housing				P						
Dwelling, Multiple-Family	P	C	C		P			C		
Educational Facility	P						P	P	P	
Extractive Industry						C			C	
Farm			P	P		P				

		City Center	RGA 1	RGA 2	RGA 3	Pikes Corner ISGA	Rural District	Highway Services District	Gateway Commercial District	Industrial Park District	Manufacturing District
Food Cart Vendors	P										
Funeral Home		P									
Golf Course						P					
Greenhouse									P	P	
Greenhouse or Florist	P	P	P	P		P	P	P			
Home Day Care Provider	C	C	C	C	C	C					
Home Occupation	P	P	P	P	P	P					
Hospital		C	C								
Hotel	P							P			
Industry							C	P	P		
Library	P	P						P			
Light Manufacturing	C				P						P
Media Studio Class 1							P	P	P		
Media Studio Class 2	P						P	P	P		
Medical Offices	P	C	C		P		P	P	P		
Municipal Facility	P	P	P	P	P	P	P	P	P	P	
Museum	P	P						P			
Neighborhood Grocery	P	P	C	P		C	P	P	P	P	
Nursing Home			P	C							
Parking Facility	P							P			
Private Recreation Facility				P				P			
Private Indoor Recreation Facility	P						P		P	P	
Research and Development	C							P	C	P	
Restaurant Class 1							P	C			
Restaurant Class 2	P						P	P			
Retail Class 1	P				P*		P	P			
Retail Class 2					P*		P	P			
Retail Class 3	P				P*		P	P			
Retail Class 4							C	P			
Service Business	P				P		P	P			
Telecommunications Facility	P					P		P	P	P	
Telecommunications Tower						C			C	C	
Theater	C				C			C	C		
Veterinary Clinic						P	P	P	P		
Vocational Education Facility	P							P	P	P	
Warehousing									P	P	

*Footprint limited to 20,000 sqft.

301 City Center District

The purpose of the City Center Zoning District is to create a flexible atmosphere for the return of the downtown to a prominent regional service center. Flexible setbacks will be balanced with an overlay of design standards to encourage new development that will be consistent with the goals established in the City's Comprehensive Plan, Downtown Revitalization Plan, Downtown Parking Plan, Downtown Streetscape Plan and Westbrook Riverfront Master Plan. (Ord. of 4-5-10; 3/3/14)

301.1 **Permitted Uses.** The following uses are permitted in the City Center District as a matter of right:

Accessory Use	Home Occupation
Bank Class 2	Hotel
Bed and Breakfast Class 1 & 2	Library
Business Office	Media Studio Class 2
Child Care Center	Museum
Club or Lodge	Municipal Facility
Congregate Care Facility***	Medical Offices*
Day Care Center	Neighborhood Grocery
Dwelling, Single-Family	Parking Facility
Dwelling, Two-Family	Private Indoor Recreation Facility
Dwelling, Multiple-Family	Restaurant Class 2
Educational Facility	Retail Class 1 & 3
Food Cart Vendors	Service Business
Greenhouse or Florist	Telecommunications Facility****
	Vocational Education Facility

*(Ord. of 03-07-05)

*** (Ord. of 4-5-10)

**** (Ord. of 3-3-14)

301.2 **Conditional Use.** The following uses are permitted in the City Center District as a conditional use under Section 204:

Artisan Food and Beverage
Bank Class 1
Boarding Home for Sheltered Care
Boarding house or Lodging House
Church
Community Center
Community-Based Residential Facilities
Home Day Care Provider
Light Manufacturing
Research and Development
Theater

Notwithstanding the requirements of Section 204.1.D(9), conditional uses other than home day care providers shall not be required to provide off-street parking.

301.3 **Performance Standards.** The following performance standards apply in the City Center District:

- A. Minimum Lot Size: None
- B. Dimension Requirements:
 - (1) There are no dimension requirements for yard depths,
 - (2) Maximum height is negotiable during site plan review and is restricted to existing scales and safety capacity.
- C. Maximum Footprint Factor: 100%
- D. Maximum Gross Density Factor: 100%
- E. Landscaping Factor: As required by the reviewing authority.
- F. Residential Density Factor: 1 dwelling unit per 2500 S.F. of base site area. (However, minimum size of a residential unit shall be 500 S.F., and an additional 150 S.F. per each additional bedroom.)

Residential Density Factor within the Downtown District, as shown on the Westbrook Zoning Map, and the following specific Map/Lot locations (M32/L121 and M32/L122): 1 dwelling unit per 500 s.f. of base site area. For structures with 4 (four) or more stories, the residential density factor is negotiable during subdivision/site plan review.
- G. Lighting. All outdoor lighting must be of the cutoff luminaire variety and must be installed so no direct lighting is emitted beyond lot lines.
- H. Noise. Noise levels must not exceed existing levels at the exterior limits of the property.
- I. Vibrations. Vibrations must not exceed existing levels at the exterior limits of the building.
- J. Odors. Odors must not exceed existing levels at the lot lines.
- K. Traffic Impact. The traffic pattern from a change or expansion of use must be designed so as to maintain the existing traffic operation level of service and pedestrian safety along the lot frontage and at the nearest intersection in both directions. (Amended by Ord. of 11/17/14)
- L. Storage of Materials. All materials must be stored within an enclosed structure so as to be screened from view.
- M. Parking Requirements. The parking requirements of Chapter V are only applicable to the following uses in the City Center District: Home Day Care Provider,

Day Care Center, Child Care Center, Dwelling, Single-Family, Two-Family and Multiple-Family. (Ord. of 4-5-10)

N. For properties located in the Downtown District as shown on the Westbrook Zoning Map, and the following specific Map/Lot locations (M32/L121 and M32/122) the following standards apply:

(1) Parking Requirements. A minimum of 1 on-site parking space must be provided per dwelling unit. This standard may be reduced during subdivision/site plan review with a transportation management plan.

(2) Residential uses are prohibited on street level in structures adjacent to the following rights-of-way: Main Street, Stroudwater Street, Spring Street, Harnois Avenue, Cumberland Street.

301.4 **Telecommunications Facilities.** For provisions concerning telecommunications facilities, see Section 202.30-1. (Ord. of 3/3/14)

302 Residential Growth Area 1.

The purpose of the Residential Growth Area 1 zone is to provide urban core community densities to support the downtown center. Reduced setbacks will permit the infill of vacant properties in areas that are already served by municipal infrastructure.

302.1 **Permitted Uses.** The following uses are permitted in the Residential Growth Area 1 as a matter of right:

Accessory Uses	Funeral Home
Bed & Breakfast Class 2	Greenhouse or Florist
Congregate Care Facility	Home Occupation
Dwelling, Single-Family	Library
Dwelling, Two-Family	Municipal Facility
	Museum
	Neighborhood Grocery

302.2 **Conditional Use.** The following uses are permitted in the Residential Growth Area 1 as a conditional use under Section 204:

Bed and Breakfast Class 1
Day Care Center
Adult Day Care
Dwelling, Multiple-Family
Medical Office
Hospital
Home Day Care Provider
Church
Community Center

302.3 **Performance Standards.** The following performance standards apply in Residential Growth Area 1:

A. Minimum Lot Size: 5,000 S.F. existing; 7,500 S.F. new

B. Dimension Requirements:

(1) Minimum Lot Frontage: 50' existing, 65' new

(2) Yard Setbacks:

- (a) Front 15'
- (b) Rear 15'
- (c) Side 10' existing, 15' new

(3) Maximum Height: 40'

(Ord. of 03-07-05; 11/17/14)

C. Maximum Footprint Factor: 40%

D. Maximum Gross Density Factor: 70%

E. Landscaping Factor: 30%

F. Residential Density Factor: 1 dwelling unit per 5000 S.F.

G. Lighting. All outdoor lighting must be of cutoff luminaire variety and must be installed so that no direct lighting is emitted beyond lot lines.

H. Noise. Noise levels must not exceed existing levels at the exterior limits of the building.

I. Vibrations. Vibrations must not exceed existing levels at the exterior limits of the building.

J. Odors. Odors must not exceed existing levels at the lot lines.

K. Screening. A plan for parking and screening is required for uses other than dwellings, single and two-family. Screening may include, but is not limited to, fencing or plantings.

L. Traffic Impact. The traffic pattern from a change or expansion of use must be designed so as to maintain the existing traffic operations levels of service and pedestrian safety along the lot frontage and at the nearest intersection in both directions. (Amended by Ord. of 11/17/14)

M. Storage of Materials. All materials must be stored within an enclosed structure so as to be screened from view.

303 Residential Growth Area 2.

The purpose of the Residential Growth Area 2 is to develop suburban neighborhoods in areas that can be easily served by municipal infrastructure. This zone is a mixture of older subdivisions and vacant land that would best be served with interconnected road systems. Development, through density incentives, is encouraged to bring water and sewer to sites.

303.1 **Permitted Uses.** The following uses are permitted in the Residential Growth Area 2:

Accessory Use	Cemetery
Bed and Breakfast 1	Greenhouse or Florist
Bed and Breakfast 2	Home Occupation
Congregate Care Facility	Nursing Home
Dwelling, Single-Family	Adult Day Care Center
Dwelling, Two-Family	
Municipal Facility	
Farm	

303.2 **Conditional Use.** The following uses are permitted in the Residential Growth Area 2 as a conditional use under Section 204:

Business Office 2 (added per Order 2013-188 adopted 10/21/13)
Neighborhood Grocery
Dwelling, Multiple-Family
Medical Office
Hospital
Day Care Center
Home Day Care Provider
Church
Community Center

303.3 **Performance Standards.** The following performance standards apply in the Residential Growth Area 2:

A. Minimum Lot Size: 10,000 S.F. with sewer
20,000 - 40,000 S.F. without sewer

(1) Lot size for non-sewered subdivisions with lot sizes less than 40,000 S.F.: In order to reduce the potential impacts of phosphorus and nitrate groundwater pollution from untreated communal septic system effluent and septic system failure, the determination of lot sizes will be based on the following:

(a) Hydrological impact analysis: The applicant shall demonstrate the nitrate and phosphorus carrying capacity of the property through the completion of a high-intensity soil survey and subsurface waste water disposal system exploration study. Specific information must be included that quantifies the

levels of nitrates and phosphorus that leave the site. A Certified Soil Scientist licensed in the State of Maine shall complete this work.

- (b) Communal Septic Systems: It is recommended that unsewered lots less than 40,000 S.F. in size be on a communal septic system, or any similar system that enables the project to be connected to sewer lines, if and when they are extended to the property.

B. Dimension Requirements:

- (1) Minimum Lot Frontage: 75' for 10,000 S.F. lots
100' for 20,000 - 40,000 S.F. lots

- (2) Yard Setbacks:

- (a) Front 10' existing, 15' new
- (b) Rear 10' existing, 15' new
- (c) Side 10' existing, 15' new
- (d) The Code Enforcement Officer may reduce the setback requirements for existing structures to that of the average of adjacent properties, provided that no additional dwelling units are added.

- (3) Maximum Height: 35' and limited to 2 and one-half stories

C. Maximum Footprint Factor: 30%

D. Maximum Gross Density Factor: 40%

E. Landscaping Factor: 60%

F. Residential Density Factor: 1 dwelling unit per 10,000 S.F. with sewer
1 dwelling unit per 20,000 S.F. - 40,000 S.F. without sewer

- (1) Residential Density Factor for non-sewered subdivisions with a density greater than 1 unit per 40,000 S.F.: In order to reduce the potential impacts of phosphorus and nitrate groundwater pollution from untreated communal septic system effluent and septic system failure, the determination of lot sizes will be based on the following:

- (a) Hydrological impact analysis: The applicant shall demonstrate the nitrate and phosphorus carrying capacity of the property through the completion of a high-intensity soil survey and subsurface waste water disposal system exploration study. Specific information must be included that quantifies the levels of nitrates and phosphorus that leave the site. A Certified Soil Scientist licensed in the State of Maine shall complete this work.
- (b) Communal Septic Systems: It is recommended that unsewered projects developed at less than 40,000 S.F. in size be on a communal septic system, or any similar system that enables the project to be connected to sewer lines, if and when they are extended to the property.

- G. Lighting. All outdoor lighting must be of the cutoff luminaire variety and must be installed so that no direct lighting is emitted beyond lot lines.
- H. Noise. Noise levels must not exceed existing levels at the lot lines.
- I. Vibrations. Vibrations must not exceed existing levels at the lot lines.
- J. Odors. Odors must not exceed existing levels at the lot line.
- K. Screening. A plan for parking and screening is required for all uses other than dwellings, single and two-family. Screening may include, but is not limited to, fencing or plantings.
- L. Storage of Materials. All materials must be stored within an enclosed structure so as to be screened from view.
- M. Traffic Impact. The traffic pattern from a change or expansion of use must be designed so as to maintain the existing traffic operations levels of service and pedestrian safety along the lot frontage and at the nearest intersection in both directions.

(Amended by Ord. of 11/17/14)

304 Residential Growth Area 3.

The purpose of this more rural zone is to create a similar growth pattern with the Falmouth border. This zone also recognizes that public sewer is not likely to be extended in the near term. While the area is rural in character, there is not an abundance of farm lands. The cluster density incentives are designed preserve more open space, particularly around the Minnow Creek watershed. This zone is also designed to maintain the rural character along Duck Pond Road and Route 302.

304.1 **Permitted Uses.** The following uses are permitted in the Residential Growth Area 3:

Accessory Use	Farm
Cemetery	Greenhouse or Florist
Dwelling, Single-Family	Home Occupation
Dwelling, Manufactured Housing	Municipal Facility
Dwelling, Two-Family	Neighborhood Grocery
	Private Recreation Facility

304.2 **Conditional Use.** The following uses are permitted in the Residential Growth Area 3 as a conditional use under Section 204:

Day Care Center
Adult Day Care Center
Nursing Home
Congregate Care
Home Day Care Provider
Church
Community Center

304.3 **Performance Standards:** The following performance standards apply in the Residential Growth Area 3:

A. Minimum Lot Size: 60,000 S.F. for single lots
20,000 square feet for subdivisions with cluster designs
(Ord. of 03-07-05)

B. Dimension Requirements:

(1) Minimum Lot Frontage: 100'

(2) Yard Depths:

	Traditional	Cluster
(a) Front	30'	15'
(b) Rear	30'	15'
(c) Side	20'	15'

(Ord. of 03-07-05)

(3) Maximum Height: 35', and limited to 2 and one half stories

(Ord. of 03-07-05)

- C. Maximum Footprint Factor: 15%
25% for Cluster
(Ord. of 03-07-05)
- D. Maximum Gross Density Factor: 25%
40% for Cluster
(Ord. of 03-07-05)
- E. Landscaping Factor: 75%
60% for Cluster
(Ord. of 03-07-05)
- F. Residential Density Factor: 1 Dwelling unit per 60,000 S.F. for single lots
1 dwelling unit per 40,000 S.F. for cluster projects
- G. Lighting. All outdoor lighting must be of the cutoff luminaire variety and must be installed so that no lighting is emitted beyond lot lines.
- H. Noise. Noise levels must not exceed existing levels at the exterior limits of the building.
- I. Vibrations. Vibrations must not exceed existing levels at the exterior limits of the building.
- J. Odors. Odors must not exceed existing levels at the exterior lot lines.
- K. Screening. A plan for parking and screening is required for all uses other than dwellings, single and two-family and manufactured housing. Screening may include, but is not limited to, fencing or plantings.
- L. Storage of Materials. All materials must be stored within an enclosed structure so as to be screened from view.
- M. Farm Buffer. All newly created farms housing livestock, poultry, horses and other farm animals must be kept a minimum of 50 feet from an abutting residential development.
- N. No direct driveway access to Duck Pond or Mast Road shall be permitted for subdivided lots.
- O. All lots created through subdivision review shall maintain a 25-foot buffer between the developed portion of the property and Duck Pond or Mast Road for any new development, preserved through appropriate legal mechanisms. Selective cutting of trees and vegetation within this strip is permitted provided that a well distributed stand of trees and other vegetation is maintained. Clearing of trees and vegetation shall be permitted to provide access to lots for agricultural and timber harvesting

purposes. Unless it can be shown that no other reasonable alternatives exist, this clearing shall be no wider than 250 feet of road frontage.

- P. Traffic Impact. The traffic pattern from a change or expansion of use must be designed so as to maintain the existing traffic operations levels of service and pedestrian safety along the lot frontage and at the nearest intersection in both directions.

(Amended by Ord. of 11/17/14)

- (c) Side 8'
- (3) Maximum Height: 50'
- C. Maximum footprint factor: 40%
(for entire zone; no restrictions per lot)
- D. Maximum Gross Density Factor: 50%
(for entire zone; no restrictions per lot)
- E. Residential Density Factor: 1 per 15,000 S.F.
(for all areas marked residential)
- F. Landscaping Factor: 50%
(for entire zone, no restrictions per lot)
- G. Lighting: All outdoor lighting must be of the cutoff luminaire variety and must be installed so no direct lighting is emitted beyond lot lines.
- H. Noise. Noise levels must not exceed existing levels at the exterior limits of the building.
- I. Vibrations. Vibrations must not exceed existing levels at the exterior limits of the building.
- J. Odors. Odors must not exceed existing levels at the lot lines.
- K. Traffic Impact. The traffic pattern from a change or expansion of use must be designed so as to maintain the existing traffic operation level of service and pedestrian safety along the lot frontage and at the nearest intersection in both directions.
- L. Storage of Materials. All materials must be stored within an enclosed structure so as to be screened from view.
- M. The size of any retail building shall be limited to 20,000 square feet.

(Amended by Ord. of 11/14/17)

306 Rural District.

The purpose of the Rural District is to provide an area of rural quality consistent with the Comprehensive Plan. Standards permit clustering and focus on preserving open space and important vistas. The uses for the rural district are also more consistent with farm and low-density development.

306.1 **Permitted Uses.** The following uses are permitted in the Rural District as a matter of right:

Accessory Use	Golf Course
Bed and Breakfast Class I	Greenhouse or Florist
Cemetery	Home Occupation
Day Care Center	Municipal Facility
Dwelling, Two-family	Telecommunications Facility*
Dwelling, Single-family	Veterinary Clinic
Farm	

*(Added per Ord. adopted 3/3/14)

306.2 **Conditional Uses.** The following uses are permitted in the Rural District as a conditional use under Section 204:

Adult Daycare
Campgrounds
Church
Extractive Industry
Home Day Care Provider
Neighborhood Grocery*
Telecommunications Tower**

* (Added per Ord. adopted 11/17/14)

** (Added per Ord. adopted 3/3/14)

306.3 **Performance Standards.** The following performance standards apply in the Rural District as a conditional use, subject to the requirements of Section 204:

A. Minimum Lot Size: 60,000 S.F.
20,000 Square Feet for subdivisions with cluster designs
(Ord. of 03-07-05)

B. Dimension Requirements:

	Cluster	Traditional
(1) Minimum Lot Frontage:	100'	200'

(Ord. of 03-07-05)

Cluster Traditional

(2) Yard Depths:

(a) Front	15'	30'
(b) Rear	15'	30'
(c) Side	15'	30'

(Ord. of 03-07-05)

(3) Maximum Height: 45'

C. Maximum Footprint Factor: 25%

D. Maximum Gross Density Factor 40%

E. Residential Density Factor: 1 dwelling unit per 40,000 S.F.

F. Landscape Factor: 60%

G. Campgrounds. A campground application must be approved under site plan review and must be approved and licensed by the Maine Department of Human Services.

H. Lighting. All outdoor lighting must be of the cutoff luminaire variety and must be installed so that no direct lighting is emitted beyond lot lines.

I. Noise. Noise must not exceed existing levels at the lot lines.

J. Vibrations. Vibrations must not exceed existing levels at the lot lines.

K. Odors. With the exception of agricultural application and practices, odors must not exceed existing levels beyond their lot lines.

L. Screening. A plan for parking and screening may be required for all uses other than dwellings, single family, two-family and manufactured housing. Screening may include, but is not limited to, fencing or plantings.

M. Storage of Materials. All materials shall be stored in an enclosed structure so as to be screened from view.

N. Vegetative Setbacks for Methodist Road. All lots created through subdivision review shall retain a 25-foot vegetative strip between the developed portion of the property and Methodist Road. Selective cutting of trees and vegetation within this strip is permitted provided that a well distributed stand of trees and other vegetation is maintained. Clearing of trees and vegetation shall be permitted to provide access to lots for agricultural and timber harvesting purposes. Unless it can be shown that no other reasonable alternatives exist, this clearing shall be no wider than 250 feet of road frontage.

O. Traffic Impact. The traffic pattern from a change or expansion of use must be designed so as to maintain the existing traffic operations levels of service and pedestrian safety along the lot frontage and at the nearest intersection in both directions. (Amended per Ord. of 11/17/14)

306.4 **Telecommunications Facilities and Towers.** For provisions concerning telecommunications facilities, see Section 202.30-1. For provisions concerning telecommunications towers, see Section 202.31-1. (Ord. 3/3/14)

307 Highway Services District.

The Highway Services district is comprised of the small commercial/retail areas located in the following areas: Methodist and Duck Pond Road neighborhood; Pride's Corner Center; Spring Street at the city line; and small individual sites along Pride Street. . The standards are meant to be flexible, but geared to improve appearance and reduce sprawl in these important mixed-use gateway centers.

307.1 **Permitted Uses.** The following uses are permitted in the Highway Services District as a matter of right:

Accessory Use	Media Studio Class 1 & 2
Business Office	Municipal Facility
Car Wash	Neighborhood Grocery
Child Care Center	Private Indoor Recreation Facility
Day Care Center	Restaurant Classes 1 & 2
Education Facility	Retail Classes 1, 2, 3
Greenhouse or Florist	Service Business
Medical Offices*	Veterinary Clinic
	*(Ord. of 03-07-05)

307.2 **Conditional Use.** The following uses are permitted in the Highway Services District as a conditional use under Section 204:

Boarding Kennel
Church
Club or Lodge
Industry
Retail Class 4

307.3 **Performance Standards.** The following performance standards apply to the Highway Services District:

A. Minimum Lot Size:	15,000 S.F.
B. Dimension Requirements:	
(1) Minimum Lot Frontage:	100'
(2) Yard Depth:	
(a) Front	30'
(b) Rear	30'
(c) Side	30'
(3) Maximum Height:	40', or 3 stories
C. Maximum Footprint Factor:	40%

- D. Maximum Gross Density Factor: 75%
- E. Landscaping Factor: 25%
- F. Noise. Noise must not exceed existing levels at the lot lines.
- G. Odors. Odors must not exceed existing levels at the lot lines.
- H. Hazardous Matter. The emission of hazardous matter must be so controlled that no concentration is permitted beyond the building limits that would be detrimental to or endanger the public health or cause damage or injury to property. No storage of hazardous matter is permitted, except that used exclusively for ongoing production purposes.
- I. Vibrations. Vibrations must not exceed existing levels at the lot lines.
- J. Lighting. All outdoor lighting must be of the cutoff luminaire variety and must be installed so that no direct lighting is emitted beyond zone lines.
- K. Traffic Impact. The traffic pattern from a change or expansion in use must be designed so as to maintain the existing traffic operations levels of service and pedestrian safety within a reasonable determined distance from its point of ingress or egress. In addition, the following applies:
- (1) No point of any ingress or egress may be located within 150' from any recognized intersection or other curb cut,
 - (2) One point of ingress and egress is permitted per lot. All other frontage must be curbed and landscaped so as to prevent its use as a point of ingress or egress,
 - (3) Any point of ingress or egress must be from 12' to 15' in width per lane. Said point shall intersect the main arterial at 90 degrees and shall have a minimum 25' curb radii at the intersection,
 - (4) Driveways shall be shared with neighboring businesses whenever possible to reduce the number of curb cuts.
- L. Storage of Materials. All materials must be stored within an enclosed structure so as to be screened from view.
- M. Installation of Utilities. All electric, telephone, and similar lines must be placed underground from the street connection to the building, where possible. In the case of commercial park developments, the use of underground utilities is also encouraged for streets within the development.

(Amended per Ord. of 11/17/14)

308 Gateway Commercial District.

This district is designed to provide for a regional retail center that takes advantage of major transportation linkages. The use of land in this zone is to be maximized, but according to a set of

standards as part of the community's gateway planning. The 2012 Comprehensive Plan encourages a mix of uses on consolidated lots and a uniform building line along Main Street. (Amended by Ord. of 11/17/14)

308.1 **Permitted Uses.** The following uses are permitted in the Gateway Commercial District as a matter of right:

Accessory Use	Library
Adult Daycare	Media Studio Class 1 & 2
Artisan Food and Beverage	Medical Offices (Ord. of 3-7-05)
Automobile Dealership (6-23-14)	Municipal Facility
Automobile Repair Service	Museum
Bank Class 2 (Ord. 1-6-14)	Neighborhood Grocery
Business Office	Parking Facility
Business Office 2	Private Recreation Facility
Child Care Center	Research and Development
Convention Center	Restaurants Class 2
Day Care Center	Retail Class 1, 2, 3 & 4
Educational Facility (Ord. of 7-1-13)	Service Business
Greenhouse or Florist	Telecommunication Facilities (Ord. of 3/3/14)
Hotel	Veterinary Clinic
Industry	Vocational Education Facility

308.2 **Conditional Use.** The following uses are permitted in the Gateway Commercial District as conditional uses under Section 204:

Bank Class 1 (Ord. 1-6-14)
Boarding Kennel
Church
Dwelling, Multiple Family¹
Medical Marijuana Dispensary (See General Provisions)
Restaurant Class 1 (Ord. 1-6-14)
Theater

308.3 **Performance Standards.** The following performance standards apply in the Gateway Commercial District:

A. Minimum Lot Size:	20,000 S.F.
B. Dimension Requirements:	
(1) Minimum Lot Frontage:	100'
(2) Yard Depth:	
(a) Front	20'

¹Note to committee: this was added based on a multi-use transportation corridor study done by PACTS in which having housing in this HUB is both good for those working in retail centers and assists in the development of transit operations.

- | | |
|------------------------|---------------------------|
| (b) Rear | 20' |
| (c) Side | 20' |
| (3) Maximum Height: | 50' and four stories |
| (4) Maximum Footprint: | 160,000 S.F. ¹ |
- C. Maximum Footprint Factor: 50%
- D. Maximum Gross Density Factor: 75%
- E. Landscape Factor: 25%
- F. Residential Density Factor: 1 dwelling unit per 2,500 S.F.
- G. Noise. Noise must be confined to the existing levels at the walls of the building on the site.
- H. Odors. Odors must be limited to existing levels at the exterior of the building.
- I. Hazardous Matter. The emission of hazardous matter must be so controlled that no concentration is permitted beyond the building limits that would be detrimental to or endanger the public health or cause damage to property. No storage of hazardous matter is permitted, except that used exclusively for ongoing production purposes.
- J. Vibrations. Must not exceed existing levels at the exterior of the building.
- K. Lighting. All outdoor lighting must be of the cutoff luminaire variety and must be installed so that no direct lighting is emitted beyond the lot lines.
- L. Storage of Materials. All materials must be stored within an enclosed structure so as to be screened from view.
- M. Installation of Utilities. All electric, telephone, and similar lines must be placed underground.
- N. Buffer Zones. Where a business or industry abuts a residential use, a 50' buffer zone must be maintained between the building and the lot line of the residential use.
- O. Gateway Standards

Purpose. In 2000, the cities of Portland and Westbrook worked jointly to develop a gateway plan for the entrances of our communities along the Brighton Avenue corridor. The Brighton Avenue/Main Street Corridor Traffic and Streetscape Study identifies a number of safety and appearance improvements to the corridor, intended to provide a safer and more pleasing experience for the driver and

¹ Maximum footprint of any single building.

pedestrian as they move through the corridor. This should, over time, increase property values in this corridor, creating an incentive for further investment.

Improvement Standards. When there is new construction (i.e. an addition or new building), or when more than 20% of a property's activity or use changes, the owners are required to submit an application for site plan review, demonstrating how the following performance standards are to be met:

- (1) **Landscaping:** 25% of the entire site shall be landscaped, leaving 75% for building and paved areas. The landscape plan shall incorporate all plantings within the site such that pavement viewshed is reduced and shaded, storage and loading areas screened, vehicle entry areas decorated/landscaped, and the general harshness of pavement and building reduced.

When it can be satisfactorily demonstrated to the Planning Board that it would be overly burdensome to fulfill this requirement due to site constraints or the unique nature of the use of the property, then the applicant shall pay a fee in lieu of providing the full on-site landscaping requirement. In no event shall an applicant be allowed to eliminate the full landscaping requirement through payment of the fee. The funds must be used in the study area in a manner consistent with the Brighton Avenue/Main Street Corridor Traffic and Streetscape Study, to provide landscaping and other streetscape improvements. The fee in lieu of landscaping is calculated as set forth in the City's Master Fee Schedule, which may be updated from time to time. (Ord. of 10-1-12; 11/17/14)

- (2) **Pedestrian Movement:** The site must provide for a system of pedestrian ways that are protected and safe from vehicular movement. The system must connect the major building entrances/exits with parking areas. The system should connect with existing sidewalks in the area, bus stops, and with any other area amenities.
- (3) **Curbing and Esplanades:** Curbing and esplanades shall be used to define parking and driveway areas. Curbing may also be used around building entrances and other pedestrian oriented areas such that the pedestrian is clearly separated from the vehicular movement. Granite curbing shall be used at all intersections with a public street and is encouraged for use through the remainder of the project.
- (4) **Vehicle Channelization:** The layout of any site must provide for the safe movement of passenger, service, and emergency vehicles in an organized and defined fashion.
- (5) **Lighting:** A lighting plan shall be developed for the site that provides for consistent treatment throughout the site. All lighting shall be of the "cutoff luminaire" style, such that light is shielded and directed down. No light shall spill beyond the property lines. Ornamental light poles and fixtures shall be located along the Main Street frontage. (Amended per Ord. of 11/17/14)

(6) Signage and Condition: In addition to meeting the sign ordinance requirements, the owner may be required to improve the existing signs when they are in poor condition. Examples of poor condition can include broken lights, broken lens covers, faded paint or colors, or broken connections of sign to building.

(7) Loading and storage areas: All loading and storage areas shall be screened from view from the street and abutters. Screening can include fencing, walls, or vegetation and shall block the loading and storage area from view.

P. Traffic Impact. The traffic pattern from a change or expansion of use must be designed so as to maintain the existing traffic operations levels of service and pedestrian safety along the lot frontage and at the nearest intersection in both directions.

(Amended per Ord. of 11/17/14)

308.4 **Telecommunications Facilities.** No new telecommunications towers are allowed. Co-location of telecommunications facilities is allowed on existing towers, provided that they comply to the provisions in Section 202. For provisions concerning telecommunications facilities, see Section 202.30-1. For provisions concerning telecommunications towers, see Section 202.31-1. (Ord. 3/3/14)

309 Industrial Park District.

The Industrial Park District includes the City's largest developed industrial parks. Some of these existing facilities are in need of upgrade, while others have the capacity to expand. Setback and lot standards have been relaxed to encourage such investment

309.1 **Permitted Uses.** The following uses are permitted in the Industrial Park District as a matter at right:

Accessory Use	Media Studio Class 2
Artisan Food and Beverage	Medical Office
Bottle Club ¹	Municipal Facility
Business Office	Neighborhood Grocery
Educational Facility ²	Private Indoor Recreation Facility
Greenhouse ³	Telecommunications Facilities ⁴
Industry	Veterinary Clinic
Media Studio Class 1	Vocational Educational Facility
	Warehousing ³

¹Ord. of 4/6/15

²Ord. of 6/3/13, 7/1/13

³Ord. of 9/14/15

⁴Ord. of 3/3/14

309.2 **Conditional Uses.** The following uses are permitted in the Industrial Park District as

conditional uses under Section 204:

Boarding Kennel
 Child Care Center
 Extractive Industry
 Church
 Club or Lodge
 Medical Marijuana Caregiver Cultivation Facility (See General Provisions)
 Research and Development
 Telecommunications Tower*
 Theater

*Ord. of 3/3/14

309.3 **Performance Standards.** The following performance standards apply in the Industrial Park District:

A. Minimum Lot Size: 20,000 S.F.

B. Dimension Requirements:

(1) Minimum Lot Frontage: 200'

(2) Yard Depths:

(a) Front 40'

(b) Rear 30'

(c) Side 30'

(3) Maximum Height: None

C. Maximum Footprint Factor: 50%

D. Maximum Gross Density Factor: 80%

E. Landscape Factor: 20%

F. Noise. Noise must not exceed existing levels at the zone lines.

G. Odors. Odors must not exceed existing levels at the zone lines. Wood pulping and similar processes are a prohibited use.

H. Hazardous Matter. The emission of hazardous matter must be so controlled that no concentration is permitted beyond the building limits that would be detrimental to or endanger the public health or cause damage or injury to property. No storage of hazardous matter is permitted, except that used exclusively for ongoing production purposes.

I. Vibrations. Vibrations must not exceed existing levels at the lot lines.

J. Lighting. All outdoor lighting must be of the cutoff luminaire variety and must be

installed so that no direct lighting is emitted beyond lot lines.

K. Traffic impact. The traffic pattern from a change or expansion of use must be designed so as to maintain the existing traffic operations levels of service and pedestrian safety along the lot frontage and at the nearest intersection in both directions.

(Amended per Ord. of 11/17/14)

309.4 **Telecommunications Facilities and Towers.** For provisions concerning telecommunications facilities, see Section 202.30-1. For provisions concerning telecommunications towers, see Section 202.31-1. (Ord. 3/3/14)

310 Manufacturing District.

This district is located south of the Stroudwater River, north of the electric transmission power line easement, and between Saco Street and Spring Street. Performance standards for uses in this district are designed to maintain compatibility between differing uses. All uses and activities must be conducted within the principal building. Such uses are capable of operating in a manner that controls the external effects of the manufacturing process, such as sound, odors, vibrations, emissions, dust, glare, or other nuisance characteristics, through prevention or mitigation devices, and of conducting operations, within the confines of buildings.

310.1 **Permitted Uses.** The following uses are permitted in the Manufacturing District as a matter of right, and other similar light manufacturing uses may be included in this district by interpretation of the Code Enforcement Officer or his/her designee:

- Light Manufacturing
- Accessory Use
- Business Office
- Warehousing
- Commercial Service Business
- Municipal Facility
- Neighborhood Grocery
- Private Indoor Recreation Facility
- Vocational Educational Facility
- Research and Development
- Telecommunications Facilities (Ord. 3/3/14)
- Greenhouse (Ord. of 9/14/15)

310.2 **Conditional Use.** The following uses are permitted in the Manufacturing District as a conditional use under Section 204:

Child Care Center
Church
Utilities
Telecommunications Tower (Ord. 3/3/14)

310.3 **Prohibited Uses.** Those uses that are prohibited shall include, but are not limited to, the following:

Junk yards
Retail trade and restaurants not accessory to a permitted use
Mining and drilling operations
Extraction and processing of raw geologic materials
Asphalt plants
Refining of petroleum or its products, including tar distillation
Commercial petroleum storage yards

310.4 **Performance Standards.** The following performance standards apply in the Manufacturing District:

- A. Minimum Lot Size: 20,000 S.F.
- B. Dimension Requirements:
1. Minimum Lot Frontage 200'
 2. Yard Depths:
 - A. Front 40'
 - B. Rear 30'
 - C. Side 30'
 3. Maximum Height: 75' and up to 5-stories. Maximum height shall include mechanical equipment and architectural detail.
- C. Maximum Footprint Factor: 50%
- D. Maximum Gross Density Factor: 80%
- E. Landscape Factor: 20%
- F. Storage. Outdoor storage must be screened from view of public ways.
- G. Maximum permissible sound levels: The maximum permissible sound level of any continuous, regular, frequent, or other sound typically produced by the use, shall not exceed the following:
1. 70 (70) dBa beyond the walls of the building between the hours of 7:00 am and 10:00 pm.
 2. 60 (60) dBa beyond the walls of the building between the hours of 10:00 pm and 7:00 am.
 3. Exemptions:

- A. Noises created by construction and maintenance activities between 7:00 am and 10:00 pm are exempt from the maximum permissible sound levels set forth in this section.
- B. The following uses and activities shall also be exempt from the requirements of this section:
 - i. The noises of safety signals, warning devices, emergency pressure relief valves, and any other emergency devices.
 - ii. Traffic noise on public roads or noise created by airplanes and railroads.
 - iii. Noise created by refuse and solid waste collection, provided that the activity is conducted between 5:00 am and 10:00 pm
 - iv. Emergency construction or repair work by utilities at any hour.
- H. Odors. Odors must not exceed existing levels at the zone lines. Wood pulping and similar processes are a prohibited use. Odors generated by the use must not leave the lot line.
- I. Hazardous Matter: The emission of hazardous matter must be so controlled that no amount generated by the use is permitted beyond the building. Storage of hazardous matter is prohibited, except that used exclusively for ongoing production purposes.
- J. Vibrations: Vibrations inherently and recurrently generated shall be imperceptible with and without instruments beyond the required building setback lines.
- K. Glare: All outdoor lighting must be of the full cut off luminaire variety and the light source must not be visible at the lot line.
- L. Traffic impact. The traffic pattern from a change or expansion of use must be designed so as to maintain the existing traffic operations levels of service and pedestrian safety along the lot frontage and at the nearest intersection in both directions. (Amended per Ord. of 11/17/14)
- M. Accessory Use. Accessory uses shall be under the same ownership or control as the permitted primary use. No accessory use shall be established until the primary permitted use is established and operating. If the primary use ceases operations for 12 months then the accessory retail use shall cease operations.
 - 1. Limited Retail Uses. Retail may be allowed as an accessory use if the Code Enforcement Officer determines that the following conditions are met:
 - A. The retail use would not exceed 15% of the gross floor area of any building. Any storage directly associated with the retail use shall be included in this allowable area.
 - B. The proposed retail use would be located within the same building as the allowed primary use to which it is accessory.

310.5 Extractive Industry. This section governs extractive industry in the Manufacturing District.

- A. Purpose. The purpose of this Section is to incorporate as part of the City's zoning ordinance the performance and use standards agreed to by the City, Pike, and IDEXX, following the completion of applicable procedures, in accordance with Paragraph 38 of *Pike Industries Inc. v. City of Westbrook*, 2012 ME 78 (June 14, 2012). The performance standards apply to the operation of the 32 acre existing hard rock quarry located at 645 Spring Street (the "Spring Street Quarry") delineated as Tax Map 5, Lot 11 and Tax Map 5B, Lot 3. The existing quarry is located easterly of Clarke Brook. The operations of the Spring Street Quarry include blasting, rock storage, rock crushing and the transport of the product.
- B. Performance and Use Standards. These performance and use standards are meant to control over any different, conflicting, or additional performance and use standards or other limitations contained in the Westbrook Code of Ordinances, including the provisions of Council Order 2010-14 (June 7, 2010) amending non-conforming use standards for extractive

industry. The following performance and use standards, and no others, apply to the Spring Street Quarry:

1. Hours of operation.

- Trucking 7:00 am – 5:00 pm weekdays and 7:00 am – 12:00 pm on Saturdays
- Weekdays only for blasting and crushing;
 - Blasting – 10:00 am – 3:00 pm
 - Crushing – 7:00 am – 6:00 pm
 - No operations on Sundays or federal holidays

The Code Enforcement Officer may approve operations outside these hours for emergencies, such as the need to repair a public utility or a public right-of-way as a result of a severe weather event.

2. Blasting. No more than 8 production blasts may be conducted per calendar year. In addition to production blasts, safety blasts limited to no more than one thousand (1000) pounds of explosive materials per blast may be conducted if necessary to maintain the safe operation of the quarry, but not for the purpose of producing rock for crushing or commercial sale. Except in the case of a safety emergency, safety blasts shall be conducted on one or more of the days when production blasts are conducted.
3. Truck Traffic. Trucking may not exceed an average of forty-five (45) daily truck departures and may not exceed a peak limit of one hundred and five (105) truck departures in any single day. The average daily truck departures will be determined by dividing the total number of annual truck departures by the total number of annual operating days, to be reconciled on an annual basis. A “truck departure” is defined as any instance in which a loaded truck, containing material for sale or commercial processing other than a pickup truck or a service vehicle truck leaves the Quarry. An “operating day” is defined as any day quarrying activities occur at the Quarry. For the purposes of calculating the average daily truck departures, the total number of annual operating days is to be calculated as follows: (1) from April 1 through December 1 of any year (the “operating season”), an “operating day” is defined as any day on which quarrying activities occur at the Quarry; (2) Saturdays on which the operator conducts quarrying activities will count as half of one operating day in calculating average daily truck traffic; and (3) outside of the operating season, only those days on which the operator has 10 or more truck departures will count as an operating day for the purposes of calculating the average daily truck departures.
4. Insurance. Maintain a minimum of \$10 million in insurance coverage in aggregate for blasting.
5. Buffers, Berms, and Fencing. Maintain the existing visual buffer between the Quarry and abutting properties and streets or a substantially equivalent visual buffer, as approved by the Code Enforcement Officer; in addition:

- a. maintain a perimeter security fence around the quarry;
 - b. maintain a minimum ten (10) feet high vegetative buffer facing County Road;
 - c. maintain the existing twenty (20) feet wide vegetative buffer along the Central Maine Power right-of-way;
 - d. maintain berms with evergreen plantings, slatted fencing, and other approved buffers;
 - e. maintain the approved visual screening of the Quarry operations from all public streets;
 - f. retain to the maximum extent possible the existing natural buffer between Spring Street and the Quarry access road with a minimum width of fifty (50) feet; and
 - g. maintain the twenty-five (25) foot wide berm with evergreen plantings with a minimum height of ten (10) feet on the Quarry side of the Quarry access road. Any revisions to any of these conditions must be reviewed by the Code Enforcement Officer to determine that they are substantially equivalent to the approved conditions.
6. Unitrode Site. Not work the Quarry below the water table except in accordance with the monitoring plan developed by Sevee & Maher Engineers, Inc. and approved in advance by the City Engineer after consultation with the Maine Department of Environmental Protection's Mining Coordinator and Unitrode Project Coordinator.
 7. Blast Monitoring. Use third-party blast planning and monitoring and provide annual reports to the City to document blasting within the preceding twelve (12) months. Video record all blast activities and maintain such records for a period of one (1) year. These records will be provided upon request to the City.
 8. Seismograph Monitors. Provide off-site seismic monitors to all requesting property owners within ½ mile, to be monitored by a third party, to the extent such monitoring is not duplicative in the judgment of a third party providing such monitoring. Monitoring reports shall be kept for three (3) years and shall be made available to the property owners and the City within ten (10) days of each blast.
 9. Pre-Blast Surveys. Provide one third-party pre-blast survey to each requesting home or business within one-half (½) mile radius of the Quarry. Copies of the surveys shall be kept until blasting at the Quarry has been completed, plus one (1) year.
 10. Weather Conditions. Blast only during weather conditions which are favorable to mitigating off-site impacts, e.g., noise and dust.
 11. Inspection and Repair. Develop, in conjunction with the City, a process through which an independent third party will inspect claims of property damage that are raised by neighboring property owners. If any damage is determined, based on the independent review, to have been proximately caused by blasting, provide reasonable compensation for necessary repairs, as recommended by an independent third party.

12. Blast Call List. Maintain and use a blast call list for any property owner within one-half (½) mile of the Quarry who requests inclusion on the blast call list. Property owners on the blast call list shall be notified (A) not less than twenty-four (24) hours before any scheduled production blast and (B) telephoned or emailed, as the property owner has specified, not less than one (1) hour before the actual production blast. In addition, production blasts shall be scheduled not less than two (2) weeks in advance and notice of the blasts shall be provided on the City's web-site. Those property owners who prefer may request their notice to be sent by U.S. mail
13. Access Road and Entrance. Maintain the existing paved access road below the grade of Spring Street and maintain the existing entrance onto Spring Street. Once the Quarry has been in operation for at least six (6) months, the Quarry owner shall meet with the City and neighbors of the Quarry in a public session to discuss the design of additional left-hand and right-hand turn lanes in Spring Street at its intersection with the new access road entrance to address traffic coming from or headed to County Road. No later than twelve (12) months thereafter, the Quarry owner shall commence construction of any required turn lanes and shall prosecute the same diligently to completion; provided the City shall use its reasonable, lawful authority, if necessary, to acquire any needed additional right of way width(s) and/or governmental approvals to accommodate the same; provided, further, the Quarry owner shall reimburse the City for any reasonable expenses incurred and for the final fair market value of any real property interests it may have to acquire.
14. Vibration. Utilize electronic (digital) detonators for all blasts to reduce the off-site effects of blasting activities; not exceed a maximum of 0.50 inches per second peak particle velocity for blast vibrations as measured by any seismograph located under the provisions of subsection 8 and 0.25 inches per second peak particle velocity for blast vibrations as measured at a baseline seismograph located at 2 Ledgeview Drive, Westbrook (City Tax Map 002-000-101); utilize laser profiling and bore hole tracking as part of blast design and implementation to improve the effectiveness of drilling activities and to reduce the risk of fly rock from blasting activities; utilize a blast face profiler to reduce impacts of air blasts.
15. Noise. Limit noise levels for all blasting so as not to exceed 129 dBA, measured in accordance with MDEP Regulations Chapter 375, Section 10.C(4), for one (1) blast per day; 126 dBA for two (2) blasts per day; 124 dBA for three (3) blasts per day; 123 dBA for four (4) blasts per day; limit daily operational noise levels for extractive industry so as not to exceed 75 dBA as measured at the property lines of the parcels on which the Quarry is located; use synthetic screens, urethane liners in crushers, or their substantial equivalents to reduce noise levels associated with crushing and screening; limit on-site speeds to no more than 10 mph; to the extent permitted by state and federal laws and regulations, minimize the volume of sound resulting from required sensors on on-site equipment through the use of sonar and similar alarm systems.
16. Dust. Not allow dust to migrate beyond the property line and take the following measures: enclose the producing areas of crushers so as to reduce the dust and noise generated by the crushing activity; pave the first 500 feet of any entrance from a publicly

utilized right-of-way and install wheel washers in order to reduce off-site dust from vehicles leaving the unpaved area of the Quarry; incorporate pre- and post-blast water mitigation to reduce the presence of dust created during blasting activities; utilize a vacuum sweeper and water truck, as needed, on all internal roads to reduce the presence of dust created during quarrying operations; utilize water fog nozzles as needed at all materials transfer points and stockpiles of quarried materials to reduce the level of dust created by quarrying operations; utilize two-sided truck trimming racks to ensure material is removed from the sides of trucks prior to the vehicles leaving the site; require load covers for trucks transporting material from the quarry operation.

17. Spillage. Perform a daily inspection of truck routes to remove any spillage of gravel, crushed stone, product, or debris from trucks leaving the Quarry from the entrance to Spring Street up to and including the intersection of Spring Street and County Road and the intersection of Eisenhower Drive and Spring Street and shall provide cell phone contact numbers to requesting residents and to City officials so that the Quarry owner may promptly respond to any request to remove any spillage from trucks leaving the Quarry. Respond with clean-up activities immediately upon notification.
18. Community. Meet at least annually with a neighborhood working group constituted by the City, review relevant records with this group, and review and discuss compliance with the performance and use standards. The operator will send a responsible management representative and provide records reasonably related to compliance with the conditions. The operator will submit all of its business records as are reasonably related to compliance no less than quarterly to be kept on file at City Hall, provided that the operator may request that certain business records be kept confidential by the City to avoid compromising the operator's legitimate business interests.

The initial meeting of the neighborhood working group shall be called by the City, but at that first meeting the neighborhood working group shall assume control over all aspects of the group, both substantive and procedural, and shall open the group's membership to all persons or firms as it deems appropriate. The City and its officials thereafter shall serve only as a resource for the working group and, upon reasonable advance notice, shall provide for public meeting space for the group; provided, at a minimum, the City Council ward representative for this area of the City, or his/her designee, shall attend such meetings if so requested, provided further, subject to and consistent with Section 59 of the Consent Order, the working group may call for an audit if the group believes there is a substantial issue of noncompliance with the performance standards of this Section.

19. Compliance Audits. The City may initiate an audit of extractive industry operations to determine compliance with the performance and use standards in this Section to be performed by an independent third party engaged by the City. The auditor shall provide the operator with not less than two (2) working days advance notice of any site visit and shall conduct any such visit during normal business hours. Not more than one (1) audit may be performed in any twelve (12) month period. The results of the audit shall be made available to the operator. These compliance audits shall be separate from and not a limitation upon inspections by the Code Enforcement Officer.

20. The Quarry owner shall comply with the reclamation plan submitted to the City. Any amendments to the reclamation plan shall receive the prior approval of the City Engineer pursuant to the then current requirements of the Department of Environmental Protection.

(Ord. of 10-15-12)

311.6. **Telecommunications Facilities and Towers.** For provisions concerning telecommunications facilities, see Section 202.30-1. For provisions concerning telecommunications towers, see Section 202.31-1. (Ord. 3/3/14)

311 Contract Zone 1 – Millbrook Estates
(Amended 6/2/14 by Ord. 2014-59)

That pursuant to the provisions of Section II (H) of the Westbrook Zoning Ordinance, a parcel of land on East Bridge Street shown as Lot 10 on Tax Map 12, be rezoned to allow the Westbrook Housing Authority to construct up to 140 units of elderly housing.

Said property is rezoned subject to the following conditions, which have been recommended by the Westbrook Planning Board and are incorporated herein:

1. The development is to contain a first phase of no more than 100 units of 1 bedroom apartments, all of which are to be occupied by qualified elderly (age 55 or over) or disabled households (“Phase I”). The project may also contain an adult day care facility for no more than 20 individuals. Up to an additional 40 units of affordable housing for qualified elderly or disabled households may be constructed in the future subject to specific Site Plan approval for that phase of the development (“Phase II”). Development of Phase I shall take place in accordance with the plans of East Bridge Woods by John H. Leasure Architect and Caruthers Engineers dated November 17, 1989 (the “Phase I Plan”), which plans are incorporated herein by reference and made a part of this approval, and in accordance with a plan entitled “Conceptual Site Plan,” Millbrook Estates Phases I and II, East Bridge Street, Westbrook, Maine, by St. Germain Collins dated April 4, 2014.
2. The remainder of the property shall remain as open space permanently and shall be so marked on the Site Plans to be submitted to the Planning Board.
3. The building will be a maximum of 3 stories consisting of 3 wings in Phase I, as shown on page 1 of the Phase I Plan. Phase II involves the creation of a new parcel and construction of a separate building to consist of 4 stories, with access over the existing driveway and additional parking spaces to be created and connected to the existing Phase I building with an enclosed corridor, all subject to Site Plan approval.
4. The construction of Phase I including the 3 wings and central core and all site improvements shall be completed within 2 years from the date of receipt of final site plan approval for Phase I.
5. The buildings shall be set back from the property lines as follows: Southerly front set back from East Bridge Street at least 230’; Westerly side yard at least 160’; Easterly side yard at least 100’, provided, however, that there shall be no setback required from the property line dividing Phases I and II, which shall be physically connected with an enclosed corridor, and benefitted by easements for pedestrian passage between Phases I and II.
6. The developer shall provide landscaping and buffering plan prepared by a registered landscape architect which plan shall provide for adequate vegetative screening and/or fencing to adequately protect the side and front yard neighboring properties and the residents of the project. The plan shall be submitted to the City Planner and City Arborist and approved by them before the issuance of any construction permits.
7. So long as the project may be treated for tax purposes as owned and operated by Westbrook Housing Authority or its affiliated 501(c)(3) corporation, Westbrook Development Corporation, the Phase I property shall be assessed each year and shall pay to the City of Westbrook a sum in lieu of real property taxes of \$20,000.00 to cover the

cost of providing necessary municipal services to Phase I. Phase II shall be assessed each year and shall pay to the City of Westbrook a sum in lieu of real property taxes of \$20,000.00 to cover the cost of providing necessary municipal services to Phase II. The amount of the sum in lieu of taxes paid for Phase II shall increase by 2% annually, commencing with the third fiscal year after Phase II has been placed in service.

8. The developer shall provide prior to the construction of each of Phases I and II the following performance guarantees:
 - A performance bond to assure completion of all site improvements in an amount satisfactory to the Director of Engineering;
 - Site improvements and all construction shall be inspected by the Engineering Department during construction to assure compliance with all applicable building and zoning regulations.
9. Sidewalks shall be installed on both sides of the proposed driveway from East Bridge as shown on the above-referenced plan.
10. This project is proposed to remain a low to moderate income elderly housing project in perpetuity. The developer shall include as a restriction in the deed to the premises a requirement the property shall remain a publicly managed, low to moderate income, elderly housing complex and that the City of Westbrook shall be deeded the premises in the event that the Westbrook Housing Authority, or its affiliate or affiliated successor, should cease to exist or otherwise cease to own and manage this project, provided, however, that this restriction shall not apply to transfers resulting from the foreclosure of a mortgage upon the project to a financial institution.
11. A professional traffic impact study shall be conducted for the Planning Board Site Plan Review, the costs of which shall be borne by the developer.

312 Contract Zone 2 – Brydon Farm

Ordered: #2000-127

Order that the Brydon property, Tax Map 58, Lot 1 and Tax Map 55, Lot 21 be rezoned pursuant to the provisions of the conditional zoning (Section II.H, Westbrook Zoning Ordinance) and subject to the following conditions as reviewed and recommended by the Planning Board:

1. Property use: Brydon Farm is proposed as a clustered residential development consisting of two-unit attached homes. The property surrounding the units will be commonly owned and maintained by a homeowners association with the exception of the roadway that will be dedicated for public use. The road way will have access to route 302 and Pride Street.
2. The new “contract 2” zone will have the following standards:

Permitted Uses

Dwellings

Accessory building

Space and Bulk Requirements

Maximum net residential density	4 dwelling units per net residential acre
Minimum lot area:	none
Minimum street frontage:	none
Minimum front yard:	15 feet
Minimum side and rear yards:	none
Maximum building height:	30 feet
Minimum distance between unattached buildings:	20 feet
Maximum stories:	1
Open Space:	All other areas not within the building envelope areas and held in common by the homeowners association

Off-Street Parking

In conformance with Section XVIII of the City of Westbrook Zoning Ordinance

Signs

In conformance with Section XIX of the City of Westbrook Zoning Ordinance

3. As part of the review process, the following additional conditions have been set:
 - a. The developer agrees to \$3,000.00 for recreation facilities to serve primary grade schools and \$35,000.00 to be placed in a fund to support the movement of the Tennis Courts at Pride School. The fund will be paid 50% up-front and have a letter of credit behind the remainder, to be paid at the 75% completion point; and,
 - b. That the applicant receive final subdivision and site plan review from the Planning Board, including any appropriate changes to the site design, recreation

areas, and public and privately held space. Any other appropriate state or federal license approvals must also be received prior to the project beginning construction. All units shall be built to appropriate building standards of the City of Westbrook.

- c. Approval of the Planning Board of appropriate covenants and bylaws associated with establishing a permanent homeowners association to manage commonly owned property.

313 Contract Zone 3 – Hannaford Brothers

Ordered: #2001-91

Amended: #2018-73

That the Hannaford Brothers parcel, 100 Hawkes Street, be rezoned to a conditional (contract) zone with the following conditions:

1. Be consistent with all conceptual design issues and commitments shown on a plan called “Conceptual Site Plan” and dated 6-26-2001, as amended by the plan dated October 2007 and revised 2-05-2008 (including no access to Hawkes Street or Stroudwater Street, all buffering shown on the plan, and the redevelopment of Bicentennial Park, as shown on the plan);
2. That the Site Plan Review will show improved internal pedestrian circulation;
3. That the Site Plan Review, the delivery times will be identified and set;
4. That the hours of operation be restricted to the present hours of operation (Mon.- Sat, 7-11; Sun. 7-9);
5. The lighting pollution be minimized and contained within the lot lines or appropriately screened and be approved as part of Site Plan Review
6. That the property demonstrate during Site Plan Review that it is ADA accessible;
7. That the out-parcel shown on the plan as a bank be restricted to a similar type of office compatible with the Business General Zone; and,
8. Any other conditions that the City Council chooses to set.

A. Performance Standards. Contract Zone 3 will conform to the standards of the City Center District with the exception of the following:

- a. Minimum Lot Size: 8.3 acres
- b. Yard Setbacks: 25-feet from property lines that abut a residential zone. When not abutting a residential zone, the City Center District Standards shall apply.
- c. Building Height: 39’
- d. Signage:

Description	Standard
<u>Front Building Sign</u>	<u>208 sf</u>
<u>Left Side Elevation Sign</u>	<u>253 sf</u>
<u>Pylon Sign</u>	<u>120 sf</u>

314 Contract Zone 4 – Brown Street Contract Zone

Ordered: #2002-15

Amended

Ordered: #2004-57

A. Purpose: To provide flexible zoning standards that will incite new investment in the neighborhood, leading to higher quality housing and neighborhood conditions.

B. Permitted Uses:

1. Dwellings
2. Day Care homes
3. Accessory uses including home occupations
4. Government buildings and uses
5. Public and private utility uses

C. Conditional Uses:

1. Neighborhood grocery stores

D. Space and Bulk Regulations:

1. Minimum net residential density for entire Contract Zone:
2. 1 unit per 1,500 sq. ft.
3. Minimum area per residential unit: 350 sq. ft.
4. Minimum lot area: 2,500 sq. ft.
5. Minimum street frontage: 40'
6. Minimum yard setbacks: 0', subject to approval of fire department
7. Minimum distance between buildings: 8'
8. Maximum height of buildings: 4 stories

E. Area to be included in the zone:

(See City of Westbrook Zoning Map)

In addition to the zone, we ask that you set as the following conditions of contract zone approval that:

1. Tax Map 33, lots 226 and 219 will be sold as three-unit condominium projects with each unit owned privately by the person living there.
2. Tax Map 33, lots 215 and 225 will be sold as two-unit condominium projects with each unit owned privately by the person living there.

3. Tax Map 33, lot 228 will be sold as a four-unit condominium project with each unit owned privately by the person living there.
4. PROP will add the improvements cited on the plan, with the exception of F, G, H, and J, which we will hope to do jointly through another grant or road improvement projects.
5. The City will allow PROP to use up to 8 feet of public right of way in front of the units to create green space for the units. These additions of green space will be done during road projects, when the roadways are narrowed and sidewalks relocated.
6. Tax Map 33, lots 231, 233, and 234 may be retained by PROP to be used as rental properties.
7. All dwellings will provide a minimum of one (1) off-street parking space per unit.

315 Contract Zone 5 – Victoria Heights Contract Zone

Ordered: # 2002-117

Amended: #2004-156

- The property is shown as lot 11A, Map 4 of the tax map and is located presently in the RFC Zone and within the mobile home park sub-district. The layout and position of lots is found in the attached plan known as Saco Street Subdivision-Hildreth and White, dated 01-21-02 and is hereby made a part of this record.
- Space and Bulk Criteria for the contract zone:
 - Net residential density: 3 units per NRA
 - Minimum Lot Size: 10,000 square feet
 - Minimum Street frontage: 80'
 - Minimum Front yard setback: 15'
 - Minimum Side yard setback: 10'
 - Minimum Rear yard setback: 15'
 - Max. Building Height 40' except lots 23, 21, 19, which shall be 26' and lots 22, 20, 18, which shall be 29'. Heights shall be defined according to The BOCA ® National Building Code 1999.
 - Maximum Building Coverage: 35%
- Total area of the parcel is 13.83 acres. Total net residential acreage and final lot layout shall be established during subdivision review, when detailed wetland delineation is completed.

Other conditions:

1. The developer shall pay an impact fee of \$500 per lot, or \$15,500. \$12,400 shall go to recreation improvements to be defined by the City and the remainder to a fund set up for the development of sidewalks between the project and where the sidewalks end on Saco Street.
2. All properties shall be buffered or screened and be negotiated during subdivision review. The vegetation for the Tewey property shall be placed on their land while the remaining vegetation for the Saco Street properties shall be placed within the rear buffer yards of the new lots. Vegetation shall be of the evergreen variety for the purpose of providing a visual barrier.
3. The paved right of way shall be 22' in width, with granite curbs at the radii of intersections.
4. Four housing units shall be constructed and sold to eligible first time-homebuyers. The Maine State Housing Authority guidelines shall be used. As a guide, a first time homebuyers in this area shall make a maximum of \$62,000 for a 3+ family and can afford a house costing no more than \$171,800.
5. That the storm water management system be designed such that an organized recreation area is provided in the storage area, during dry periods.
6. Granite curbing shall be used throughout the project.
7. Prior to construction and blasting, the applicant shall conduct a blasting assessment of all adjacent properties and shall show evidence of insurance in the case of damage to

adjacent properties. Said insurance shall be kept on file with the City. Any damage to adjacent properties during construction shall be the responsibility of the developer, in accordance the attached blasting plan.

8. All other design aspects of development shall be subject to final subdivision approval.
9. Street lighting shall be of the cut-off luminare variety.
10. A stockade fence shall be installed on the perimeter of the Tewey property along the new development.
11. Hold in escrow for one (1) year after street acceptance an amount to cover the cost for a new light; at the end of the year, if no request is made, than the escrow shall be returned to the developer.

Any modifications of these conditions shall require City Council approval.

316 Contract Zone 6 - Golder Commons Contract Zone

Ordered: #2004-56

The proposed contract zone will allow for the construction of a 26-unit affordable apartment building. The proposed building will compliment the historic Bridge Street School apartments that currently reside on the property.

Permitted Uses:

1. Dwellings

Space and Bulk Regulations:

1. Maximum Net Residential Density: 28 dwelling units per acre; 66 bedrooms per acre
2. Minimum Lot Area: 1.60 acres
3. Minimum Street Frontage: 75 feet
4. Minimum Front Yard: 0 feet
5. Minimum Side and Rear Yards: 15 feet
6. Maximum Building Height: 4 Stories

Off-Street Parking

1. 1.5 spaces per 2 bedroom unit; 2 spaces per 3 bedroom unit; including handicapped parking in accordance with Section XVIII of the 1973 zoning ordinance.

Additional Conditions

1. A children's play structure will be constructed to provide recreation opportunities for the future residents of the apartment buildings. The specific details and cost of the play structure will be decided upon by the Planning Board, with a recommendation from the Recreation and Conservation Commission, as part of the site plan or subdivision review process.

The apartment units shall be rented at an affordable price as established by the project's funding requirements.

317 Contract Zone 7 - Stroudwater Street Growth Area Contract Zone

317.1 **Purpose.** The purpose of this contract zone is to allow for the construction of a public school and related facilities or a recreational facility, while allowing the possibility of a future residential development at density levels permitted in the Residential Growth Area I, provided certain conditions are met.

317.2 **Permitted Uses.** The following uses are permitted in the Stroudwater Street Growth Area Contract Zone as a matter of right:

Accessory Uses	Funeral Home
Bed & Breakfast Class 2	Greenhouse or Florist
Church	Home Occupation
Community Center	Library/Museum
Congregate Care Facility	Municipal Facility
Dwelling, Single-Family	Neighborhood Grocery
Dwelling, Two-Family	

317.3 **Conditional Use.** The following uses are permitted in the Stroudwater Street Growth Area Contract Zone as a conditional use under Section 204:

Bed and Breakfast Class 1
Day Care Center
Adult Day Care
Dwelling, Multiple-Family
Medical Office
Hospital
Home Day Care Provider

317.4 **Performance Standards.** The following performance standards apply in the Stroudwater Street Growth Area Contract Zone:

A. Minimum Lot Size: 5,000 S.F. existing; 7,500 S.F. new

B. Dimension Requirements:

- | | |
|------------------------|-----------------------|
| (1) Minimum Lot Width: | 50' existing, 65' new |
| (2) Yard Setbacks: | |
| (a) Front | 10' existing, 15' new |
| (b) Rear | 10' existing, 15' new |
| (c) Side | 10' existing, 15' new |

(3) Maximum Height: 40'

- C. Maximum Footprint Factor: 40%
- D. Maximum Gross Density Factor: 70%
- E. Landscaping Factor: 30%
- F. Residential Density Factor: 1 dwelling unit per 5000 S.F.
- G. Lighting. All outdoor lighting must be of cutoff luminaire variety and must be installed so that no direct lighting is emitted beyond lot lines.
- H. Vibrations. Vibrations must not exceed existing levels at the exterior limits of the building.
- I. Screening. A plan for parking and screening is required for uses other than dwellings, single and two-family. Screening may include, but is not limited to, fencing or plantings.
- J. Traffic Impact. The traffic pattern from a change or expansion of use must be designed so as to maintain the existing traffic operations levels of service and pedestrian safety within a reasonably determined distance from its point of ingress or egress.
- K. Storage of Materials. All materials must be stored within an enclosed structure so as to be screened from view.

317.5 **Conditions.**

If any use listed as a permitted use or a conditional use, other than a municipal school facility and related facilities or municipal recreational facility, is proposed for this contract zoning site, such use shall require an amendment to this contract zoning agreement to establish standards and restrictions upon such development to ensure protection of the wetlands and natural resources on the site and to ensure an appropriate transition from the adjoining Residential Growth Area 1 District to the adjoining Rural District. This requirement shall not apply to a municipal school facility, which shall not require additional zoning action under this section, but will require site plan approval by the Planning Board.

318 Contract Zone 8 - 500 Westbrook LLC Contract Zone

WHEREAS, the City Council finds that the materials submitted to date on traffic are sufficient to allow the Council to make the legislative policy judgment that the requested rezoning is consistent with the Comprehensive Plan and is an appropriate zoning designation for the subject property, understanding that this rezoning does not approve a specific development project and that the specific development project will be reviewed by the Planning Board, at which time more detailed information concerning traffic will be required.

Now, therefore, Ordered that City Council hereby authorizes the establishment of the attached Stroudwater Place contract zone, as recommended by the Planning Board, subject, however, to the condition of the approval of this Contract Zone, which condition is hereby incorporated into the text of the contract zoning district, that the applicant must submit a traffic study containing all information set forth in Section 7 of MDOT’s Rules and Regulations Pertaining to Traffic Movement Permits to the Planning Board at the time of application for site plan approval.

318.1 **Purpose.** This zone consists of approximately 61 acres of currently undeveloped land located between the Westbrook Arterial and Stroudwater Street*. The purpose of this Contract Zone is to enable a high quality integrated, master-planned, mixed-use commercial development that will serve as a gateway to Westbrook from Exit 47, a regional economic hub and a destination for shoppers and visitors to the City, while maintaining an appropriate buffer along Stroudwater Street. The kind of development intended for this zone is further described in the “Guiding Principals for a Master Plan for Stroudwater Place, Westbrook, Maine” by Thompson Design Group dated September ____, 2008 (“Guiding Principals”).

It is of critical concern to the City that the development envisioned in this Contract Zone move forward in a way that protects and has minimal impact on traffic, noise or light pollution in surrounding neighborhoods (including the neighborhoods in and around Forest Street, Haskell Street, Rochester Street, Stroudwater Street and Monroe Avenue), school facilities and currently active agricultural businesses.

*Amended by Ord. of 2/10/14. The City Council approved rezoning of Tax Map 9, Lot 3A therefore this parcel is no longer subject to the CZA. The remaining land in the CZA is Tax Map 9, Lot 3 consisting of 1.95 acres.

318.2 **Permitted Uses.** The following uses are permitted in the 500 Westbrook LLC Contract Zone as a matter of right:

Accessory Use	Light Manufacturing
Adult Daycare	Media Studio Class 1
Bank Class 2	Media Studio Class 2
Business/Executive Suite Hotel	Medical Office
Business Office	Municipal Facility
Class A Lounge	Museum

Club or Lodges	Neighborhood Grocery
Community Center	Outdoor Farmers Market
Conference/Exhibition Facility	Outdoor Gathering Spaces, including, but not limited to picnic area, parade/fairgrounds, etc.
Daycare Center	Outdoor Performing Arts Venue
Dwelling, Multiple Family	Parking Facility
Education Facility	Public or Private Indoor or Outdoor Recreation or Sports Facility
Greenhouse or Florist	Research and Development
Grocery Store	Restaurant Class 2
Health Club	Restaurant Class 4
Home Occupation	Retail Class 1
Hotel/Motel	Service Business
Intermodal Passenger Transportation Facility	Theater
Kiosk Vendor	Veterinary Office
Library	

318.3 **Conditional Use.** The following use is permitted in the 500 Westbrook LLC Contract Zone as a conditional use under Section 204:

Child Care Center

318.4 **Performance Standards.** The following performance standards apply in the 500 Westbrook LLC Contract Zone:

A. Dimensional Requirements*:

- (1) Minimum Building Setbacks:
 - (a) from Westbrook Arterial 20 feet
 - (b) from Stroudwater Street 200 feet
 - (c) from side property lines 20 feet
- (2) Maximum Height 75 feet
 (exclusive of architectural features which may, upon approval of the design by the Planning Board during site plan review, extend above the roof of the building provided such architectural features do not increase habitable space).

B. Maximum Building Footprint. The total, cumulative footprint of all buildings within the Contract Zone shall not exceed 50% of the land area within the Contract Zone.

* The dimensional requirements established in this section apply to the Contract Zone as a whole and not to individual lots (if any) within the Contract Zone.

- C. **Maximum Gross Density.** The total, cumulative amount of building footprint and impervious surface shall not exceed 78% of the land area within the Contract Zone.
- D. **Minimum Landscaping.** At least 22% of the total land area within the Contract Zone must be landscaping. Stabilized grass surfaces shall be considered pervious landscaping.
- E. **Lighting.** All outdoor lighting must be of the cutoff luminaire variety and must be installed so that no permanent direct lighting is emitted beyond the lot lines, except for special accent / event lighting oriented towards the Westbrook Arterial. No lighting shall be permitted on architectural features above 75 feet in height.
- F. **Buffer.** A 50-foot buffer with berms and trees shall be maintained along the entire Stroudwater Street frontage, in order to maintain a continuous visual screen, except where a break in the screen is necessary to provide an emergency access route for public safety purposes.
- G. **Traffic Impact.** Except for emergency vehicle access as determined to be necessary by the City's public safety officials, there shall be no motor vehicle access between Stroudwater Street and the development, and the only access to the development shall be from the Arterial, or from a connector road which runs only between the development and the Arterial. At the time of site plan review, 500 Westbrook LLC must submit a traffic study providing all information set forth in Section 7 of the Maine Department of Transportation's Rules and Regulations pertaining to Traffic Movement Permits, as such may be amended from time to time.
- H. **Parking.** Because of the variety of uses proposed by 500 Westbrook LLC, various uses on the property will have different operating hours and different peak-period parking demands. In keeping with principles of optimizing resources, shared parking can therefore be utilized. The Table of Off-Street Parking in Section 505.1.A shall not apply within this Contract Zone. Instead, the number of parking spaces to be provided as each phase of the development is undertaken and in total shall be determined by applying best-practice traffic engineering standards for shared parking and in accordance with a parking management plan. Parking may be provided through a combination of surface parking and parking structures. At final build-out, the majority of parking shall be located in parking structures. Any surface parking, whether provided for an individual phase or for final build-out, shall be adequately screened from pedestrian ways and public streets. Because of the seasonal variation in parking demand for retail uses, a portion of the parking may occur on stabilized grass surfaces to function as overflow parking during peak periods or for special events, but otherwise to function as a fairground/parade ground, field, or other open area.
- I. **Sustainability.** Buildings and improvements shall, to the extent feasible, utilize materials, techniques and designs which incorporate then-current best practices for energy efficiency, sustainability and low environmental impact.

- J. The final square footage of the development and the square footage of any individual phase shall be determined by the Planning Board during the Site Plan review process. Both total square footage and retail are not to exceed 20% of the square footage depicted on the program diagram incorporated herein. In addition to any other applicable requirements, at each stage of the Planning Board's review process (including but not limited to the Master Plan Review and review of each individual phase) the Planning Board shall make specific findings that each of the goals described in Section 318.1 are met. At final build-out, the development shall include a mix of the following uses: (1) retail; (2) office space; (3) hospitality and food; and (4) sports and entertainment.
- K. In addition to the Performance Standards set forth herein, the development shall comply with Subsection 505.11 of the City's Site Plan Review Design and Performance Standards, except where qualified herein:
- (1) 505.11.3.A (1) Space and Bulk Standards shall not apply.
 - (2) 505.11.3.A (2) (b) (ii-iv) Lighting standards shall not apply to special accent/event lighting.
 - (3) 505.11.3.A (2) (c) The buffer or screening shall limit the decibel level of all sounds or noise that reach the property lines according to limits set by the Planning Board. After an initial inspection to determine that noise is being emitted, the Code Enforcement Officer reserves the right to hire a consultant or expert in the field of sound measurement so as to not have an unreasonable adverse impact on the abutting properties as determined by the Planning Board. All services billed by the consultant or expert must be paid for by the owner of the property from which the sound is being emitted.
 - (4) 505.11.3.B (1) (a) and (b) The Planning Board shall set such standards so as not to have an unreasonable adverse impact on the abutting properties as determined by the Planning Board.
 - (5) 505.11.3.B (2) and (3) The Planning Board shall set retail and non-retail hours of operation during the Site Plan review process so as not to have an unreasonable adverse impact on the abutting properties as determined by the Planning Board.
 - (6) 505.11.3.C Building Design Standards shall not apply.
 - (7) 505.11.3C (1) Access management shall not apply.
 - (8) 505.11.3 D (2) A traffic study shall be completed after each phase of the development and shall include, but is not limited to, the new Westbrook Middle School, Monroe Avenue, Rochester Street, Haskell Street, Stroudwater Street and Forest Street areas.
 - (9) 505.11.3.D (3) The Planning Board may accept the impact study required by the State Informed Growth Act to the extent the Planning Board is satisfied that such study addresses the requirements of this subsection.
 - (10) For the purpose of application of these performance standards to this Contract Zone the terms "residentially zoned occupied property" includes Residential Growth Area 1, Residential Growth Area 2, Residential Growth Area 3 and the Rural Zone.

318.5 Conditions.

1. Master Plan

(a) All buildings within the zone shall be designed and constructed pursuant to an overall plan for development of the property that contemplates an integrated, internally unified mixed-use commercial development consistent with the Guiding Principles and the goals of this Contract Zone (“master plan”). The master plan will incorporate the following design principles:

- High quality public spaces will be an integral component of the development as a whole and of individual phases.
- The development as a whole and individual phases will be streetscape oriented – designed so that visitors will park in central facilities and then walk to their destinations, with building entrances located along and oriented toward the internal streets.

The Master Plan shall address the timing and type of public amenities, including, but not limited to, transportation alternatives, trail connections, outdoor gathering areas and other public spaces. It shall include an activation program, developed in consultation with the Westbrook Recreation Department, for the management of multi-use, active recreation fields. The ice skating facility shall provide for 2.5 free hours of ice time to Westbrook residents and Westbrook school-aged hockey teams each day. The schedule shall be developed in consultation with the operator and the Recreation Department.

(b) In order to achieve the goals of an integrated, master-planned, mixed-use commercial development that will serve as a gateway to Westbrook from Exit 47, a regional economic hub and a destination for shoppers and visitors to the City, the master plan shall include a master lease or declaration of covenants containing restrictive covenants which preclude the following uses: “bargain” or “dollar” stores, wholesalers, sellers of distressed or salvaged merchandise and other retailers whose advertising, marketing practices or appearance, either interior or exterior, are not consistent with the kind of quality, destination-retail development described in the Guiding Principles. In addition, the master lease or declaration shall incorporate architectural design guidelines controlling matters such as streetscape design, façade treatment, appearance of public spaces, quality of common areas, location and appearance of kiosk vendors, signage, landscaping and lighting, placement of buildings with respect to the public spaces, and such other features of development which 500 Westbrook LLC deems appropriate to ensure a quality project and a quality experience for customers of and visitors to the development.

(c) The master plan shall be submitted as part of the application for site plan review for the first phase to be constructed. Any subsequent revisions to that

initial master plan shall be submitted as part of each application for site plan review for subsequent phases. Before approving any phase, the Planning Board must approve the master plan as being consistent with the Guiding Principles and meeting the requirements of this Contract Zone.

- (d) The development of the property shall be substantially consistent with the design principles articulated in the Guiding Principles and with the design concepts illustrated in the four depictions attached hereto and incorporated herein.

- 2. **Phasing.** The property may be developed in phases, with the Planning Board determining during site plan review what infrastructure improvements are required for the incremental development of each phase. At a minimum, an outdoor farmers market area and an intermodal passenger transportation facility must be constructed within two years after the first 100,000 square feet of commercial space is occupied. No more than 400,000 square feet of commercial space may be issued a certificate of occupancy until an outdoor farmers market area and an intermodal passenger transportation facility has been constructed. No more than 800,000 square feet of commercial space may be issued a certificate of occupancy until a central common/outdoor gathering space has been constructed. No more than 1,200,000 square feet of commercial space shall be issued a certificate of occupancy until an indoor ice skating facility, arena or similar civic facility has been constructed, except that, as an alternative, the City and 500 Westbrook LLC may agree on a monetary contribution from 500 Westbrook LLC to assist the City in constructing or operating an off-site facility.

318.6 **Definitions.** As used in this Section 318, Contract Zone 8 – 500 Westbrook, LLC, the following terms shall have the following meanings:

- i. **Class A lounge.** An establishment which holds a Class X liquor license from the State of Maine, which qualifies as a “Class A Lounge” under the provisions of Title 28-A of the Maine Revised Statutes and is licensed by the Department of Health and Human Services as required by 28-A M.R.S.A. § 1065(5). This category excludes bottle clubs and restaurants that allow patrons to bring and consume their own alcoholic beverages.
- ii. **Business/Executive Suite Hotel.** A hotel that offers customary hotel services and amenities to the traveling public on a daily basis and also has rooms or suites available for longer term rentals, designed and intended to accommodate businesses or institutions and their employees, contractors or consultants who require temporary lodging while working on temporary assignment or relocating to the Westbrook area.
- iii. **Conference/exhibition facility.** A facility used for conferences, seminars and exhibitions, and entertainment, which may include accommodations for sleeping, food-preparation and eating, recreation, and meeting rooms, and retail sales and

services that are offered primarily for the convenience of persons attending conferences, seminars or exhibitions at the facility. A conference/ exhibition facility which includes sleeping rooms for guests shall also be considered a hotel/motel, subject to the requirements of this ordinance applicable to hotels/motels.

- iv. **Health club.** A facility where members or nonmembers use equipment or space for the purpose of physical exercise. This term includes facilities commonly known as fitness centers or wellness centers.
- v. **Intermodal passenger transportation facility.** A building, structure or location where two or more modes of transportation intersect and passengers can transfer between modes.
- vi. **Kiosk Vendor.** An outdoor vendor selling food or consumer goods or services from a wheeled cart or a kiosk (a small structure with one or more open sides).
- vii. **Library.** A public and/or non-profit facility in which literary, musical, artistic or reference materials (such as books, manuscripts, recordings or films) are kept for use but not normally for sale.
- viii. **Museum.** A building having public significance due to its architecture or former use or occupancy or a building serving as a repository for a collection of lasting interest or value arranged, intended and designed to be used by members of the public for viewing with or without an admission charge.
- ix. **Outdoor farmers market.** An area designated for the seasonal selling at retail of vegetables, produce, flowers, orchard products and similar agricultural products, or farm-related products such as jams, jellies, syrups, dairy products, etc.
- x. **Outdoor performing arts venue.** An area designed and arranged so that it may be used for outdoor concerts or performances, including live or multimedia performances or showing of films or videos. It may include a bandstand, band shell, stage or other shelter for performers, and seating or seating areas for audiences, any of which may be permanent or temporary. This use category does not include drive-in theaters.
- xi. **Public or private indoor or outdoor recreation or sports facility.** An indoor or outdoor space, which may be publicly or privately owned, that is designed and equipped for the conduct of sports and leisure time activities, excluding water slides, amusement parks and racetracks, and which may include spectator sporting events.
- xii. **Research and development.** A laboratory or similar facility for investigation into the natural, physical or social sciences, which may include engineering and product development. Such use shall not involve the mass manufacturing, fabrication, processing or sale of products.

- xiii. **Restaurant Class 4.** A wine bar, winery, brew pub or similar establishment which serves for consumption on the premises wine, malt liquor, or low-alcohol spirits products, but not spirits, as those terms are defined in Section 2 of Title 28-A of the Maine Revised Statutes. A restaurant class 4 must serve food, but is not required to have a kitchen and the food need not be prepared on the premises. Restaurant Class 4 excludes bottle clubs and restaurants that allow patrons to bring and consume their own alcoholic beverages.

- xiv. **Theater.** A building or part of a building used to show motion pictures, or for drama, dance, musical or other live performances. This term includes multi-screen cinemas, but excludes drive-in theaters.

319 The Elms Contract Zone.

This zoning district was created by Contract Zoning Agreement between Scott A. Balfour and the City of Westbrook, dated February 4, 2013, and is subject to all of the requirements of that Contract Zoning Agreement. The subject property is described as Map 40 Lot 206 and 102 Cumberland Street and consists of approximately 0.99 acres. The property is located within the Cumberland Mills Historic District of the National Register of Historic Places. The subject property is located within the General Development Shoreland Zone and Village Review Overlay Zone and shall comply with the requirements of those zones.

The purpose of The Elms Contract Zoning District is to provide for a flexible mix of uses in order to enhance the economic feasibility for this unique property given its unique size, scale, nature, location, historical use and significance. An appropriate mix of permitted residential and commercial uses, based on the unique features of the building, location and neighboring industrial, residential and commercial uses and zones, will provide for the continued viability of this property, while remaining consistent with the goals established in the City's Comprehensive Plan.

319.1 **Permitted Uses.** The property owner is authorized to establish on the property any of the following uses as a matter of right:

Accessory Use	Home Occupation
Bed and Breakfast Class 1 & 2	Hotel or Motel
Business Office	Library or Museum
Club or Lodge	Medical Offices
Congregate Care Facility	Restaurant Class 2
Dwelling, Single-Family	Service Business
Dwelling, Two-Family	
Dwelling, Multiple-Family	
Greenhouse or Florist	

Uses under this section shall have the same definitions as are set forth in the Land Use Ordinances.

319.2 **Conditional Uses.** The property owner may establish the following uses as conditional use, subject to review and approval under Section 204 of the Land Use Ordinances:

Educational/Vocational
Funeral Home
Retail Class 1

Uses in this section shall have the same definitions as are set forth in the Land Use Ordinances.

319.3 **Performance Standards.** The following performance standards shall apply in The

Elms Contract Zoning District:

- A. Preservation of historic structure. Upon destruction or demolition of the building, the City Council shall have the authority, after notice and hearing as required by State law, to terminate the Agreement and rezone of the Property to the prior or any successor zoning districts. In such an event, the Property shall then be used only for such other uses as are otherwise allowed by law.
- B. Buildings, additions and/or alterations must retain the character of the structures. This includes, but is not limited to, architectural style, windows, doors, roof pitches, and siding material.
- C. Dimensional requirements:
 - (1) Setbacks: There are no dimension requirements for yard depths.
 - (2) Height: Building height may not exceed the current building height.
 - (3) Maximum Footprint Factor. 40%.
 - (4) Maximum Gross Density Factor. 70%
 - (5) Landscaping Factor. 30%.
 - (6) Residential Density Factor. 1 dwelling unit per 2500 S.F. of base site area. (However, minimum size of a residential unit shall be 500 S.F., and an additional 150 S.F. per each additional bedroom.)
- D. Lighting. All outdoor lighting must be of the cutoff luminaire variety and must be installed so no direct lighting is emitted beyond lot lines.
- E. Noise. Noise levels must not exceed existing levels at the exterior limits of the property.
- F. Vibrations. Vibrations must not exceed existing levels at the exterior limits of the building.
- G. Odors. Odors must not exceed existing levels at the lot lines.
- H. Traffic Impact. The traffic pattern from a change or expansion of use must be designed so as to maintain the existing traffic operation level of service and pedestrian safety within 200 feet of the point of ingress or egress.
- I. Storage of Materials. All materials must be stored within an enclosed structure so as to be screened from view from the public way.

- J. Parking Requirements. The parking requirements of Section 505.1 of the Land Use Ordinances are applicable to all uses in The Elms Contract Zoning District.
- K. Signage. As regulated by Section 404.6 Signs in the City Center District.
- L. Agreement to be recorded. The Property Owner shall record this Contract Zoning Agreement in the Cumberland County Registry of Deeds and shall submit proof of recording to the Westbrook Code Enforcement Officer and the City Planner.
- M. Amendments to Agreement. The provisions of this Contract Zoning Agreement shall be deemed restrictions on the use of the property and shall be amended only upon further written agreement of the City of Westbrook and the Property Owner or his successors in interest to the Property. Any amendment will be reviewed and approved in accordance with the requirements of 30-A M.R.S.A. § 4352(8).
- N. Other reviews. Approval of this Agreement will not serve as a waiver of any other applicable code or review requirements of the Land Use Ordinances.
- O. Department of Environmental Protection. Because the Property is located in the General Development Shoreland Zoning District, this Contract Zoning Agreement shall be forwarded to the Commissioner Maine Department of Environmental Protection.

320 Contract Zone 10 – Gateway West (Established 5-6-13; Amended by Ord. 2016-34 on 5-2-16)

This zoning district was created by the Contract Zoning Agreement between Storage Realty Corporation and the City of Westbrook for Gateway West, dated May 6, 2013 and is subject to all of the requirements of that Contract Zoning Agreement and the Village Review Overlay Zone District. The subject property is specifically described in the Contract Zoning Agreement and the map attached to that Agreement and is referred to in that Agreement as the Rezoned Property. Upon fulfillment of the requirements of the Contract Zoning agreement, including but not limited to, the demolition of the dilapidated building and the land swap for the construction of roadway improvements identified as necessary in the Comprehensive Plan, the City Council enacted the subject Contract Zoning Agreement which allows for a wider range of uses that currently allowed in the City Center Zoning District. The Contract Zoning Agreement and adoption of this zoning district do not approve a specific development project and the specific development project will be reviewed by the Village Review Overlay Zone Committee and must receive final approval by the Planning Board.

320.1 Purpose. This zone is intended to promote the redevelopment of the western gateway of downtown Westbrook. Redevelopment of the western end of downtown has so far included a 3-unit live-work condominium building on the block to the north of the subject property and a multi-unit apartment building on this same block. Redevelopment of the subject property is intended to spur additional redevelopment as this is the westernmost parcel in the downtown and is immediately visible upon entering downtown. Building scale, materials and relationship of the first floor to the sidewalk and the street is critical and the design shall be of a caliber that is appropriate for a gateway into the downtown.

Development of the subject property shall be consistent with the urban design and streetscape recommendations of the Downtown Streetscape Plan adopted in 2009.

320.2 **Permitted uses as of right.** The Property Owner is authorized to establish on the Rezoned Property any of the following uses as a matter of right:

- Accessory Use
- Bank Class 1 and 2
- Bed and Breakfast Class 1 & 2
- Business Office
- Child Care Center
- Congregate Care Facility
- Day Care Center
- Dwelling, Multiple-Family
- Educational/Vocational
- Food Cart Vendors
- Home Occupation
- Florist
- Hotel or Motel
- Library or Museum
- Media Studio Class 2
- Municipal Facility
- Medical Offices
- Neighborhood Grocery
- Parking Facility
- Private Indoor Recreation Facility
- Restaurant Class 2
- Retail Class 1 & 3
- Service Business

Uses under this section shall have the same definitions as are set forth in the Land Use Ordinances.

320.3 **Conditional Uses.** The Property Owner may establish the following uses as conditional uses, subject to review and approval under Section 204 of the Land Use Ordinance:

- Church
- Community Center
- Light Manufacturing
- Research and Development
- Theater

Notwithstanding the requirements of Section 204.1.D(9) of the Land Use Ordinances, conditional uses shall not be required to provide off-street parking.

Uses in this section shall have the same definitions as are set forth in the Land Use Ordinances.

320.4 **Performance Standards.** The following performance standards shall apply in the Gateway West Contract Zoning District:

- A. Minimum Lot Size: None
- B. Dimensional Requirements:
 - (1) No setbacks are required.
 - (2) Maximum height: No maximum
- C. Maximum Footprint Factor: 100%
- D. Maximum Gross Density Factor: 100%
- E. Landscaping Factor: None
- F. Residential Density Factor: 1 dwelling unit per 500 S.F. of base site area
- G. Lighting. All outdoor lighting must be of the cutoff luminaire variety and must be installed so no direct lighting is emitted beyond lot lines.
- H. Noise. Noise levels must not exceed levels at the exterior limits of the property.
- I. Vibrations. Vibrations must not exceed existing levels at the exterior limits of the building.
- J. Odors. Odors must not exceed existing levels at the lot lines.
- K. Traffic Impact. The traffic pattern from a change or expansion of use must be designed so as to maintain the existing traffic operation level of service and pedestrian safety within 200' of its point at ingress or egress.
- L. Storage of Materials. All materials must be stored within an enclosed structure so as to be screened from view.
- M. Parking Requirements. The parking requirements of Chapter V are only applicable to the following uses in the Gateway West Contract Zoning District: Day Care Center, Child Care Center, and Multiple-Family Dwelling.
- N. Signage:
 - (1) Building Signage, Lot 46. Provided that the building proposed for Tax Map 32, Lot 46 is a building consisting of northerly and southerly facades of not less than one hundred linear feet, more or less, easterly and westerly façades of not less than fifty linear feet, more or less, and a building height of not less than twenty-eight feet, more or less, to the trusses for the sloped roof, together with a building height at the top of the roof of not more than forty-one feet, more or less, the following building mounted signage shall be permitted provided the total amount of signage on the 4 sides, once signage calculations are reviewed and approved, shall

not exceed the maximum allowed in the City Center District Sign Ordinance:

<i>Façade</i>	<i>Building Sign Area (sq. ft.)</i>
North (Main Street)	96
South (William Clarke)	96
East (Parking lot)	49
West (Front of building)	128

(2) Other Signage. Any other signage shall comply with the requirements of Section 404.6 (the provisions for signs in the City Center District) of the Land Use Ordinances.

O. Access. Access to the site shall be limited to a single combined access and egress driveway onto Main Street and a single combined access and egress driveway onto William Clarke Drive. This access shall also provide access to the property shown on Tax Map 32 as Lot 38. The configuration and exact location of the driveways will be determined as part of the site plan approval for the new development.

321 Contract Zone 11 – 212 Brown Street Contract Zone (Ord. October 1, 2018)

F. Purpose: To provide flexible zoning standards and increased density that will incite new investment in the neighborhood, leading to higher quality housing and neighborhood conditions.

G. Permitted Uses:

1. Permitted uses within the RGA1 District

H. Conditional Uses:

1. Conditional Uses allowed within the RGA1 District

I. Space and Bulk Regulations:

1. Minimum net residential density for entire Contract Zone:
1 unit per 650 sq. ft.
2. Minimum area per dwelling unit: 600 sq. ft.
3. Minimum lot area: 5,000 sq. ft.
4. Minimum street frontage: 50'
5. Minimum yard setbacks: 0' front(Brown St. & North St.), 5' side, 15' rear
6. Minimum distance between buildings: 8'
7. Maximum height of buildings: 3 stories or 45 feet

J. Area to be included in the zone:

Tax Map 33, Lot 250 (212 Brown Street)

In addition to the zone, we ask that you set as the following conditions of contract zone

approval that:

1. Each dwelling unit will provide a minimum of one and a half (1.5) off-street parking spaces per unit transferable for those units with required lease agreement or easements and within a reasonable distance.
2. The 212 Brown Street Contract Zone frontage along North Street will be designated as No Parking by the City of Westbrook.

322 Contract Zone -12 – Rock Row Contract Zone

WHEREAS, the City Council finds that the materials submitted to the Planning Board to date on traffic and master planning are sufficient to allow the Council to make the legislative policy judgment that the requested rezoning is consistent with the Comprehensive Plan and is an appropriate zoning designation for the subject property, understanding that this rezoning does not approve a specific development project and that the specific development project will be reviewed by the Planning Board, at which time more detailed information concerning traffic and design will be required.

Now, be it therefore Ordered that the City Council hereby authorizes the establishment of the attached Rock Row Contract Zone and the rezoning of the Property (as defined below), as recommended by the Planning Board.

322.1 Purpose. The Rock Row Contract Zone consists of land located within Larrabee Road, the Westbrook Arterial, Main Street, and the Westbrook/Portland boundary line (the “Property”), more particularly shown on Exhibit A attached hereto. The purpose of this Contract Zone is to enable a high quality integrated, master-planned, mixed-use commercial development (the “Development”) that will serve as a gateway to Westbrook from Interstate 95 Exits 47 and 48, as a regional economic hub, and as a destination for visitors and shoppers to the City and the State. The kind of development intended for this zone is further described in the Rock Row Master Plan prepared by Waterstone Properties and Wakefield Beasley & Associates attached as Exhibit A (the “Master Plan”). At final build-out, the Development is anticipated to include a mix of the following uses: (a) retail; (b) office space; (c) hospitality and food; (d) sports and entertainment; (e) commercial; and (f) residential.

It is of critical concern to the City that the Development envisioned in this Contract Zone move forward in a way that protects and has minimal impact on traffic, surrounding neighborhoods, school facilities and currently active agricultural businesses.

322.2 Permitted Uses. All uses permitted in the Gateway Commercial District in Section 309 of the Land Use Ordinance (the “Ordinance”) are permitted in the Rock Row Contract Zone, and in addition, the following uses are permitted in the Rock Row Contract Zone as a matter of right:

Car Wash	Indoor or Outdoor Performing Arts Facility
Data Center	Intermodal Passenger Transportation Facility

322.3 Conditional Use. All uses permitted in the Gateway Commercial District as conditional uses in Section 309 of the Ordinance are permitted as conditional uses in the Rock Row Contract Zone, and in addition, the following uses are permitted in the Rock Row Contract Zone as conditional uses under Section 204 of the Ordinance:

Water Park

322.4 Phasing. The Rock Row Contract Zone includes four phases as shown in the Rock Row
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Master Plan attached as Exhibit A. The Development may be further divided and developed in subphases without requiring amendment of this Contract Zone, so long as the overall development in subphases is consistent with the purpose and intent of this Contract Zone. The Planning Board will determine during site plan review what infrastructure improvements are required for the incremental development of each phase or subphase.

- A. Phase I is intended for retail development at Main Street and Larrabee Road.
- B. Phase II is intended for high-density mixed-use development in the center of the Property, including but not limited to retail, restaurants, entertainment, hotel, residential, and office space. (Because of the density of development and amounts of buildings and infrastructure in this Phase, it will be developed in subphases as Phases IIA and IIB.)
- C. Phase III is intended for higher density mixed use development, residential uses and an amphitheater, including but not limited to retail, residential, office (potential for office tower), amphitheater, performing arts center, and healthcare.
- D. Phase IV is the area south of Nasons Brook intended for health care office, office, commercial, and higher density residential use.

322.5 Dimensional and Performance Standards. The following dimensional and performance standards apply in the Rock Row Contract Zone:

A. Dimensional Requirements:

- 1. Minimum Building Setbacks:
 - a. from Westbrook Arterial 20 feet
 - b. from Main Street 20 feet
 - c. from Larrabee Road 20 feet
 - d. from side property lines and within the Property 0 feet

The Minimum Building Setbacks established in this Section 322.5.A.1. apply to the Contract Zone as a whole and not to individual lots within the Contract Zone. All buildings must have adequate emergency access as reasonably determined by the Fire Inspector. Recreational trails, driveways, sidewalks, signs and other non-building structures and elements may be located within the Minimum Building Setbacks.

- 2. Minimum Front Setback from interior Private Ways. None
- 3. Minimum Lot Size. None
- 4. Minimum Lot Frontage. None.
- 5. Yard Depth. None.
- 6. Maximum Height. Up to twelve stories, but no taller than 150 feet (exclusive of architectural features which may, upon approval of the design by the Planning Board during site plan review, extend above the roof of the building provided such architectural features do not increase habitable space).
- 7. Maximum Building Footprint Factor. The total, cumulative footprint of all buildings within each Phase or subphase of the Rock Row Contract Zone shall not exceed the percentage of the base site area shown in Table 1 below; the base site area shall include all

land within the Phase or subphase in which the buildings are located.

8. **Maximum Gross Density Factor.** The total, cumulative amount of building footprint and impervious surface within each Phase or subphase of the Rock Row Contract Zone shall not exceed the percentage of the base site area shown in Table 1 below; the base site area shall include all land within the Phase or subphase in which the buildings and impervious surface are located.
9. **Minimum Landscaping Factor.**
 - a. The minimum percentage of the base site area within each Phase or subphase of the Rock Row Contract Zone that must be landscaped is shown in Table 1 below the base site area shall include all land within that Phase or subphase in which the landscaping is located.
 - b. Stabilized grass or vegetated surfaces and unpaved recreational trails shall be considered pervious landscaping from a Gross Density/Landscaped Factor definition.
10. **Residential Density Factor.**
 - a. Residential density shall be a minimum of 500 square feet of base site area per dwelling unit within that Phase or subphase of the Rock Row Contract Zone in which the residential use is located.
 - b. The base site area shall include all land within the Phase or subphase in which the dwellings are located, and the base site area that satisfies the residential density requirement may be used for other nonresidential buildings and uses.
 - c. The building containing the residential use must be located on the land/lot encumbered by the density factor.

Table 1

	Phase I	Phase II A and B	Phase III	Phase IV
Maximum Building Footprint Factor	85%	100%	85%	85%
Maximum Gross Density Factor	85%	100%	85%	85%
Minimum Landscaping Factor	15%	None	15%	15%

B. Performance Standards.

1. **Lighting.**
 - a. All permanent outdoor lighting fixtures, except those used for lighting displays, must be of the cutoff luminaire variety and must be installed so that no permanent direct lighting is directed beyond the Rock Row Contract Zone Property lines.
 - b. No permanent lighting shall be permitted on architectural features above 180 feet in height except as otherwise required by FAA requirements.
 - c. Lighting displays are permitted throughout the Contract Zone for special accents, special events, general information, and advertising for the Development or businesses and tenants within the Rock Row Contract Zone or for sponsorship of Development programming, and may be in the form of digital displays including, but not limited to, holographic signs, changeable signs (as defined in 23 M.R.S. §1914), water features, and light displays on the quarry walls and on other Development elements, provided, however, that such lighting displays not be directed beyond the Rock Row Contract Zone Property lines, and shall not constitute a distraction to operators of motor vehicles on public ways.
2. **Traffic Impact.**

- a. Access to the Rock Row Contract Zone shall be from the Westbrook Arterial, Main Street, and Larrabee Road in accordance with Traffic Movement Permits issued by the Maine Department of Transportation’s Rules and Regulations pertaining to Traffic Movement Permits, as such may be amended from time to time.
3. Parking. Because of the variety of uses proposed by the developers of Rock Row, various uses on the Property will have different operating hours and different peak-period parking demands. In keeping with principles of optimizing resources, shared parking can therefore be utilized.
 - a. The Table of Off-Street Parking in Section 505.1.A and the provisions of Section 505.1.D and E of the Ordinance shall not apply within this Contract Zone. Instead, the number of parking spaces to be provided as each Phase or subphase of the Development is undertaken and in total shall be determined by the Planning Board by applying best-practice traffic engineering standards for shared parking and in accordance with a parking management plan.
 - b. For Phases of the Development that are to be constructed primarily with residential uses, however, because the Development will be constructed with an emphasis on transportation alternatives to automobile and will feature mass transit, bicycle and pedestrian transportation options, for multi-family dwellings within the Development, 1.0 parking spaces will be required for each dwelling unit.
 - c. Parking may be provided through a combination of surface parking and parking structures.
 - d. Low utilization, temporary surface parking may be provided on gravel or stabilized grass or vegetated surfaces utilizing materials including, but not limited to, “grasscrete.”
 - e. Except for Phase I of the Development, for which surface parking will be provided in accordance with the approved plans therefor, any surface parking, whether provided for an individual Phase or for final build-out, shall be adequately screened from pedestrian ways and public streets.
 4. Internal Roads.
 - a. Internal roads in the Development are “Private Ways” as defined and regulated by this Ordinance.
 - b. Internal roads/Private Ways leased to public entities that count as “lots” for purposes of the State subdivision law are exempt from complying with dimensional and performance standards of the Ordinance, but shall comply with the applicable provisions of Section 502 C Design Standards for Streets and Private Rights of Way.
 - c. Such internal roads/Private Ways will not be considered public ways for purposes of Maine sign, traffic and motor vehicle statutes and regulations and the Ordinance.
 - d. The developer will provide for unified management responsibility for maintenance, plowing, and repair of the Private Ways.
 5. Noise.
 - a. The Planning Board shall establish maximum sound levels on a case-by-case basis for uses and activities in the Rock Row Contract Zone that will prevent undue adverse noise impact to neighboring properties.
 - b. The developer shall conduct pre- and post-construction sound level testing and analysis to assist the Planning Board in establishing sound level standards.
 - c. Operators of uses and activities in the Rock Row Contract Zone that generate noise shall undertake sound level testing at locations set with the approval of the Planning Board and shall comply with those standards.
 - d. Noise standards for Development in the Gateway Commercial District previously approved by the Planning Board shall remain valid under this Rock Row Contract Zone enactment.

6. Recreation and Conservation Commission Recommendation.
 - a. The Recreation and Conservation Commission shall review applications for site plan or subdivision approvals in each Phase or subphase of the Development subsequent to Phase I.
 - b. The Committee shall have thirty (30) days to make its recommendation to the Planning Board on the open space–related recreation and the landscaping aspects of the application.
 - 1) If no recommendation is provided to the Planning Board within the thirty (30) day period, the Planning Board may proceed with a public hearing without the recommendation.
 - c. However, this recommendation shall not be required for administrative changes under Section 504.

7. Sections Specifically Not Applicable to Development.
 - a. Section 505.13 of the Site Plan provisions of the Ordinance do not apply to this Development.
 - b. Section 20-50.B of the Ordinance, which limits outdoor dining hours for restaurant uses that abut a residential zone to 7 am to 11 pm, does not apply to this Development, and there are no limits on outdoor dining hours for such uses.

8. Prior Development Approvals Remain Valid.
 - a. All previous City of Westbrook planning, land use and zoning approvals issued for this Development and Phases and portions thereof with conditions of approval and standards are still valid unless and until amended by the Planning Board or other permitting authority.

C. Signage Standards. The Sign Regulations of Section 404 of the Ordinance apply to signage in this Rock Row Contract Zone except as modified by this Section 322.5 C.; although the underlying zoning district for the Development is Gateway Commercial, signage in the Development shall be regulated as though it is located in the City Center District, under Section 404.6 of the Ordinance except as modified herein by this Section.

1. General.
 - a. Traffic Safety and illumination. Section 404.6 of the Ordinance notwithstanding, 1) changeable signs shall be allowed as permitted under State law and subject to Section 322.5.C.2.k of the Ordinance, and 2) there is no limitation on the hours during which illuminated signs may operate.
 - b. Sign Height. Section 404.6 of the Ordinance notwithstanding, the topmost element of any sign may not be higher than ten (10) feet above the cornice line of any building.
 - c. Temporary Signs. Section 404.6.C.11 of the Ordinance notwithstanding:
 - 1) the maximum area of Real Estate Signs per lot is 144 square feet per lot or building proposed for lease, sale or rent, and such signs shall not be of a banner construction;
 - 2) the maximum area of a new business sign is 144 square feet and must be attached to the structure, and such signs shall not be of a banner construction; and
 - 3) construction signage may be placed continuously along fencing on public ways that the Development fronts upon so long as such signage does not

exceed a height of four feet above the abutting street or sidewalk, whichever is taller, and may be of a banner construction.

2. Sign Types Allowed.

a. Building Mounted Signs.

1) Storefront Building Mounted Sign. Section 404.6.C.1 of the Ordinance notwithstanding,

a) One Building Mounted sign per tenant on the storefront façade fronting upon a public or private way or a parking area, and for tenants of building corners, an additional sign on the other storefront façade fronting upon another public or private way or parking area, is permitted.

b) Maximum sign area shall be at the ratio of one (1) square foot per one linear foot of tenant frontage, with a maximum sign area of 10% of the relevant façade wall area.

b. Ground Mounted Signs.

1) Section 404.6.C.2 of the Ordinance notwithstanding, one ground-mounted sign is permitted per lot.

2) The sign area for ground mounted signs shall be no more than one hundred (100) square feet, including all tenant signage, per side, may advertise the name of the Development or of tenants in buildings on that lot, and may include a message board or changeable sign in the 100 square feet of sign area.

3) One ground mounted sign will be allowed at each of the four major entrances to the Development (one from Main Street, one from the Westbrook Arterial, and two from Larrabee Road);

4) No additional ground mounted signs will be allowed in the area between Larrabee Road and the road named Rock Row, but additional ground mounted signs at the above ratio of one per lot will be allowed in the area that is east of the road named Rock Row except that no additional ground mounted signs will be allowed in the Phase I area that is east of the road named Rock Row.

a) Monument Signs. Ground mounted monument signs are signs mounted to the ground by a solid (opaque) base structure made of wood (painted or varnished and weather treated), brick, or stone. A monument sign shall be no taller than twenty-five (25) feet including the base and setback to avoid sight line issues for the motoring public.

b) Pylon Signs. Ground mounted pylon signs are signs mounted to the ground by poles made of materials consistent with this Zoning Ordinance. A pylon sign shall be no taller than twenty-five (25) feet including the base.

c. Blade Sign.

1) Section 404.6.C.3 of the Ordinance notwithstanding, one blade sign per tenant is permitted;

2) for tenants of spaces located in building corners with storefront façades fronting upon two or more public or private ways or parking areas, the tenant is permitted one blade sign along each façade or a single vertical blade sign at the corner, and blade signs may be spaced more closely than one every 25 feet of linear frontage on a freestanding building.

3) Proof of general liability insurance to protect the City of Westbrook is not required.

- d. Message Boards. Message board signs are permitted where freestanding (ground-mounted) signs are allowed.
- e. Sandwich Boards. Sandwich Board signs are permitted in the Rock Row Development on sidewalks along internal roads at a frequency of no more than one per 20 feet of linear building frontage along the internal road, and these shall meet the Ordinance requirements for size, except that proof of general liability insurance to protect the City of Westbrook is not required.
- f. Entry Point Tenant Directory Sign. Section 404.6.C.6 of the Ordinance notwithstanding, an Entry Point Tenant Directory Sign is permitted for occupants located on the second floor and above for each multi-story building in the Development, which sign may be built similar to a monument sign, shall have a maximum sign height of 6 feet including the base, and shall have a maximum letter height for the building/development name or logo of 8 inches, and for all other lettering, of 4 inches.
- g. Directional (Wayfinding) Signs.
- h. Window Signs.
- i. Canopy or Awning Sign. Section 404.6.C.9 of the Ordinance notwithstanding, canopy or awning signs may include graphics and/or the tenant's logo if the tenant's storefront has no building mounted signs including but not to limited blade signs, and each such canopy or awning may have a length of up to the full length of the storefront. Proof of general liability insurance to protect the City of Westbrook is not required.
- j. Marquee Sign (Amphitheater/Theater/Performing Arts Facility). A marquee sign is permitted for each amphitheater, theater, or performing arts center in the Development. Each marquee sign may be up to 500 square feet in sign area.
- k. Changeable Signs (as defined in 23 M.R.S. §1914). One changeable sign with two sides is allowed for each public way that provides vehicular access to a business, facility or point of interest in the Development. The total area of the changeable board area shall not exceed sixty (60) square feet per side. The sign may include a changeable message, but the message may not change more than once every five (5) minutes.
- l. Menu Boards – these may be placed alongside the entrances to eating or drinking establishments and are not to exceed four (4) square feet.
- m. Multi-story Business/Office Building. Internally illuminated signs constructed of metal and plastic may be allowed on multi-story business and/or office buildings with over three (3) floors, as measured from street level, to identify up to three major tenants of the building. The following standards apply:
 - 1) Only one (1) such sign is permitted per tenant per façade, identifying up to three major tenants of the building.
 - 2) Such signs may not be placed below the third (3rd) floor of the building, and the topmost element of any sign may not be higher than ten (10) feet above the cornice line of the building.

- 3) Maximum signage area shall be determined by the height of the building:
 - 18' to 100': 200 square feet
 - 101' to 150': 300 square feet
 - 4) Maximum signage height shall be determined by the height of the building:
 - 18' to 100': 4 feet
 - 101' to 150': 6 feet
 - 5) Maximum signage width (maximum percentage of façade length): 66%.
- n. Internal Special Events Signage.
- 1) Signage for internal special events, special accent, general wayfinding or directory information, advertising for the Development or businesses and tenants within or outside of the Rock Row Contract Zone, or for sponsorship of Development programming, is permitted along the internal roads and on buildings within the Contract Zone in the form of freestanding signs on sidewalks and digital displays including, but not limited to, holographic signs, changeable messaging, LED screens, light displays, and projections onto buildings and structures in the Development, provided, however, that:
 - a) Such signage, lighting, displays, and projections shall be of a pedestrian scale, shall not be directed beyond the Rock Row Contract Zone Property lines, shall not be visible from public ways, and shall not constitute a distraction to operators of motor vehicles on public ways;
 - b) Any such sign structures shall be no larger than 6 feet tall and 4 feet wide and have a message area of no greater than 16 square feet per side and shall be located at least 50 feet apart from each other;
 - c) The area of any projection upon a building or structure shall be reasonably determined by the Planning Board based upon the size of the available projection area on that building or structure and the distance of that projection area from the sidewalk area where the projection is to be viewed, as well as upon compliance with this provision; and
 - d) The total number of such signs and projections or area shall be determined for each Phase by the Planning Board at its reasonable discretion based upon the standards of this provision, but the total number of such signs, lighting, displays, and projections in the Development shall not exceed twenty-five (25).
 - 2) This provision does not include any quarry lighting display, which is separately addressed in Section 322.5.B.1.
- o. Murals/Painted Signs.
- 1) A large picture/image (including but not limited to painted art) which is painted, or affixed directly onto a vertical building wall, which contains text, logos, and/or symbols, shall be considered building mounted signage and be limited as per the building mounted signage section of this ordinance.
 - 2) A wall, facade, or surface that is used for a mural pertaining to the business on which it is located shall be counted as one sign.
 - 3) However, a large picture/image (including but not limited to painted art) which is painted or affixed directly onto a vertical building wall which is devoid of advertising and does not contain text, logos and/or symbols intended to advertise or indicate the name of the premises, products or services available shall not constitute a sign.

- p. Prohibited Signs. “Feather flag” and “Blow-up” signs are prohibited in the Development.

322.6 Conditions.

A. Master Plan

1. All buildings within the Rock Row Contract Zone shall be designed and constructed pursuant to an overall plan for Development of the Property that contemplates an integrated, internally unified, mixed-use commercial development of a design, with uses, and at densities, consistent with the Master Plan attached as Exhibit A hereto. That Master Plan is a conceptual document that will include a design plan and narrative, and will incorporate the following design principles:
 - a. High quality public spaces will be an integral component of the development as a whole and of individual phases.
 - b. The Development as a whole and in individual Phases and subphases will be streetscape oriented and designed so that, except in Phase I, visitors will park in central facilities (surface parking and decks) and then walk to their destinations, with building entrances located along and oriented toward the internal roads.
2. The Master Plan is submitted as part of the Rock Row Contract Zone application. It is understood that the details of the Master Plan may be changed or modified as the developer applies for site plan review of each Phase or subphase, and the Master Plan shall not require modification by amendment to the Rock Row Contract Zone so long as the changes or modifications to the Master Plan for each individual Phase or subphase or to buildings or infrastructure therein are consistent with the purpose and intent of the Rock Row Contract Zone.
3. The development of the Property and of each Phase and subphase subsequent to Phase I shall be substantially consistent with the design principles articulated in the Master Plan and with the design concepts, including but not limited to landscaping, illustrated in Exhibit A attached hereto and incorporated herein.

B. Annual Meetings with the City

1. Calls for Public Safety service volume – A representative of Waterstone Properties, or of its successors or assigns, shall meet annually with City’s Public Safety Departments (Police, Fire and Dispatch) to review the volume of calls for service, not including concerts and amphitheater event service calls.
2. Water quality in previous quarry pit - A representative of Waterstone, or of its successors or assigns, shall meet annually with City Staff from Planning, Engineering/Wastewater Departments to review and discuss the quality of water contained in the quarry pit.

- C. Amendment Process.** Provisions of Section 504 of the Ordinance to the contrary notwithstanding, Planning Staff may exempt from Planning Board approval an unlimited number of administrative change approvals for development in the contract zone so long as all other criteria of the “Exemptions from Site Plan Review” provisions in Section 504 of the Ordinance are satisfied.

Chapter IV – Special Standards and Overlay Districts

401 Shoreland Protection Zone

- 1. Purposes.** The purposes of this Ordinance are to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources; to protect commercial fishing and maritime industries; to protect freshwater and coastal 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 and coastal waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas.

The Westbrook Shoreland Zoning Ordinance may contain sections or statements that do not apply to the City of Westbrook due to its geographic location (Non-coastal), however, the Maine DEP State Model was included in its entirety for the purposes of consistency for future amendments.

- 2. Authority.** This Ordinance has been prepared in accordance with the provisions of Title 38 sections 435-449 of the Maine Revised Statutes Annotated (M.R.S.A.).
- 3. Applicability.** This Ordinance applies to all land areas within 250 feet, horizontal distance, of the
 - normal high-water line of any great pond or river,
 - upland edge of a coastal wetland, including all areas affected by tidal action, or
 - upland edge of a freshwater wetland,

and all land areas within 75 feet, horizontal distance, of the normal high-water line of a stream.

This Ordinance also applies to any structure built on, over or abutting a dock, wharf or pier, or other structure extending or located below the normal high-water line of a water body or within a wetland.

- 4. Effective Date of Ordinance and Ordinance Amendments.** This Ordinance, which was adopted by the municipal legislative body on April 24, 2017, shall not be effective unless approved by the Commissioner of the Department of Environmental Protection. A certified copy of the Ordinance, or Ordinance Amendment, attested and signed by the Municipal Clerk, shall be forwarded to the Commissioner for approval. If the Commissioner fails to act on this Ordinance or Ordinance Amendment, within forty-five (45) days of his/her receipt of the Ordinance, or Ordinance Amendment, it shall be automatically approved.

Any application for a permit submitted to the municipality within the forty-five (45) day period shall be governed by the terms of this Ordinance, or Ordinance Amendment, if the Ordinance, or Ordinance Amendment, is approved by the Commissioner.

- 5. Availability.** A certified copy of this Ordinance shall be filed with the Municipal Clerk and shall be accessible to any member of the public. Copies shall be made available to the public at reasonable cost at the expense of the person making the request. Notice of availability of this Ordinance shall be posted.
- 6. Severability.** Should any section or provision of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of the Ordinance.

7. Conflicts with Other Ordinances. Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other ordinance, regulation or statute administered by the municipality, the more restrictive provision shall control.

8. Amendments. This Ordinance may be amended by majority vote of the legislative body. Copies of amendments, attested and signed by the Municipal Clerk, shall be submitted to the Commissioner of the Department of Environmental Protection following adoption by the municipal legislative body and shall not be effective unless approved by the Commissioner. If the Commissioner fails to act on any amendment within forty-five (45) days of his/her receipt of the amendment, the amendment is automatically approved. Any application for a permit submitted to the municipality within the forty-five (45) day period shall be governed by the terms of the amendment, if such amendment is approved by the Commissioner.

9. Districts and Zoning Map

A. Official Shoreland Zoning Map. The areas to which this Ordinance is applicable are hereby divided into the following districts as shown on the Official Shoreland Zoning Map(s) which is (are) made a part of this Ordinance:

- (1) Resource Protection
- (2) Limited Residential
- (3) Limited Commercial
- (4) General Development I
- (5) General Development II
- (6) Commercial Fisheries/Maritime Activities
- (7) Stream Protection

B. Scale of Map. The Official Shoreland Zoning Map shall be drawn at a scale of not less than: 1 inch = 2000 feet. District boundaries shall be clearly delineated and a legend indicating the symbols for each district shall be placed on the map.

C. Certification of Official Shoreland Zoning Map. The Official Shoreland Zoning Map shall be certified by the attested signature of the Municipal Clerk and shall be located in the municipal office. In the event the municipality does not have a municipal office, the Municipal Clerk shall be the custodian of the map.

D. Changes to the Official Shoreland Zoning Map. If amendments, in accordance with Section 8, are made in the district boundaries or other matter portrayed on the Official Shoreland Zoning Map, such changes shall be made on the Official Shoreland Zoning Map within thirty (30) days after the amendment has been approved by the Commissioner of the Department of Environmental Protection.

10. Interpretation of District Boundaries. Unless otherwise set forth on the Official Shoreland Zoning Map, district boundary lines are property lines, the centerlines of streets, roads and rights of way, and the boundaries of the shoreland area as defined herein. Where uncertainty exists as to the exact location of district boundary lines, the Board of Appeals shall be the final authority as to location.

11. Land Use Requirements. Except as hereinafter specified, no building, structure or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, expanded, moved, or altered and no new lot shall be created except in conformity with all of the regulations herein specified for the district in which it is located, unless a variance is granted.

12. Non-conformance

A. Purpose. It is the intent of this Ordinance to promote land use conformities, except that non-conforming conditions that existed before the effective date of this Ordinance or amendments thereto shall be allowed to continue, subject to the requirements set forth in Section 12. Except as otherwise provided in this Ordinance, a non-conforming condition shall not be permitted to become more non-conforming.

B. General

- (1) **Transfer of Ownership.** Non-conforming structures, lots, and uses may be transferred, and the new owner may continue the non-conforming use or continue to use the non-conforming structure or lot, subject to the provisions of this Ordinance.
- (2) **Repair and Maintenance.** This Ordinance allows, without a permit, the normal upkeep and maintenance of non-conforming uses and structures including repairs or renovations that do not involve expansion of the non-conforming use or structure, and such other changes in a non-conforming use or structure as federal, state, or local building and safety codes may require.

C. Non-conforming Structures

- (1) **Expansions.** All new principal and accessory structures, excluding functionally water-dependent uses, must meet the water body, tributary stream, or wetland setback requirements contained in Section 15(B)(1). A non-conforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the non-conformity of the structure and is in accordance with subparagraphs (a) and (b) below.
 - (a) Expansion of any portion of a structure within 25 feet of the normal high-water line of a water body, tributary stream, or upland edge of a wetland is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream or wetland setback requirement. Expansion of an accessory structure that is located closer to the normal high-water line of a water body, tributary stream, or upland edge of a wetland than the principal structure is prohibited, even if the expansion will not increase nonconformity with the water body, tributary stream, or wetland setback requirement.
 - (b) Notwithstanding paragraph (a), above, if a legally existing nonconforming principal structure is entirely located less than 25 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland, that structure may be expanded as follows, as long as all other applicable municipal land use standards are met and the expansion is not prohibited by Section 12(C)(1).
 - (i) The maximum total footprint for the principal structure may not be expanded to a size greater than 800 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of the principal structure may not be made greater than 15 feet or the height of the existing structure, whichever is greater.
 - (c) All other legally existing nonconforming principal and accessory structures that do not meet the water body, tributary stream, or wetland setback requirements may be expanded or altered as follows, as long as other applicable municipal land use standards are met and the expansion is not prohibited by Section 12(C)(1) or Section 12(C)(1)(a), above.
 - (i) For structures located less than 75 feet from the normal high-water line of a water

body, tributary stream, or upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,000 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than 20 feet or the height of the existing structure, whichever is greater.

(ii) For structures located less than 100 feet from the normal high-water line of a great pond classified as GPA or a river flowing to a great pond classified as GPA, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,500 square feet or 30% larger than the footprint that existed on January 1, 1989, whichever is greater. The maximum height of any structure may not be made greater than 25 feet or the height of the existing structure, whichever is greater. Any portion of those structures located less than 75 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland must meet the footprint and height limits in Section 12(C)(1)(b)(i) and Section 12(C)(1)(c)(i), above.

(iii) In addition to the limitations in subparagraphs (i) and (ii), for structures that are legally nonconforming due to their location within the Resource Protection District when located at less than 250 feet from the normal high-water line of a water body or the upland edge of a wetland, the maximum combined total footprint for all structures may not be expanded to a size greater than 1,500 square feet or 30% larger than the footprint that existed at the time the Resource Protection District was established on the lot, whichever is greater. The maximum height of any structure may not be made greater than 25 feet or the height of the existing structure, whichever is greater, except that any portion of those structures located less than 75 feet from the normal high-water line of a water body, tributary stream, or upland edge of a wetland must meet the footprint and height limits in Section 12(C)(1)(b)(i) and Section 12(C)(1)(c)(i), above.

(d) An approved plan for expansion of a nonconforming structure must be recorded by the applicant with the registry of deeds, within 90 days of approval. The recorded plan must show the existing and proposed footprint of the non-conforming structure, the existing and proposed structure height, the footprint of any other structures on the parcel, the shoreland zone boundary and evidence of approval by the municipal review authority.

(2) **Foundations.** Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board or its designee, basing its decision on the criteria specified in Section 12(C)(3) Relocation, below.

(3) **Relocation.** A non-conforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board or its designee, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules (Rules), or that a new system can be installed in compliance with the law and said Rules. In no case, shall a structure be relocated in a manner that causes the structure to be more non-conforming.

In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board or its designee shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on

adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation.

When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation in accordance with Section 15(S). In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

- (a) Trees removed in order to relocate a structure must be replanted with at least one native tree, three (3) feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed.

Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.

- (b) Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof.

- (4) **Reconstruction or Replacement.** Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed, or damaged or destroyed, regardless of the cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Planning Board or its designee in accordance with the purposes of this Ordinance. In no case, shall a structure be reconstructed or replaced so as to increase its non-conformity. If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to Section 12(C)(1) above, as determined by the non-conforming footprint of the reconstructed or replaced structure at its new location. If the total footprint of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Section 12(C)(3) above.

Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed by 50% or less of the market value, or damaged or destroyed by 50% or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place if a permit is obtained from the Code Enforcement Officer within one year of such damage, destruction, or removal.

In determining whether the building reconstruction or replacement meets the setback to the greatest practical extent the Planning Board or its designee shall consider, in addition to the

criteria in Section 12(C)(3) above, the physical condition and type of foundation present, if any.

- (5) **Change of Use of a Non-conforming Structure.** The use of a non-conforming structure may not be changed to another use unless the Planning Board, after receiving a written application, determines that the new use will have no greater adverse impact on the water body, tributary stream, or wetland, or on the subject or adjacent properties and resources than the existing use.

In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

D. Non-conforming Uses

- (1) **Expansions.** Expansions of non-conforming uses are prohibited, except that non-conforming residential uses may, after obtaining a permit from the Planning Board, be expanded within existing residential structures or within expansions of such structures as allowed in Section 12(C)(1) above.
- (2) **Resumption Prohibited.** A lot, building or structure in or on which a non-conforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a non-conforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one year extension to that time period. This provision shall not apply to the resumption of a use of a residential structure provided that the structure has been used or maintained for residential purposes during the preceding five (5) year period.
- (3) **Change of Use.** An existing non-conforming use may be changed to another non-conforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources, including water dependent uses in the CFMA district, than the former use, as determined by the Planning Board. The determination of no greater adverse impact shall be made according to criteria listed in Section 12(C)(5) above.

E. Non-conforming Lots

- (1) **Non-conforming Lots:** A non-conforming lot of record as of the effective date of this Ordinance or amendment thereto may be built upon, without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this Ordinance except lot area, lot width and shore frontage can be met. Variances relating to setback or other requirements not involving lot area, lot width or shore frontage shall be obtained by action of the Board of Appeals.
- (2) **Contiguous Built Lots:** If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption of this Ordinance, if all or part of the lots do not meet the dimensional requirements of this Ordinance, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that the *State Minimum Lot Size Law* (12 M.R.S.A. sections 4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with.

If two or more principal uses or structures existed on a single lot of record on the effective date of this ordinance, each may be sold on a separate lot provided that the above referenced law and rules are complied with. When such lots are divided each lot thus created must be as conforming as possible to the dimensional requirements of this Ordinance.

- (3) **Contiguous Lots - Vacant or Partially Built:** If two or more contiguous lots or parcels are in single or joint ownership of record at the time of or since adoption or amendment of this Ordinance, if any of these lots do not individually meet the dimensional requirements of this Ordinance or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure the lots shall be combined to the extent necessary to meet the dimensional requirements.

This provision shall not apply to 2 or more contiguous lots, at least one of which is non-conforming, owned by the same person or persons on July 20, 1992, and recorded in the registry of deeds if the lot is served by a public sewer or can accommodate a subsurface sewage disposal system in conformance with the State of Maine Subsurface Wastewater Disposal Rules; and

- (a) Each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or
- (b) Any lots that do not meet the frontage and lot size requirements of Section 12(E)(3)(a) are reconfigured or combined so that each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

13. Establishment of Districts

A. Resource Protection District. The Resource Protection District includes areas in which development would adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values. This district shall include the following areas when they occur within the limits of the shoreland zone, exclusive of the Stream Protection District, except that areas which are currently developed and areas which meet the criteria for the Limited Commercial, General Development I, or Commercial Fisheries/Maritime Activities Districts need not be included within the Resource Protection District. For areas not included in the RP definitions below, refer to the Zoning map and the description of other districts provided in this section.

- (1) Floodplains along rivers and floodplains along artificially formed great ponds along rivers, defined by the 100-year floodplain as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent floodplain soils. This district shall also include 100 year floodplains adjacent to tidal waters as shown on FEMA's Flood Insurance Rate Maps or Flood Hazard Boundary Maps.
- (2) Areas of two or more contiguous acres with sustained slopes of 20% or greater.
- (3) Areas of two (2) or more contiguous acres supporting wetland vegetation and hydric soils, which are not part of a freshwater or coastal wetland as defined, and which are not surficially connected to a water body during the period of normal high water.
- (4) Land areas along rivers subject to severe bank erosion, undercutting, or river bed movement, and lands adjacent to tidal waters which are subject to severe erosion or mass movement, such as steep coastal bluffs
- (5) Lands along the southerly section of Highland Lake, except as depicted on the Zoning Map.

- (6) Lands along the southerly section of Mill Brook and around the wetlands associated with Mill Brook which are in the floodplain, except as depicted on the Zoning Map
- (7) Presumpscot River North of: (Lots depicted as of the Amendment date April 24, 2017)
 - (a) Shared Lot Boundary Line of Lots 031*000*036 and 031*000*033A
 - (b) Shared Lot Boundary Line of Lots 010*000*002 and 037*000*001
- (8) Presumpscot River south of the Industrial Park District, except as depicted on the Zoning Map.
- (9) Stroudwater River, except as depicted on the Zoning Map.

B. Limited Residential District. The Limited Residential District includes those areas suitable for residential and recreational development. It includes areas other than those in the Resource Protection District, or Stream Protection District, and areas which are used less intensively than those in the Limited Commercial District, the General Development Districts, or the Commercial Fisheries/Maritime Activities District.

C. Limited Commercial District. The Limited Commercial District includes areas of mixed, light commercial and residential uses, exclusive of the Stream Protection District, which should not be developed as intensively as the General Development Districts. This district includes areas of two or more contiguous acres in size devoted to a mix of residential and low intensity business and commercial uses. Industrial uses are prohibited.

D. General Development I District. The General Development I District includes the following types of existing, intensively developed areas:

- (1) Areas of two or more contiguous acres devoted to commercial, industrial or intensive recreational activities, or a mix of such activities, including but not limited to the following:
 - (a) Areas devoted to manufacturing, fabricating or other industrial activities;
 - (b) Areas devoted to wholesaling, warehousing, retail trade and service activities, or other commercial activities; and
 - (c) Areas devoted to intensive recreational development and activities, such as, but not limited to amusement parks, race tracks and fairgrounds.
- (2) Areas otherwise discernible as having patterns of intensive commercial, industrial or recreational uses.
- (3) Portions of the General Development District I may also include residential development. However, no area shall be designated as a General Development I or II District based solely on residential use.

E. General Development II District. The General Development II District includes the same types of areas as those listed for the General Development I District. The General Development II District, however, shall be applied to newly established General Development Districts where the pattern of development at the time of adoption is undeveloped or not as intensively developed as that of the General Development I District.

Portions of the General Development District II may also include residential development. However, no area shall be designated as a General Development I or II District based solely on residential use.

TABLE 1. LAND USES IN THE SHORELAND ZONE
LAND USES

	<i>DISTRICT</i>						
		<u>SP</u>	<u>RP</u>	<u>LR</u>	<u>LC</u>	<u>GD</u>	<u>CFMA</u>
1. Non-intensive recreational uses not requiring structures such as hunting, fishing and hiking		Yes	yes	Yes	yes	yes	yes
2. Motorized vehicular traffic on existing roads and trails		Yes	yes	Yes	yes	yes	Yes
3. (Reserved)		-	-	-	-	-	-
4. (Reserved)		-	-	-	-	-	-
5. Clearing or removal of vegetation for activities other than timber harvesting		CEO	CEO ¹	Yes	yes	yes	Yes
6. Fire prevention activities		Yes	Yes	Yes	yes	yes	Yes
7. Wildlife management practices		Yes	Yes	Yes	yes	yes	Yes
8. Soil and water conservation practices		Yes	Yes	Yes	yes	yes	Yes
9. Mineral exploration		No	yes ²				
10. Mineral extraction including sand and gravel extraction		No	PB ³	PB	PB	PB	PB
11. Surveying and resource analysis		Yes	Yes	Yes	yes	yes	Yes
12. Emergency operations		Yes	Yes	Yes	yes	yes	Yes
13. Agriculture		Yes	PB	Yes	yes	yes	Yes
14. Aquaculture		PB	PB	PB	yes	yes	Yes
15. Principal structures and uses							
A. One and two family residential, including driveways		No	No	CEO	CEO	CEO	No
B. Multi-unit residential		No	No	PB	PB	PB	No
C. Commercial		No	no ¹⁰	no ¹⁰	PB	PB	PB ⁵
D. Industrial		No	No	No	no	PB	PB ⁵
E. Governmental and institutional		No	No	PB	PB	PB	PB ⁵
F. Small non-residential facilities for educational, scientific, or nature interpretation purposes		No	No	CEO	CEO	PB	PB ⁵
16. Structures accessory to allowed uses		No	No	CEO	CEO	CEO	Yes
17. Piers, docks, wharfs, bridges and other structures and uses extending over or below the normal high-water line or within a wetland							
a. Temporary		CEO ¹¹					
b. Permanent		PB	PB	PB	PB	PB	PB ⁵
18. Conversions of seasonal residences to year-round residences		LPI	LPI	LPI	LPI	LPI	No
19. Home occupations		PB	PB	PB	CEO	yes	Yes
20. Private sewage disposal systems for allowed uses		LPI	LPI	LPI	LPI	LPI	LPI
21. Essential services		PB ⁶	PB ⁶	PB	PB	PB	PB
A. Roadside distribution lines (34.5kV and lower)		CEO ⁶	CEO ⁶	yes ¹²	yes ¹²	yes ¹²	yes ¹²
B. Non-roadside or cross-country distribution lines involving ten poles or less in the shoreland zone		PB ⁶	PB ⁶	CEO	CEO	CEO	CEO
C. Non-roadside or cross-country distribution lines involving eleven or more poles in the shoreland zone		PB ⁶	PB ⁶	PB	PB	PB	PB
D. Other essential services		PB ⁶	PB ⁶	PB	PB	PB	PB
22. Service drops, as defined, to allowed uses		Yes	Yes	yes	yes	yes	Yes
23. Public and private recreational areas involving minimal structural development		PB	PB	PB	CEO	CEO	CEO ⁵
24. Individual, private campsites		CEO	CEO	CEO	CEO	CEO	CEO
25. Campgrounds		No	no ⁷	PB	PB	PB	No
26. Road construction		PB	no ⁸	PB	PB	PB	PB ⁵
27. (Reserved)		-	-	-	-	-	-
28. Parking facilities		No	no ⁷	PB	PB	PB	PB ⁵
29. Marinas		PB	No	PB	PB	PB	PB
30. Filling and earth moving of <10 cubic yards		CEO	CEO	yes	yes	yes	Yes
31. Filling and earth moving of >10 cubic yards		PB	PB	CEO	CEO	CEO	CEO
32. Signs		Yes	Yes	yes	yes	yes	Yes
33. Uses similar to allowed uses		CEO	CEO	CEO	CEO	CEO	CEO
34. Uses similar to uses requiring a CEO permit		CEO	CEO	CEO	CEO	CEO	CEO
35. Uses similar to uses requiring a PB permit		PB	PB	PB	PB	PB	PB
36. Recreational Trails							
b. Primitive Trail		CEO	CEO	CEO	CEO	CEO	CEO
c. Category 2 Multiple Use nonmotorized trail		CEO ¹⁴					
d. Category 1 Multiple Use nonmotorized trail		PB	PB	PB	PB	PB	PB
e. Category 2 Multiple Use trail, including motorized		PB	PB	PB	PB	PB	PB
f. Category 1 Multiple Use trail, including motorized		PB	PB	PB	PB	PB	PB

¹In RP not allowed within 75 feet horizontal distance, of the normal high-water line of great ponds, except to remove safety hazards.

²Requires permit from the Code Enforcement Officer if more than 100 square feet of surface area, in total, is disturbed.

³In RP not allowed in areas so designated because of wildlife value.

⁴(Reserved)

⁵Functionally water-dependent uses and uses accessory to such water dependent uses only (See note on previous page).

⁶See further restrictions in Section 15(L)(2).

⁷Except when area is zoned for resource protection due to floodplain criteria in which case a permit is required from the PB.

⁸Except as provided in Section 15(H)(4).

⁹ (Reserved)

¹⁰Except for commercial uses otherwise listed in this Table, such as marinas and campgrounds, that are allowed in the respective district.

¹¹Excluding bridges and other crossings not involving earthwork, in which case no permit is required.

¹²Permit not required but must file a written "notice of intent to construct" with CEO.

¹³Reserved

¹⁴ Planning Board review required if a setback waiver is necessary.

NOTE: A person performing any of the following activities shall require a permit from the Department of Environmental Protection, pursuant to 38 M.R.S.A. section 480-C, if the activity occurs in, on, over or adjacent to any freshwater or coastal wetland, great pond, river, stream or brook and operates in such a manner that material or soil may be washed into them:

- A. Dredging, bulldozing, removing or displacing soil, sand, vegetation or other materials;
- B. Draining or otherwise dewatering;
- C. Filling, including adding sand or other material to a sand dune; or
- D. Any construction or alteration of any permanent structure.

15. Land Use Standards. All land use activities within the shoreland zone shall conform with the following provisions, if applicable. *The area and frontage standards of the underlying district shall apply, except as otherwise stated below:

A. Minimum Lot Standards

	Minimum Lot Area (sq. ft.)	Minimum Shore Frontage (ft.)
(1)		
(a) Residential per dwelling unit		
(i) Within the Shoreland Zone	40,000	200
(ii) In GD Districts (on Water & Sewer)	*	*
(iii) Specified GD open space/park parcels listed below ^a *		300
(b) Governmental, Institutional, Commercial or Industrial per principal structure		
(i) Within the Shoreland Zone	60,000	300
(ii) In GD Districts (on Water & Sewer)	*	*
(iii) Specified GD open space/park parcels listed below ^a	60,000	300
(c) Public and Private Recreational Facilities		
(i) Within the Shoreland Zone Adjacent to Tidal and Non-Tidal Areas	40,000	200
(ii) In GD Districts (on Water & Sewer)	*	*

^aSpecified GD open space/park parcels

Parcels not served by public water and sewer, are open space areas in existence at the time of this ordinance and further specified by their map and lot numbers, are as follows: ((032*000*014 (Sacarrappa Park), 033*000*145 (ball fields), 033*000*148 (Riverwalk),

033*000*157 (Riverwalk), 033*000*192 (Riverbank Park), 033*000*194 (Riverwalk), 039*000*004 (ball fields), 040*000*197 (ball fields)).

- (2) 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 (2) lots shall not be included toward calculating minimum lot area.
- (3) Lots located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971.
- (4) The minimum width of any portion of any lot within one hundred (100) feet, horizontal distance, of the normal high-water line of 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.
- (5) If more than one residential dwelling unit, principal governmental, institutional, commercial or industrial structure or use, or combination thereof, is constructed or established on a single parcel, all dimensional requirements shall be met for each additional dwelling unit, principal structure, or use, except as provided in the above Table in the General Development District.

B. Principal and Accessory Structures

- (1) All new principal and accessory structures shall be set back at least one hundred (100) feet, horizontal distance, from the normal high-water line of great ponds classified GPA and rivers that flow to great ponds classified GPA, and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland, except that in the General Development I District the setback from the normal high-water line shall be at least twenty five (25) feet, horizontal distance, and in the Commercial Fisheries/Maritime Activities District there shall be no minimum setback. In the Resource Protection District the setback requirement shall be 250 feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district in which case the setback requirements specified above shall apply.

In addition:

- (a) The water body, tributary stream, or wetland setback provision shall neither apply to structures which require direct access to the water body or wetland as an operational necessity, such as piers, docks and retaining walls, nor to other functionally water-dependent uses.
- (b) Reserved.
- (c) Reserved.
- (d) On a non-conforming lot of record on which only a residential structure exists, and it is not possible to place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the code enforcement officer may issue a permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structure shall not exceed eighty (80) square feet in area nor eight (8) feet in height, and shall be located as far from the shoreline or tributary stream as practical and shall meet all other applicable standards, including lot coverage and vegetation clearing limitations. In no case, shall the structure be located closer to the shoreline or tributary stream than the principal structure.

(2) Principal or accessory structures and expansions of existing structures which are permitted in the Resource Protection, Limited Residential, Limited Commercial, and Stream Protection Districts, shall not exceed thirty-five (35) feet in height. This provision shall not apply to structures such as transmission towers, windmills, antennas, and similar structures having no floor area, such as cupolas, domes, or widow's walks as stated below:

A. The legally existing conforming structure is not located in a Resource Protection District or a stream protection district as defined in guidelines adopted by the board; and

B. The cupola, dome, widow's walk or other similar feature:

(1) Does not extend beyond the exterior walls of the existing structure;

(2) Has a floor area of 53 square feet or less; and

(3) Does not increase the height of the existing structure by more than 7 feet, as defined in the ordinance.

For purposes of this subsection, "cupola, dome, widow's walk or other similar feature" means a nonhabitable building feature mounted on a building roof for observation purposes.

(3) The lowest floor elevation or openings of all buildings and structures, including basements, shall be elevated at least one foot above the elevation of the 100-year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent flood-plain soils. In those municipalities that participate in the National Flood Insurance Program and have adopted the April 2005 version, or later version, of the Floodplain Management Ordinance, accessory structures may be placed in accordance with the standards of that ordinance and need not meet the elevation requirements of this paragraph.

(4) With the exception of General Development Districts located adjacent to rivers that do not flow to great ponds, non-vegetated surfaces shall not exceed a total of twenty (20) percent of the portion of the lot located within the shoreland zone. This limitation does not apply to public boat launching facilities regardless of the district in which the facility is located.

In a General Development District located adjacent to rivers that do not flow to great ponds, non-vegetated surfaces shall not exceed a total of seventy (70) percent of the portion of the lot located within the shoreland zone.

For the purposes of calculating lot coverage, non-vegetated surfaces include, but are not limited to the following: structures, driveways, parking areas, and other areas from which vegetation has been removed. Naturally occurring ledge and rock outcroppings are not counted as nonvegetated surfaces when calculating lot coverage for lots of record on March 24, 1990 and in continuous existence since that date.

(5) Retaining walls that are not necessary for erosion control shall meet the structure setback requirement, except for low retaining walls and associated fill provided all of the following conditions are met:

(a) The site has been previously altered and an effective vegetated buffer does not exist;

(b) The wall(s) is(are) at least 25 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland;

(c) The site where the retaining wall will be constructed is legally existing lawn or is a site eroding from lack of naturally occurring vegetation, and which cannot be stabilized with vegetative plantings;

(d) The total height of the wall(s), in the aggregate, are no more than 24 inches;

- (e) Retaining walls are located outside of the 100-year floodplain on rivers, streams, coastal wetlands, and tributary streams, as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils.
- (f) The area behind the wall is revegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the setback area, including patios and decks; and
- (g) A vegetated buffer area is established within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland when a natural buffer area does not exist. The buffer area must meet the following characteristics:
 - (i) The buffer must include shrubs and other woody and herbaceous vegetation. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch;
 - (ii) Vegetation plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of stormwater runoff;
 - (iii) Only native species may be used to establish the buffer area;
 - (iv) A minimum buffer width of 15 feet, horizontal distance, is required, measured perpendicularly to the normal high-water line or upland edge of a wetland;
 - (v) A footpath not to exceed the standards in Section 15(P)(2)(a), may traverse the buffer;
- (6) Notwithstanding the requirements stated above, stairways or similar structures may be allowed with a permit from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils provided: that the structure is limited to a maximum of four (4) feet in width; that the structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland, (unless permitted by the Department of Environmental Protection pursuant to the *Natural Resources Protection Act*, 38 M.R.S.A. section 480-C); and that the applicant demonstrates that no reasonable access alternative exists on the property.

C. Piers, Docks, Wharves, Bridges and Other Structures and Uses Extending Over or Below the Normal High-Water Line of a Water Body or Within a Wetland, and Shoreline Stabilization

- (1) No more than one pier, dock, wharf or similar structure extending or located below the normal high-water line of a water body or within a wetland is allowed on a single lot; except that when a single lot contains at least twice the minimum shore frontage as specified in Section 15(A), a second structure may be allowed and may remain as long as the lot is not further divided.
- (2) Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.
- (3) The location shall not interfere with existing developed or natural beach areas.
- (4) The facility shall be located so as to minimize adverse effects on fisheries.
- (5) The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with the surrounding character and uses of the area. A temporary pier, dock or wharf in non-tidal waters shall not be wider than six feet for non-commercial uses.

- (6) No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water body or wetland as an operational necessity.
- (7) New permanent piers and docks on non-tidal waters shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the *Natural Resources Protection Act*.
- (8) No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high-water line of a water body or within a wetland shall be converted to residential dwelling units in any district.
- (9) Except in the General Development Districts and Commercial Fisheries/Maritime Activities District, structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland shall not exceed twenty (20) feet in height above the pier, wharf, dock or other structure.
- (10) Vegetation may be removed in excess of the standards in Section 15(P) of this ordinance in order to conduct shoreline stabilization of an eroding shoreline, provided that a permit is obtained from the Planning Board. Construction equipment must access the shoreline by barge when feasible as determined by the Planning Board.
 - (a) When necessary, the removal of trees and other vegetation to allow for construction equipment access to the stabilization site via land must be limited to no more than 12 feet in width. When the stabilization project is complete the construction equipment accessway must be restored.
 - (b) Revegetation must occur in accordance with Section 15(S).
- (11) A deck over a river may be exempted from the shoreland setback requirements if it is part of a downtown revitalization project that is defined in a project plan approved by the legislative body of the municipality, and may include the revitalization of structures formerly used as mills that do not meet the structure setback requirements, if the deck meets the following requirements:
 - (a) The total deck area attached to the structure does not exceed 700 square feet;
 - (b) The deck is cantilevered over a segment of a river that is located within the boundaries of the downtown revitalization project;
 - (c) The deck is attached to or accessory to an allowed commercial use in a structure that was constructed prior to 1971 and is located within the downtown revitalization project;
 - (d) The construction of the deck complies with all other applicable standards, except the shoreline setback requirements in section 15(B); and
 - (e) The construction of the deck complies with all other state and federal laws.

D. Campgrounds. Campgrounds shall conform to the minimum requirements imposed under State licensing procedures and the following:

- (1) Campgrounds shall contain a minimum of five thousand (5,000) square feet of land, not including roads and driveways, for each site. Land supporting wetland vegetation, and land below the normal high-water line of a water body shall not be included in calculating land area per site.
- (2) The areas intended for placement of a recreational vehicle, tent or shelter, and utility and service buildings shall be set back a minimum of one hundred (100) feet, horizontal distance, from the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.

E. Individual Private Campsites. Individual private campsites not associated with campgrounds are allowed provided the following conditions are met:

- (1) One campsite per lot existing on the effective date of this Ordinance, or thirty thousand (30,000) square feet of lot area within the shoreland zone, whichever is less, may be permitted.
- (2) When an individual private campsite is proposed on a lot that contains another principal use and/or structure, the lot must contain the minimum lot dimensional requirements for the principal structure and/or use, and the individual private campsite separately.
- (3) Campsite placement on any lot, including the area intended for a recreational vehicle or tent platform, shall be set back one hundred (100) feet, horizontal distance, from the normal high-water line of a great pond classified GPA or river flowing to a great pond classified GPA, and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland.
- (4) Only one recreational vehicle shall be allowed on a campsite. The recreational vehicle shall not be located on any type of permanent foundation except for a gravel pad, and no structure except a canopy shall be attached to the recreational vehicle.
- (5) The clearing of vegetation for the siting of the recreational vehicle, tent or similar shelter in a Resource Protection District shall be limited to one thousand (1000) square feet.
- (6) 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.
- (7) When a recreational vehicle, tent or similar shelter is placed on-site for more than one hundred and twenty (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.

F. Commercial and Industrial Uses. The following new commercial and industrial uses are prohibited within the shoreland zone adjacent to great ponds classified GPA, and rivers and streams which flow to great ponds classified GPA:

- (1) Auto washing facilities
- (2) Auto or other vehicle service and/or repair operations, including body shops
- (3) Chemical and bacteriological laboratories

- (4) Storage of chemicals, including herbicides, pesticides or fertilizers, other than amounts normally associated with individual households or farms
- (5) Commercial painting, wood preserving, and furniture stripping
- (6) Dry cleaning establishments
- (7) Electronic circuit assembly
- (8) Laundromats, unless connected to a sanitary sewer
- (9) Metal plating, finishing, or polishing
- (10) Petroleum or petroleum product storage and/or sale except storage on same property as use occurs and except for storage and sales associated with marinas
- (11) Photographic processing
- (12) Printing

G. Parking Areas

- (1) Parking areas shall meet the shoreline and tributary stream setback requirements for structures for the district in which such areas are located, except that in the Commercial Fisheries/Maritime Activities District parking areas shall be set back at least twenty-five (25) feet, horizontal distance, from the shoreline. The setback requirement for parking areas serving public boat launching facilities in Districts other than the General Development I District and Commercial Fisheries/Maritime Activities District shall be no less than fifty (50) feet, horizontal distance, from the shoreline or tributary stream if the Planning Board finds that no other reasonable alternative exists further from the shoreline or tributary stream.
- (2) Parking areas shall be adequately sized for the proposed use and shall be designed to prevent stormwater runoff from flowing directly into a water body, tributary stream or wetland and where feasible, to retain all runoff on-site.
- (3) In determining the appropriate size of proposed parking facilities, the following shall apply:
 - (a) See Section 505 of the Westbrook Land Use Ordinance

H. Roads and Driveways. The following standards shall apply to the construction of roads and/or driveways and drainage systems, culverts and other related features.

- (1) Roads and driveways shall be set back at least one-hundred (100) feet, horizontal distance, from the normal high-water line of a great pond classified GPA or a river that flows to a great pond classified GPA, and seventy-five (75) feet, horizontal distance from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland unless no reasonable alternative exists as determined by the Planning Board. If no other reasonable alternative exists, the road and/or driveway setback requirement shall be no less than fifty (50) feet, horizontal distance, upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the water body, tributary stream, or wetland.

On slopes of greater than twenty (20) percent the road and/or driveway setback shall be increased by ten (10) feet, horizontal distance, for each five (5) percent increase in slope above twenty (20) percent.

Section 15 (H)(1) does not apply to approaches to water crossings or to roads or driveways that provide access to permitted structures and facilities located nearer to the shoreline or tributary stream due to an operational necessity, excluding temporary docks for recreational uses. Roads and driveways providing access to permitted structures within the setback area shall comply fully with the requirements of Section 15(H)(1) except for that portion of the road or driveway necessary for direct access to the structure.

- (2) Existing public roads may be expanded within the legal road right of way regardless of their setback from a water body, tributary stream or wetland.
- (3) New permanent roads are not allowed within the shoreland zone along Significant River Segments except:
 - (a) To provide access to structures or facilities within the zone; or
 - (b) When the applicant demonstrates that no reasonable alternative route exists outside the shoreland zone. When roads must be located within the shoreland zone they shall be set back as far as practicable from the normal high-water line and screened from the river by existing vegetation.
- (4) New roads and driveways are prohibited in a Resource Protection District except that the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the district. A road or driveway may also be approved by the Planning Board in a Resource Protection District, upon a finding that no reasonable alternative route or location is available outside the district. When a road or driveway is permitted in a Resource Protection District 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 upland edge of a wetland.
- (5) Road and driveway banks shall be no steeper than a slope of two (2) horizontal to one (1) vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Section 15(T).
- (6) Road grades shall meet the Design Standards of the Subdivision Ordinance Section 502.5. Driveway grades shall be no greater than ten (10) percent except for segments of less than two-hundred (200) feet.
- (7) In order to prevent road and driveway surface drainage from directly entering water bodies, tributary streams or wetlands, roads and driveways shall be designed, constructed, and maintained to empty onto an unscarified buffer strip at least (50) feet plus two times the average slope, in width between the outflow point of the ditch or culvert and the normal high-water line of a water body, tributary stream, or upland edge of a wetland. Surface drainage which is directed to an unscarified buffer strip shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.
- (8) 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 gains sufficient volume or head to erode the road, driveway, 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, or driveway at intervals no greater than indicated in the following table:

Grade (Percent)	Spacing (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 grade is ten (10) percent or less.
- (c) On sections having slopes greater than ten (10) percent, ditch relief culverts shall be placed at approximately a thirty (30) degree angle downslope from a line perpendicular to the centerline of the road or driveway.
- (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.
- (9) Ditches, culverts, bridges, dips, water turnouts and other storm water runoff control installations associated with roads and driveways shall be maintained on a regular basis to assure effective functioning.

I. Signs. Refer to Westbrook Land Use Ordinance Section 404 for sign regulations based upon the underlying Zoning District.

J. Storm Water Runoff

- (1) All new construction and development shall be designed to minimize storm water runoff from the site in excess of the natural predevelopment conditions. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas, shall be retained in order to reduce runoff and encourage infiltration of stormwaters.
- (2) Storm water runoff control systems shall be maintained as necessary to ensure proper functioning.

K. Septic Waste Disposal

- (1) All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules, and the following: a) clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions, shall not extend closer than seventy-five (75) feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a wetland and b) a holding tank is not allowed for a first-time residential use in the shoreland zone.

L. 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, other than road-side distribution lines, is not allowed in a Resource Protection or Stream Protection District, except to provide services to a permitted use within said district, or except where the applicant demonstrates that no reasonable alternative

exists. Where allowed, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts.

- (3) Damaged or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit.

M. 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 one hundred (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 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 before a permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of Section 15 (M)(4) below.
- (2) No part of any extraction operation, including drainage and runoff control features, shall be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and within seventy-five (75) feet, horizontal distance, of the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland. Extraction operations shall not be permitted within seventy-five (75) feet, horizontal distance, of any property line without written permission of the owner of such adjacent property.
- (3) Developers of new gravel pits along Significant River Segments shall demonstrate that no reasonable mining site outside the shoreland zone exists. When gravel pits must be located within the zone, they shall be set back as far as practicable from the normal high-water line and no less than seventy-five (75) feet and screened from the river by existing vegetation.
- (4) Within twelve (12) months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than one hundred (100) cubic yards of materials are removed in any consecutive twelve (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.
 - (b) The final graded slope shall be two and one-half to one (2 1/2:1) slope or flatter.
 - (c) Top soil 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 may impose such conditions as are necessary to minimize the adverse impacts associated with mineral extraction operations on surrounding uses and resources.

N. Agriculture

- (1) All spreading of manure shall be accomplished in conformance with the *Manure Utilization Guidelines* published by the former Maine Department of Agriculture on November 1, 2001, and the *Nutrient Management Law* (7 M.R.S.A. sections 4201-4209).

- (2) Manure shall not be stored or stockpiled within one hundred (100) feet, horizontal distance, of a great pond classified GPA or a river flowing to a great pond classified GPA, or within seventy-five (75) feet horizontal distance, of other water bodies, tributary streams, or wetlands. All manure storage areas within the shoreland zone must be constructed or modified such that the facility produces no discharge of effluent or contaminated storm water.
- (3) Agricultural activities involving tillage of soil greater than forty thousand (40,000) square feet in surface area, within the shoreland zone shall require a Conservation Plan to be filed with the Planning Board. Non-conformance with the provisions of said plan shall be considered to be a violation of this Ordinance.
- (4) There shall be no new tilling of soil within one-hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA; within seventy-five (75) feet, horizontal distance, from other water bodies and coastal wetlands; nor within twenty-five (25) feet, horizontal distance, of tributary streams and freshwater wetlands. Operations in existence on the effective date of this ordinance and not in conformance with this provision may be maintained.
- (5) Newly established livestock grazing areas shall not be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA; within seventy-five (75) feet, horizontal distance, of other water bodies and coastal wetlands, nor; within twenty-five (25) feet, horizontal distance, of tributary streams and freshwater wetlands. 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 Conservation Plan.

O. Reserved – Timber Harvesting Repealed

P. Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting

- (1) In a Resource Protection District abutting a great pond, there shall be no cutting of vegetation within the strip of land extending 75 feet, horizontal distance, inland from the normal high-water line, except to remove hazard trees as described in section Q.

Elsewhere, in any Resource Protection District the cutting or removal of vegetation shall be limited to that which is necessary for uses expressly authorized in that district.

- (2) Except in areas as described in Section P(1), above, within a strip of land extending one-hundred (100) feet, horizontal distance, inland from the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, or within a strip extending seventy-five (75) feet, horizontal distance, from any other water body, tributary stream, or the upland edge of a wetland, a buffer strip of vegetation shall be preserved as follows:
 - (a) There shall be no cleared opening greater than 250 square feet in the forest canopy (or other existing woody vegetation if a forested canopy is not present) as measured from the outer limits of the tree or shrub crown. However, a single footpath not to exceed six (6) feet in width as measured between tree trunks and/or shrub stems is allowed for accessing the shoreline provided that a cleared line of sight to the water through the buffer strip is not created.
 - (b) Selective cutting of trees within the buffer strip is allowed provided that a well-distributed stand of trees and other natural vegetation is maintained. For the purposes of Section 15(P)(2)(b) a "well-distributed stand of trees" adjacent to a great pond classified GPA or a river or stream flowing to a great pond classified GPA, shall be defined as maintaining a

rating score of 24 or more in each 25-foot by 50-foot rectangular (1250 square feet) area as determined by the following rating system.

Diameter of Tree at 4-1/2 feet Above Ground Level (inches)	Points
2 - < 4 in.	1
4 - <8 in.	2
8-< 12 in.	4
12 in. or greater	8

Adjacent to other water bodies, tributary streams, and wetlands, a "well-distributed stand of trees" is defined as maintaining a minimum rating score of 16 per 25-foot by 50-foot rectangular area.

The following shall govern in applying this point system:

- (i) The 25-foot by 50-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;
- (ii) Each successive plot must be adjacent to, but not overlap a previous plot;
- (iii) Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this Ordinance;
- (iv) Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by is Ordinance;
- (v) Where conditions permit, no more than 50% of the points on any 25-foot by 50-foot rectangular area may consist of trees greater than 12 inches in diameter.

For the purposes of Section 15(P)(2)(b), "other natural vegetation" is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least five (5) saplings less than two (2) inches in diameter at four and one-half (4 ½) feet above ground level for each 25-foot by 50-foot rectangular area. If five (5) saplings do not exist, no woody stems less than two (2) inches in diameter can be removed until five (5) saplings have been recruited into the plot.

Notwithstanding the above provisions, no more than 40% of the total volume of trees four (4) inches or more in diameter, measured at 4 1/2 feet above ground level may be removed in any ten (10) year period.

- (c) In order to protect water quality and wildlife habitat, existing vegetation under three (3) feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered, or removed, except to provide for a footpath or other permitted uses as described in Section 15(P) paragraphs (2) and (2)(a) above.
- (d) Pruning of tree branches, on the bottom 1/3 of the tree is allowed.
- (e) In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, dead or hazard trees results in the creation of cleared openings, these openings shall be replanted with native tree species in accordance with Section Q, below, unless existing new tree growth is present.
- (f) In order to maintain the vegetation in the shoreline buffer, clearing or removal of vegetation for allowed activities, including associated construction and related equipment operation,

within or outside the shoreline buffer, must comply with the requirements of Section 15.P(2).

- (3) At distances greater than one hundred (100) feet, horizontal distance, from a great pond classified GPA or a river flowing to a great pond classified GPA, and seventy-five (75) feet, horizontal distance, from the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland, there shall be allowed on any lot, in any ten (10) year period, selective cutting of not more than forty (40) percent of the volume of trees four (4) inches or more in diameter, measured 4 1/2 feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the forty (40) percent calculation. For the purposes of these standards volume may be considered to be equivalent to basal area.

In no event shall cleared openings for any purpose, including but not limited to, principal and accessory structures, driveways, lawns and sewage disposal areas, exceed in the aggregate, 25% of the lot area within the shoreland zone or ten thousand (10,000) square feet, whichever is greater, including land previously cleared. This provision applies to the portion of a lot within the shoreland zone, including the buffer area, but shall not apply to the General Development or Commercial Fisheries/Maritime Activities Districts.

- (4) Legally existing nonconforming cleared openings may be maintained, but shall not be enlarged, except as allowed by this Ordinance.
- (5) Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of Section 15(P).

Q. Hazard Trees, Storm-Damaged Trees, and Dead Tree Removal

- (1) Hazard trees in the shoreland zone may be removed without a permit after consultation with the Code Enforcement Officer if the following requirements are met:
 - (a) Within the shoreline buffer, if the removal of a hazard tree results in a cleared opening in the tree canopy greater than two hundred and fifty (250) square feet, replacement with native tree species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least four (4) feet in height, and be no less than two (2) inches in diameter. Stumps may not be removed.
 - (b) Outside of the shoreline buffer, when the removal of hazard trees exceeds forty (40) percent of the volume of trees four (4) inches or more in diameter, measured at four and one half (4.5) feet above ground level in any ten (10) year period, and/or results in cleared openings exceeding twenty-five (25) percent of the lot area within the shoreland zone, or ten thousand (10,000) square feet, whichever is greater, replacement with native tree species is required, unless there is new tree growth already present. New tree growth must be as near as practicable to where the hazard tree was removed and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level. If new growth is not present, then replacement trees shall consist of native species and be at least two (2) inches in diameter, measured at four and one half (4.5) feet above the ground level.
 - (c) The removal of standing dead trees, resulting from natural causes, is permissible without the need for replanting or a permit, as long as the removal does not result in the creation of new lawn areas, or other permanently cleared areas, and stumps are not removed. For the purposes of this provision dead trees are those trees that contain no foliage during the

growing season.

- (d) The Code Enforcement Officer may require the property owner to submit an evaluation from a licensed forester or arborist before any hazard tree can be removed within the shoreland zone.
 - (e) The Code Enforcement Officer may require more than a one-for-one replacement for hazard trees removed that exceed eight (8) inches in diameter measured at four and one half (4.5) feet above the ground level.
- (2) Storm-damaged trees in the shoreland zone may be removed without a permit after consultation with the Code Enforcement Officer if the following requirements are met:
- (a) Within the shoreline buffer, when the removal of storm-damaged trees results in a cleared opening in the tree canopy greater than two hundred and fifty (250) square feet, replanting is not required, but the area shall be required to naturally revegetate, and the following requirements must be met:
 - (i) The area from which a storm-damaged tree is removed does not result in new lawn areas, or other permanently cleared areas;
 - (ii) Stumps from the storm-damaged trees may not be removed;
 - (iii) Limbs damaged from a storm event may be pruned even if they extend beyond the bottom one-third (1/3) of the tree; and
 - (iv) If after one growing season, no natural regeneration or regrowth is present, replanting of native tree seedlings or saplings is required at a density of one seedling per every eighty (80) square feet of lost canopy.
 - (b) Outside of the shoreline buffer, if the removal of storm damaged trees exceeds 40% of the volume of trees four (4) inches or more in diameter, measured at four and one half (4.5) feet above the ground level in any ten (10) year period, or results, in the aggregate, in cleared openings exceeding 25% of the lot area within the shoreland zone or ten thousand (10,000) square feet, whichever is greater, and no natural regeneration occurs within one growing season, then native tree seedlings or saplings shall be replanted on a one-for-one basis.

R. Exemptions to Clearing and Vegetation Removal Requirements

The following activities are exempt from the clearing and vegetation removal standards set forth in Section 15(P), provided that all other applicable requirements of this chapter are complied with, and the removal of vegetation is limited to that which is necessary:

- (1) The removal of vegetation that occurs at least once every two (2) years for the maintenance of legally existing areas that do not comply with the vegetation standards in this chapter, such as but not limited to cleared openings in the canopy or fields. Such areas shall not be enlarged, except as allowed by this section. If any of these areas, due to lack of removal of vegetation every two (2) years, reverts back to primarily woody vegetation, the requirements of Section 15(P) apply;
- (2) The removal of vegetation from the location of allowed structures or allowed uses, when the shoreline setback requirements of section 15(B) are not applicable;
- (3) The removal of vegetation from the location of public swimming areas associated with an

allowed public recreational facility;

- (4) The removal of vegetation associated with allowed agricultural uses, provided best management practices are utilized, and provided all requirements of section 15(N) are complied with;
- (5) The removal of vegetation associated with brownfields or voluntary response action program (VRAP) projects provided that the removal of vegetation is necessary for remediation activities to clean-up contamination on a site in a general development district, commercial fisheries and maritime activities district or other equivalent zoning district approved by the Commissioner that is part of a state or federal brownfields program or a voluntary response action program pursuant 38 M.R.S.A section 343-E, and that is located along:
 - (a) A coastal wetland; or
 - (b) A river that does not flow to a great pond classified as GPA pursuant to 38 M.R.S.A section 465-A.
- (6) The removal of non-native invasive vegetation species, provided the following minimum requirements are met:
 - (a) If removal of vegetation occurs via wheeled or tracked motorized equipment, the wheeled or tracked motorized equipment is operated and stored at least twenty-five (25) feet, horizontal distance, from the shoreline, except that wheeled or tracked equipment may be operated or stored on existing structural surfaces, such as pavement or gravel;
 - (b) Removal of vegetation within twenty-five (25) feet, horizontal distance, from the shoreline occurs via hand tools; and
 - (c) If applicable clearing and vegetation removal standards are exceeded due to the removal of non-native invasive species vegetation, the area shall be revegetated with native species to achieve compliance.
- (7) The removal of vegetation associated with emergency response activities conducted by the Department, the U.S. Environmental Protection Agency, the U.S. Coast Guard, and their agents.

S. Revegetation Requirements

When revegetation is required in response to violations of the vegetation standards set forth in Section 15(P), to address the removal of non- native invasive species of vegetation, or as a mechanism to allow for development that may otherwise not be permissible due to the vegetation standards, including removal of vegetation in conjunction with a shoreline stabilization project, the revegetation must comply with the following requirements.

- (1) The property owner must submit a revegetation plan, prepared with and signed by a qualified professional, that describes revegetation activities and maintenance. The plan must include a scaled site plan, depicting where vegetation was, or is to be removed, where existing vegetation is to remain, and where vegetation is to be planted, including a list of all vegetation to be planted.
- (2) Revegetation must occur along the same segment of shoreline and in the same area where vegetation was removed and at a density comparable to the pre-existing vegetation, except where a shoreline stabilization activity does not allow revegetation to occur in the same area and at a density comparable to the pre-existing vegetation, in which case revegetation must occur along the same segment of shoreline and as close as possible to the area where vegetation was

removed:

- (3) If part of a permitted activity, revegetation shall occur before the expiration of the permit. If the activity or revegetation is not completed before the expiration of the permit, a new revegetation plan shall be submitted with any renewal or new permit application.
- (4) Revegetation activities must meet the following requirements for trees and saplings:
 - (a) All trees and saplings removed must be replaced with native noninvasive species;
 - (b) Replacement vegetation must at a minimum consist of saplings;
 - (c) If more than three (3) trees or saplings are planted, then at least three (3) different species shall be used;
 - (d) No one species shall make up 50% or more of the number of trees and saplings planted;
 - (e) If revegetation is required for a shoreline stabilization project, and it is not possible to plant trees and saplings in the same area where trees or saplings were removed, then trees or sapling must be planted in a location that effectively reestablishes the screening between the shoreline and structures; and
 - (f) A survival rate of at least eighty (80) percent of planted trees or saplings is required for a minimum five (5) years period.
- (5) Revegetation activities must meet the following requirements for woody vegetation and other vegetation under three (3) feet in height:
 - (a) All woody vegetation and vegetation under three (3) feet in height must be replaced with native noninvasive species of woody vegetation and vegetation under three (3) feet in height as applicable;
 - (b) Woody vegetation and vegetation under three (3) feet in height shall be planted in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;
 - (c) If more than three (3) woody vegetation plants are to be planted, then at least three (3) different species shall be planted;
 - (d) No one species shall make up 50% or more of the number of planted woody vegetation plants; and
 - (e) Survival of planted woody vegetation and vegetation under three feet in height must be sufficient to remain in compliance with the standards contained within this chapter for minimum of five (5) years
- (6) Revegetation activities must meet the following requirements for ground vegetation and ground cover:
 - (a) All ground vegetation and ground cover removed must be replaced with native herbaceous vegetation, in quantities and variety sufficient to prevent erosion and provide for effective infiltration of stormwater;
 - (b) Where necessary due to a lack of sufficient ground cover, an area must be supplemented with a minimum four (4) inch depth of leaf mulch and/or bark mulch to prevent erosion and provide for effective infiltration of stormwater; and
 - (c) Survival and functionality of ground vegetation and ground cover must be sufficient to remain in compliance with the standards contained within this chapter for minimum of five (5) years.

T. Erosion and Sedimentation Control

- (1) All activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and which require a permit shall also require a written soil erosion and sedimentation control plan. The plan shall be submitted to the permitting authority for approval and shall include, where applicable, provisions for:
 - (a) Mulching and revegetation of disturbed soil.
 - (b) Temporary runoff control features such as hay bales, silt fencing or diversion ditches.
 - (c) Permanent stabilization structures such as retaining walls or rip-rap.
- (2) In order to create the least potential for erosion, development shall be designed to fit with the topography and soils of the site. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.
- (3) Erosion and sedimentation control measures shall apply to all aspects of the proposed project involving land disturbance, and shall be in operation during all stages of the activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.
- (4) Any exposed ground area shall be temporarily or permanently stabilized within one (1) week from the time it was last actively worked, by use of riprap, sod, seed, and mulch, or other effective measures. In all cases permanent stabilization shall occur within nine (9) months of the initial date of exposure. In addition:
 - (a) Where mulch is used, it shall be applied at a rate of at least one (1) bale per five hundred (500) square feet and shall be maintained until a catch of vegetation is established.
 - (b) Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
 - (c) Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.
- (5) Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainageways shall be designed and constructed in order to carry water from a twenty-five (25) year storm or greater, and shall be stabilized with vegetation or lined with riprap.

U. Soils. 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.

V. Water Quality. No activity shall deposit on or into the ground or discharge to the waters of the State any pollutant that, by itself or in combination with other activities or substances, will impair designated uses or the water classification of the water body, tributary stream or wetland.

W. Archaeological Site. 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 twenty (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.

X. Recreational Trails

1. Standards applicable to all recreational trails:
 - a. Recreational trails shall be designed and constructed consistent with the standards contained in this ordinance
 - b. Where a recreational trail is permitted within 100 feet of a great pond or within 75 feet of another water body or wetland, tree cutting associated with the recreational trail construction shall be limited to the minimum amount necessary and, to the extent practical, tree canopies over the trail shall be preserved.
 - c. All portions of a recreational trail, including any trail spurs, shall be designed and constructed to shed water, avoid erosion, and minimize channelized flow to surface waters.
 - d. A municipal recreational trail located within a General Development District along the Presumpscot River shall be set back at least 25' from the normal high water line of a river, except the Planning Board may approve no minimum setback from the river for short sections of the trail when no other practical location exists.
 - e. A trail that exceeds the limitations contained in this section shall meet all of the standards for roads and driveways found in Section 15H.
2. Standards applicable to primitive trails.
 - a. Primitive trails shall be set back at least 10 feet, horizontal distance, from the normal high-water line of a water body or upland edge of a wetland, except for water body and wetland crossings, and water access sites. Water access sites are limited to one site per 500 feet of shore frontage, excluding canoe portage locations and allowed footpaths pursuant to Section 15P2a, and shall be limited to the width of the trail. Private water access sites shall not be located closer than 200 linear feet from a footpath allowed by Section 15P2a.
 - b. Primitive trails shall be constructed using hand tools only, including power hand tools.
 - c. The trail must be designed and constructed such that soil erosion will be prevented. Such prevention measures may include steps, water bars, drainage dips, and minor side-sloping of trails, in addition to lining of the trail with crushed rock, pea stone, or other natural material.
 - d. Where necessary, wooden walkways, bridges, and similar installations no more than four feet in width, are allowed in wet, rocky or unstable areas.
3. Standards Applicable to Category 2 multiple-use nonmotorized trails.
 - a. A Category 2 multiple-use nonmotorized trail, including its base, shall set back at least 25 feet, horizontal distance, from the normal high-water line of the Presumpscot River, or 50 feet, horizontal distance, from the normal high water line of all other water bodies or the upland edge of a wetland, except for water and wetland access sites, and except where an existing trail base or developed area is present, including but not limited to a discontinued rail bed, roadway, parking area or industrial site. The Planning Board may waive the setback requirement when the applicant demonstrates that there is no other reasonable alternative for the location of the trail. Examples include, but are not limited to, the avoidance of rail, road and wetland crossings, the circumvention of bridge abutments, ledges and steep slopes, and the need to meet required safety standards. Where necessary, elevated walkways/platforms no more than seven feet in width over a water body or wetland resource may be permitted.
 - b. Trail spurs, no more than five feet in width, may be constructed to the water or wetland. No spur, however, shall be located less than 500 linear feet from another spur.

Clearing of vegetation for a trail spur shall not exceed 200 square feet per 25 linear feet of trail length.

- c. Where necessary to prevent erosion of surface materials, trail surfaces shall be paved, graveled, mulched, or otherwise stabilized.
4. Standards Applicable to Category 1 multiple-use nonmotorized trails.
 - a. Category 1 multiple-use nonmotorized trails shall meet the same shoreline or wetland setback requirement as that required of structures in the applicable district, except as follows:
 - i. A trail may be permitted over an existing base, such as a discontinued rail bed, roadway, berm, dike, parking lot or industrial site. The trail may be expanded within a road or rail right-of-way existing on the effective date of this ordinance, provided that no part of the expanded trail is less than 25 feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a wetland.
 - ii. Notwithstanding the limitations in Paragraphs i above, the Planning Board may waive the water or wetland setback requirement when the applicant demonstrates that there is no other reasonable alternative for the location of the trail. Examples include, but are not limited to, the avoidance of rail, road, and wetland crossings, the avoidance of permanent structures, ledges, and steep slopes, and the need to meet required safety standards. When the applicant demonstrates the need, an elevated walkway/platform over the water or wetland resource may be permitted, provided that it is no larger than necessary. NOTE: Elevated walkways must comply with local floodplain management ordinances, and may require a permit from the DEP pursuant to the Natural Resources Protection Act. In the GD district, a municipal public trail system can be constructed along the Presumpscot River. Setbacks for trails can be reduced to less than 25 feet if approved by the Maine DEP under the Natural Resources Protection Act consistent with previous paragraph i.
 - b. When a trail is permitted within the structure setback area, any significant areas of exposed mineral soil present between the trail and the water body or wetland shall be planted with native vegetation or be otherwise stabilized to prevent erosion and protect water quality.
 - c. Trail spurs, no greater than eight feet in width, may be established at distances no less than 500 linear feet apart. Clearing of vegetation for a trail spur shall not exceed 250 square feet per 25 feet of spur length. Trail spurs that extend to the shoreline shall not include any structural development except that necessary for shoreline stabilization or trail hardening, and except for the placement of a bench or similar object for sitting purposes. No trail spur shall be permitted on sustained ground slopes of greater than 15%.
 - d. Trail surfaces must either be paved, graveled, mulched or otherwise stabilized/surfaced to prevent erosion of surface materials. Trail banks and side slopes steeper than a 50% slope and retaining walls greater than four feet in height shall be designed by a professional engineer and shall be stabilized in accordance with the provisions for erosion and sedimentation control contained in Subsection T.
 5. Standards applicable to Category 2 multiple-use trails, including motorized uses.
 - a. Category 2 multiple-use trails, including motorized uses, shall meet the same shoreline or wetland setback requirement as that required for structures in the district in which such trails are located, except for water and wetland crossings, and except as follows:
 - i. A trail may be permitted over a legally existing base, such as a discontinued rail bed, roadway, berm, dike, parking lot or industrial site. No portion of the base shall be expanded closer to the normal high-water line of a water body or upland edge of a wetland.
 - ii. The Planning Board may waive the setback requirement when the applicant demonstrates that there is no other reasonable alternative for the location of the trail. Examples include the avoidance of road and wetland crossings, ledges,

and steep slopes. Any portion of the trail that is less than 75 feet from a water body or wetland shall be paved or similarly hardened to prevent erosion.

- iii. A trail that is limited exclusively for winter use need not meet setback requirements, provided that the trail is chained, gated or otherwise blocked to motorized access, except during frozen ground conditions.
- iv. All crossings of flowing water shall require a bridge or culvert, except in areas with low, hardened banks and channel beds which are composed of gravel, rock or similar hard surface which will not be eroded or otherwise damaged.
- v. Trails are prohibited within the Shoreland Zone of a significant river segment, except for water crossings, and in a Resource Protection District so designated because of wildlife habitat value or the presence of sustained slopes greater than 20%.
- vi. When a trail is permitted within the setback area, any exposed mineral soil between the trail and the water body or wetland shall be planted with native vegetation or be otherwise stabilized in order to prevent erosion and protect water quality.
- vii. Where trail stability is of concern, the Planning Board may require hardening or compacting of the trail tread to prevent erosion. Examples include wet or steeply sloped areas, and trail switchback sites.
- viii. Trail banks and side slopes steeper than a 50% slope and retaining walls greater than four feet in height shall be designed by a professional engineer and shall be stabilized in accordance with the provisions for erosion and sedimentation control contained in Subsection T.

- 6. Standards applicable to Category 1 multiple-use trails, including motorized uses.
 - a. Category 1 multiple-use trails, including motorized uses, shall meet the same standards as those for a Category 2 multiple-use trail, including motorized uses, except that the Planning Board may waive the setback requirement only where existing roads and similar obstructions require the trail to be located within the setback area. In such case the trail shall not extend into the setback area for more than 200 linear feet on each side of the obstruction. All portions of the trail permitted within 75 feet of a water body or wetland shall be paved or otherwise hardened or compacted to prevent erosion.

16. Administration

A. Administering Bodies and Agents

- (1) **Code Enforcement Officer.** A Code Enforcement Officer shall be appointed or reappointed annually by July 1st.
- (2) **Board of Appeals.** A Board of Appeals shall be created in accordance with the provisions of 30-A M.R.S.A. section 2691.
- (3) **Planning Board.** A Planning Board shall be created in accordance with the provisions of State law.

- B. Permits Required.** After the effective date of this Ordinance no person shall, without first obtaining a permit, engage in any activity or use of land or structure requiring a permit in the district in which such activity or use would occur; or expand, change, or replace an existing use or structure; or renew a discontinued nonconforming use. A person who is issued a permit pursuant to this Ordinance shall have a copy of the permit on site while the work authorized by the permit is performed.

- (1) A permit is not required for the replacement of an existing road culvert as long as:
 - (a) The replacement culvert is not more than 25% longer than the culvert being replaced;
 - (b) The replacement culvert is no longer than 75 feet; and
 - (c) Adequate erosion control measures are taken to prevent sedimentation of the water, and the crossing does not block fish passage in the watercourse.
- (2) A permit is not required for an archaeological excavation as long as the excavation is conducted by an archaeologist listed on the State Historic Preservation Officer's level 1 or level 2 approved list, and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.
- (3) Any permit required by this Ordinance shall be in addition to any other permit required by other law or ordinance.

C. Permit Application

- (1) Every applicant for a permit shall submit a written application, including a scaled site plan, on a form provided by the municipality, to the appropriate official as indicated in Section 14.
- (2) All applications shall be signed by an owner or individual who can show evidence of right, title or interest in the property or by an agent, representative, tenant, or contractor of the owner with authorization from the owner to apply for a permit hereunder, certifying that the information in the application is complete and correct.
- (3) All applications shall be dated, and the Code Enforcement Officer or Planning Board, as appropriate, shall note upon each application the date and time of its receipt.
- (4) If the property is not served by a public sewer, a valid plumbing permit or a completed application for a plumbing permit, including the site evaluation approved by the Plumbing Inspector, shall be submitted whenever the nature of the proposed structure or use would require the installation of a subsurface sewage disposal system.
- (5) Contractor Certification: When an excavation contractor will perform an activity that requires or results in more than one (1) cubic yard of soil disturbance, the contractor shall ensure that a person responsible for management of erosion and sedimentation control practices at the site is certified in erosion control practices by the Maine Department of Environmental Protection. This person must be present at the site each day earthmoving activity occurs for a duration that is sufficient to ensure that proper erosion and sedimentation control practices are followed. This is required until erosion and sedimentation control measures have been installed, which will either stay in place permanently or stay in place until the area is sufficiently covered with vegetation necessary to prevent soil erosion. The name and certification number of the person who will oversee the activity causing or resulting in soil disturbance shall be included on the permit application. This requirement does not apply to a person or firm engaged in agriculture or timber harvesting if best management practices for erosion and sedimentation control are used; and municipal, state and federal employees engaged in projects associated with that employment.

D. Procedure for Administering Permits. Within 35 days of the date of receiving a written application, the Planning Board or Code Enforcement Officer, as indicated in Section 14, shall notify the applicant in writing either that the application is a complete application, or, if the application is incomplete, that specified additional material is needed to make the application

complete. The Planning Board or the Code Enforcement Officer, as appropriate, shall approve, approve with conditions, or deny all permit applications in writing within 35 days of receiving a completed application. However, if the Planning Board has a waiting list of applications, a decision on the application shall occur within 35 days after the first available date on the Planning Board's agenda following receipt of the completed application, or within 35 days of the public hearing, if the proposed use or structure is found to be in conformance with the purposes and provisions of this Ordinance.

The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this Ordinance.

After the submission of a complete application to the Planning Board, the Board shall approve an application or approve it with conditions if it makes a positive finding based on the information presented that the proposed use:

- (1) Will maintain safe and healthful conditions;
- (2) Will not result in water pollution, erosion, or sedimentation to surface waters;
- (3) Will adequately provide for the disposal of all wastewater;
- (4) Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
- (5) Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
- (6) Will protect archaeological and historic resources as designated in the comprehensive plan;
- (7) Will not adversely affect existing commercial fishing or maritime activities in a Commercial Fisheries/Maritime Activities district;
- (8) Will avoid problems associated with floodplain development and use; and
- (9) Is in conformance with the provisions of Section 15, Land Use Standards.

If a permit is either denied or approved with conditions, the reasons as well as conditions shall be stated in writing. No approval shall be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance, or regulation or statute administered by the municipality.

E. Reserved

F. Expiration of Permit. Permits shall expire one year from the date of issuance if a substantial start is not made in construction or in the use of the property during that period. If a substantial start is made within one year of the issuance of the permit, the applicant shall have one additional year to complete the project, at which time the permit shall expire.

G. Installation of Public Utility Service. A public utility, water district, sanitary district or any utility company of any kind may not install services to any new structure located in the shoreland zone unless written authorization attesting to the validity and currency of all local permits required under this or any previous Ordinance has been issued by the appropriate municipal officials or other written arrangements have been made between the municipal officials and the utility.

H. Appeals

(1) Powers and Duties of the Board of Appeals. The Board of Appeals shall have the following powers:

- (a) **Administrative Appeals:** To hear and decide administrative appeals, on an appellate basis, where it is alleged by an aggrieved party that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Planning Board in the administration of this Ordinance; and to hear and decide administrative appeals on a de novo basis where it is alleged by an aggrieved party that there is an error in any order, requirement, decision or determination made by, or failure to act by, the Code Enforcement Officer in his or her review of and action on a permit application under this Ordinance. Any order, requirement, decision or determination made, or failure to act, in the enforcement of this ordinance is not appealable to the Board of Appeals.
- (b) **Variance Appeals:** To authorize variances upon appeal, within the limitations set forth in this Ordinance.

(2) **Variance Appeals.** Variances may be granted only under the following conditions:

- (a) Variances may be granted only from dimensional requirements including, but not limited to, lot width, structure height, percent of lot coverage, and setback requirements.
- (b) Variances shall not be granted for establishment of any uses otherwise prohibited by this Ordinance.
- (c) The Board shall not grant a variance unless it finds that:
 - (i) The proposed structure or use would meet the provisions of Section 15 except for the specific provision which has created the non-conformity and from which relief is sought; and
 - (ii) The strict application of the terms of this Ordinance would result in undue hardship. The term "undue hardship" shall mean:
 - a. That the land in question cannot yield a reasonable return unless a variance is granted;
 - b. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
 - c. That the granting of a variance will not alter the essential character of the locality; and
 - d. That the hardship is not the result of action taken by the applicant or a prior owner.
- (d) Notwithstanding Section 16(H)(2)(c)(ii) above, the Board of Appeals, or the codes enforcement officer if authorized in accordance with 30-A MRS §4353-A, may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term "structures necessary for access to or egress from the dwelling" shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure. Any permit issued pursuant to this subsection is subject to

Sections 16(H)(2)(f) and 16(H)(4)(b)(iv) below.)

- (e) The Board of Appeals shall limit any variances granted as strictly as possible in order to ensure conformance with the purposes and provisions of this Ordinance to the greatest extent possible, and in doing so may impose such conditions to a variance as it deems necessary. The party receiving the variance shall comply with any conditions imposed.
- (f) A copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.

(3) Administrative Appeals

When the Board of Appeals reviews a decision of the Code Enforcement Officer the Board of Appeals shall hold a “de novo” hearing. At this time the Board may receive and consider new evidence and testimony, be it oral or written. When acting in a “de novo” capacity the Board of Appeals shall hear and decide the matter afresh, undertaking its own independent analysis of evidence and the law, and reaching its own decision.

When the Board of Appeals hears a decision of the Planning Board, it shall hold an appellate hearing, and may reverse the decision of the Planning Board only upon finding that the decision was contrary to specific provisions of the Ordinance or contrary to the facts presented to the Planning Board. The Board of Appeals may only review the record of the proceedings before the Planning Board. The Board Appeals shall not receive or consider any evidence which was not presented to the Planning Board, but the Board of Appeals may receive and consider written or oral arguments. If the Board of Appeals determines that the record of the Planning Board proceedings are inadequate, the Board of Appeals may remand the matter to the Planning Board for additional fact finding.

(4) Appeal Procedure

(a) Making an Appeal

- (i) An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the Code Enforcement Officer or the Planning Board, except for enforcement-related matters as described in Section 16(H)(1)(a) above. Such an appeal shall be taken within thirty (30) days of the date of the official, written decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the thirty (30) day requirement.
- (ii) Applications for appeals shall be made by filing with the Board of Appeals a written notice of appeal which includes:
 - a. A concise written statement indicating what relief is requested and why the appeal or variance should be granted.
 - b. A sketch drawn to scale showing lot lines, location of existing buildings and structures and other physical features of the lot pertinent to the relief sought.
- (iii) Upon receiving an application for an administrative appeal or a variance, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
- (iv) The Board of Appeals shall hold a public hearing on an administrative appeal or a request for a variance within thirty-five (35) days of its receipt of a complete written application, unless this time period is extended by the parties.

(b) Decision by Board of Appeals

- (i) A majority of the full voting membership of the Board shall constitute a quorum for the purpose of deciding an appeal.
 - (ii) The person filing the appeal shall have the burden of proof.
 - (iii) The Board shall decide all administrative appeals and variance appeals within thirty-five (35) days after the close of the hearing, and shall issue a written decision on all appeals.
 - (iv) The Board of Appeals shall state the reasons and basis for its decision, including a statement of the facts found and conclusions reached by the Board. The Board shall cause written notice of its decision to be mailed or hand-delivered to the applicant and to the Department of Environmental Protection within seven (7) days of the Board's decision. Copies of written decisions of the Board of Appeals shall be given to the Planning Board, Code Enforcement Officer, and the municipal officers.
- (5) **Appeal to Superior Court.** Except as provided by 30-A M.R.S.A. section 2691(3)(F), any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty-five (45) days from the date of any decision of the Board of Appeals.
- (6) **Reconsideration.** In accordance with 30-A M.R.S.A. section 2691(3)(F), the Board of Appeals may reconsider any decision within forty-five (45) days of its prior decision. A request to the Board to reconsider a decision must be filed within ten (10) days of the decision that is being reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within forty-five (45) days of the date of the vote on the original decision. Reconsideration of a decision shall require a positive vote of the majority of the Board members originally voting on the decision, and proper notification to the landowner, petitioner, planning board, code enforcement officer, and other parties of interest, including abutters and those who testified at the original hearing(s). The Board may conduct additional hearings and receive additional evidence and testimony.

Appeal of a reconsidered decision to Superior Court must be made within fifteen (15) days after the decision on reconsideration.

I. Enforcement

- (1) **Nuisances.** Any violation of this Ordinance shall be deemed to be a nuisance.
- (2) **Code Enforcement Officer**
 - (a) It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance. If the Code Enforcement Officer shall find that any provision of this Ordinance is being violated, he or she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings or structures, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be submitted to the municipal officers and be maintained as a permanent record.
 - (b) The Code Enforcement Officer shall conduct on-site inspections to insure compliance with all applicable laws and conditions attached to permit approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this Ordinance.
 - (c) The Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected.

- (3) **Legal Actions.** When the above action does not result in the correction or abatement of the violation or nuisance condition, the Municipal Officers, upon notice from the Code Enforcement Officer, are hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the municipality. The municipal officers, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without Court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized municipal official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage.
- (4) **Fines.** Any person, including but not limited to a landowner, a landowner's agent or a contractor, who violates any provision or requirement of this Ordinance shall be penalized in accordance with 30-A, M.R.S.A. section 4452.

17. Definitions

Accessory structure or use - a use or structure which is incidental and subordinate to the principal use or structure. Accessory uses, when aggregated, shall not subordinate the principal use of the lot. A deck or similar extension of the principal structure or a garage attached to the principal structure by a roof or a common wall is considered part of the principal structure.

Aggrieved party - an owner of land whose property is directly or indirectly affected by the granting or denial of a permit or variance under this Ordinance; a person whose land abuts land for which a permit or variance has been granted; or any other person or group of persons who have suffered particularized injury as a result of the granting or denial of such permit or variance.

Agriculture - the production, keeping or maintenance for sale or lease of plants or animals, including, but not limited to, forages and sod crops, grains and seed crops, dairy animals and dairy products, poultry and poultry products, livestock, fruits and vegetables and ornamental green-house products. Agriculture does not include forest management and timber harvesting activities.

Aquaculture - the growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species.

Basal Area - the area of cross-section of a tree stem at 4 1/2 feet above ground level and inclusive of bark.

Basement - any portion of a structure with a floor-to-ceiling height of 6 feet or more and having more than 50% of its volume below the existing ground level.

Boat Launching Facility - a facility designed primarily for the launching and landing of watercraft, and which may include an access ramp, docking area, and parking spaces for vehicles and trailers.

Bureau of Forestry – State of Maine Department of Agriculture, Conservation, and Forestry, Bureau of Forestry.

Campground - any area or tract of land to accommodate two (2) or more parties in temporary living quarters, including, but not limited to tents, recreational vehicles or other shelters.

Canopy – the more or less continuous cover formed by tree crowns in a wooded area.

Category 1 Multiple Use Nonmotorized Trail - A public trail or a private trail open to the public, established for walking, hiking, nonmotorized biking, snowshoeing, or cross-country skiing, with a tread path no more than 12 feet in width (14 feet in an urban area) and an overall width, including trail side-slopes, of 20 feet or less. No motorized vehicles except electrically operated bicycles, wheelchairs, and similar transportation-related equipment used only by persons with disabilities, and vehicles necessary for maintenance and emergency purposes are permitted (Planning Board permit required).

Category 2 Multiple Use Nonmotorized Trail - A public trail, or a private trail open to the public, with a tread path no more than five feet in width and an overall clearance of seven feet wide, established for walking, hiking, nonmotorized biking, snowshoeing, or cross-country skiing. Electrically operated bicycles, wheelchairs, and similar transportation-related equipment used only by persons with disabilities are permitted (CEO, unless setback waiver is necessary, in which case a permit is required from the Planning Board).

Category 1 Multiple Use Trail, Including motorized uses - A public trail or a private trail open to the public, with a tread path no more than 12 feet wide (14 feet in an urban area), and an overall clearance of 20 feet wide, established for recreational vehicles, equestrian activities, mountain biking, hiking, ATVing, off-road motorcycling, snowmobiling, snowshoeing, cross-country skiing (Planning Board permit required).

Category 2 Multiple Use Trail, Including motorized uses - A public trail, or a private trail open to the public, with a tread path no more than five feet wide, and an overall clearance of seven feet wide, established for recreational vehicles, equestrian activities, mountain biking, hiking, ATVing, off-road motorcycling, snowmobiling, snowshoeing, or cross-country skiing (Planning Board permit required).

Coastal wetland - all tidal and subtidal lands; all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

Commercial use - the use of lands, buildings, or structures, other than a "home occupation," defined below, the intent and result of which activity is the production of income from the buying and selling of goods and/or services, exclusive of rental of residential buildings and/or dwelling units.

Development – a change in land use involving alteration of the land, water or vegetation, or the addition or alteration of structures or other construction not naturally occurring.

Dimensional requirements - numerical standards relating to spatial relationships including but not limited to setback, lot area, shore frontage and height.

Disability - any disability, infirmity, malformation, disfigurement, congenital defect or mental condition caused by bodily injury, accident, disease, birth defect, environmental conditions or illness; and also includes the physical or mental condition of a person which constitutes a substantial handicap as determined by a physician or in the case of mental handicap, by a psychiatrist or psychologist, as well as any other health or sensory impairment which requires special education, vocational rehabilitation or related services.

Driveway - a vehicular access-way less than five hundred (500) feet in length serving two single-family dwellings or one two-family dwelling, or less.

Emergency operations - operations conducted for the public health, safety or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings, property and livestock from the threat of destruction or injury.

Essential services - 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. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, 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.

Expansion of a structure - an increase in the footprint or height of a structure, including all extensions such as, but not limited to: attached decks, garages, porches and greenhouses.

Expansion of use - the addition of one or more months to a use's operating season; or the use of more footprint of a structure or ground area devoted to a particular use.

Family - one or more persons occupying a premises and living as a single housekeeping unit.

Floodway - the channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation by more than one foot in height.

Floor area - the sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls.

Footprint - the entire area of ground covered by the structure(s) on a lot, including but not limited to cantilevered or similar overhanging extensions, as well as unenclosed structures, such as patios and decks.

Forested wetland - a freshwater wetland dominated by woody vegetation that is six (6) meters tall (approximately twenty (20) feet) or taller.

Foundation - the supporting substructure of a building or other structure, excluding wooden sills and post supports, but including basements, slabs, frostwalls, or other base consisting of concrete, block, brick or similar material.

Freshwater wetland - freshwater swamps, marshes, bogs and similar areas, other than forested wetlands, which are:

- (1) Of ten or more contiguous acres; or of less than 10 contiguous acres and adjacent to a surface water body, excluding any river, stream or brook, such that in a natural state, the combined surface area is in excess of 10 acres; and
- (2) Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.

Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition.

Functionally water-dependent uses - those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and that cannot be located away from these waters. The uses include, but are not limited to, commercial and recreational fishing and boating facilities, finfish and shellfish processing, fish-related storage and retail and

wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aids, basins and channels, shoreline structures necessary for erosion control purposes, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water that cannot reasonably be located or operated at an inland site, and uses that primarily provide general public access to coastal or inland waters. Recreational boat storage buildings are not considered to be a functionally water-dependent use.

Great pond - any inland body of water which in a natural state has a surface area in excess of ten acres, and any inland body of water artificially formed or increased which has a surface area in excess of thirty (30) acres except for the purposes of this Ordinance, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner,

Great pond classified GPA - any great pond classified GPA, pursuant to 38 M.R.S.A. Article 4-A Section 465-A. This classification includes some, but not all impoundments of rivers that are defined as great ponds.

Ground cover – small plants, fallen leaves, needles and twigs, and the partially decayed organic matter of the forest floor.

Hazard tree - a tree with a structural defect, combination of defects, or disease resulting in a structural defect that under the normal range of environmental conditions at the site exhibits a high probability of failure and loss of a major structural component of the tree in a manner that will strike a target. A normal range of environmental conditions does not include meteorological anomalies, such as, but not limited to: hurricanes; hurricane-force winds; tornados; microbursts; or significant ice storm events. Hazard trees also include those trees that pose a serious and imminent risk to bank stability. A target is the area where personal injury or property damage could occur if the tree or a portion of the tree fails. Targets include roads, driveways, parking areas, structures, campsites, and any other developed area where people frequently gather and linger.

Height of a structure - the vertical distance between the mean original (prior to construction) grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas, and similar appurtenances that have no floor area.

Home occupation - an occupation or profession which is customarily conducted on or in a residential structure or property and which is 1) clearly incidental to and compatible with the residential use of the property and surrounding residential uses; and 2) which employs no more than two (2) persons other than family members residing in the home.

Increase in nonconformity of a structure - any change in a structure or property which causes further deviation from the dimensional standard(s) creating the nonconformity such as, but not limited to, reduction in water body, tributary stream or wetland setback distance, increase in lot coverage, or increase in height of a structure. Property changes or structure expansions which either meet the dimensional standard or which cause no further increase in the linear extent of nonconformance of the existing structure shall not be considered to increase nonconformity. For example, there is no increase in nonconformity with the setback requirement for water bodies, wetlands, or tributary streams if the expansion extends no further into the required setback area than does any portion of the existing nonconforming structure. Hence, a structure may be expanded laterally provided that the expansion extends no closer to the water body, tributary stream, or wetland than the closest portion of the existing structure from that water body, tributary stream, or wetland. Included in this allowance are expansions which in-fill irregularly shaped structures.

Individual private campsite - an area of land which is not associated with a campground, but which is developed for repeated camping by only one group not to exceed ten (10) individuals and which involves site improvements which may include but not be limited to a gravel pad, parking area, fire

place, or tent platform.

Industrial - The assembling, fabrication, finishing, manufacturing, packaging or processing of goods, or the extraction of minerals.

Institutional – a non-profit or quasi-public use, or institution such as a church, library, public or private school, hospital, or municipally owned or operated building, structure or land used for public purposes.

Lot area - The area of land enclosed within the boundary lines of a lot, minus land below the normal high-water line of a water body or upland edge of a wetland and areas beneath roads serving more than two lots.

Marina - a business establishment having frontage on navigable water and, as its principal use, providing for hire offshore moorings or docking facilities for boats, and which may also provide accessory services such as boat and related sales, boat repair and construction, indoor and outdoor storage of boats and marine equipment, bait and tackle shops and marine fuel service facilities.

Market value - the estimated price a property will bring in the open market and under prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

Mineral exploration - 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 - 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 to transport the product removed, away from the extraction site.

Minimum lot width - the closest distance between the side lot lines of a lot. When only two lot lines extend into the shoreland zone, both lot lines shall be considered to be side lot lines.

Multi-unit residential - a residential structure containing three (3) or more residential dwelling units.

Native – indigenous to the local forests.

Non-conforming condition – non-conforming lot, structure or use which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendment took effect.

Non-conforming lot - a single lot of record which, at the effective date of adoption or amendment of this Ordinance, does not meet the area, frontage, or width requirements of the district in which it is located.

Non-conforming structure - a structure which does not meet any one or more of the following dimensional requirements; setback, height, lot coverage or footprint, but which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.

Non-conforming use - use of buildings, structures, premises, land or parts thereof which is not allowed in the district in which it is situated, but which is allowed to remain solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.

Non-native invasive species of vegetation - species of vegetation listed by the Maine Department of Agriculture, Conservation and Forestry as being invasive in Maine ecosystems and not native to Maine ecosystems.

Normal high-water line (non-tidal waters) - 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. Areas contiguous with rivers and great ponds that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river or great pond during the period of normal high-water are considered part of the river or great pond.

Outlet stream - any perennial or intermittent stream, as shown on the most recent highest resolution version of the national hydrography dataset available from the United States Geological Survey on the website of the United States Geological Survey or the national map, that flows from a freshwater wetland.

Person - an individual, corporation, governmental agency, municipality, trust, estate, partnership, association, two or more individuals having a joint or common interest, or other legal entity.

Piers, docks, wharves, bridges and other structures and uses extending over or beyond the normal high-water line or within a wetland.

Temporary: Structures which remain in or over the water for less than seven (7) months in any period of twelve (12) consecutive months.

Permanent: Structures which remain in or over the water for seven (7) months or more in any period of twelve (12) consecutive months.

Primitive Trail - A public or private path or trail, with a tread path no more than three feet in width and an overall clearance of four feet in width, established for walking, hiking, nonmotorized biking purposes, snowshoeing, or cross-country skiing (CEO permit required).

Principal structure - a structure other than one which is used for purposes wholly incidental or accessory to the use of another structure or use on the same lot.

Principal use - a use other than one which is wholly incidental or accessory to another use on the same lot.

Public facility - any facility, including, but not limited to, buildings, property, recreation areas, and roads, which are owned, leased, or otherwise operated, or funded by a governmental body or public entity.

Recent floodplain soils - the following soil series as described and identified by the National Cooperative Soil Survey:

Fryeburg	Hadley	Limerick
Lovewell	Medomak	Ondawa
Alluvial	Cornish	Charles
Podunk	Rumney	Saco
Suncook	Sunday	Winooski

Recreational facility - a place designed and equipped for the conduct of sports, leisure time activities, and other customary and usual recreational activities, excluding boat launching facilities.

Recreational Trail - A thoroughfare or way across land or snow, used primarily for recreational purposes including, but not limited to, such uses as bicycling, Nordic (cross-country) skiing, day hiking, equestrian activities, jogging or similar fitness activities, trail biking, overnight and long-distance

backpacking, roller skating, in-line skating, dog sledding, running, snowmobiling, canoe and kayak portaging, and vehicular travel by motorcycle, four-wheel drive or all-terrain, off-road vehicles. Recreational trail use may be limited to foot, horse, or other nonmotorized means of transportation or motorized means of transportation or a combination of any of them. Recreational trails include primitive trails, multiple-use nonmotorized trails, and multiple-use trails, including motorized uses. A recreational trail is not a structure.

Recreational vehicle - a vehicle or an attachment to a vehicle designed to be towed, and designed for temporary sleeping or living quarters for one or more persons, and which may include a pick-up camper, travel trailer, tent trailer, camp trailer, and motor home. In order to be considered as a vehicle and not as a structure, the unit must remain with its tires on the ground, and must be registered with the State Division of Motor Vehicles.

Replacement system - a system intended to replace: 1.) an existing system which is either malfunctioning or being upgraded with no significant change of design flow or use of the structure, or 2.) any existing overboard wastewater discharge.

Residential dwelling unit - a room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time, and containing cooking, sleeping and toilet facilities. The term shall include mobile homes and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rented. Recreational vehicles are not residential dwelling units.

Riprap - rocks, irregularly shaped, and at least six (6) inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes of two (2) units horizontal to one (1) unit vertical or less.

River - a free-flowing body of water including its associated floodplain wetlands from that point at which it provides drainage for a watershed of twenty-five (25) square miles to its mouth. The Stroudwater River within the municipal boundaries of the City of Westbrook is considered a river.

Road - a route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles, excluding a driveway as defined.

Salt marsh - Areas of coastal wetland (most often along coastal bays) that support salt tolerant species, and where at average high tide during the growing season, the soil is irregularly inundated by tidal waters. The predominant species is saltmarsh cordgrass (*Spartina alterniflora*). More open areas often support widgeon grass, eelgrass, and Sago pondweed.

Salt meadow - Areas of a coastal wetland that support salt tolerant plant species bordering the landward side of salt marshes or open coastal water, where the soil is saturated during the growing season but which is rarely inundated by tidal water. Indigenous plant species include salt meadow cordgrass (*Spartina patens*) and black rush; common threesquare occurs in fresher areas.

Sapling - a tree species that is less than two (2) inches in diameter at four and one half (4.5) feet above ground level.

Seedling - a young tree species that is less than four and one half (4.5) feet in height above ground level.

Service drop - any utility line extension which does not cross or run beneath any portion of a water body provided that:

- (1) in the case of electric service

- (a) the placement of wires and/or the installation of utility poles is located entirely upon the premises of the customer requesting service or upon a roadway right-of-way; and
 - (b) the total length of the extension is less than one thousand (1,000) feet.
- (2) in the case of telephone service
- (a) the extension, regardless of length, will be made by the installation of telephone wires to existing utility poles, or
 - (b) the extension requiring the installation of new utility poles or placement underground is less than one thousand (1,000) feet in length.

Setback - the nearest horizontal distance from the normal high-water line of a water body or tributary stream, or upland edge of a wetland, to the nearest part of a structure, road, parking space or other regulated object or area.

Shore frontage - the length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline.

Shoreland zone - the land area located within two hundred and fifty (250) feet, horizontal distance, of the normal high-water line of any great pond or river; within 250 feet, horizontal distance, of the upland edge of a coastal wetland, including all areas affected by tidal action; within 250 feet of the upland edge of a freshwater wetland; or within seventy-five (75) feet, horizontal distance, of the normal high-water line of a stream.

Shoreline – the normal high-water line, or upland edge of a freshwater or coastal wetland.

Significant River Segments - See Appendix A or 38 M.R.S.A. section 437.

Storm-damaged tree - a tree that has been uprooted, blown down, is lying on the ground, or that remains standing and is damaged beyond the point of recovery as the result of a storm event.

Stream - a free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent , highest resolution version of the national hydrography dataset available from the United States Geological Survey on the website of the United States Geological Survey or the national map to the point where the stream becomes a river or where the stream meets the shoreland zone of another water body or wetland. When a stream meets the shoreland zone of a water body or wetland and a channel forms downstream of the water body or wetland as an outlet, that channel is also a stream.

Structure – anything temporarily or permanently located, built, constructed or erected for the support, shelter or enclosure of persons, animals, goods or property of any kind or anything constructed or erected on or in the ground. The term includes structures temporarily or permanently located, such as decks, patios, and satellite dishes. Structure does not include fences; poles and wiring and other aerial equipment normally associated with service drops, including guy wires and guy anchors; subsurface waste water disposal systems as defined in Title 30-A, section 4201, subsection 5; geothermal heat exchange wells as defined in Title 32, section 4700-E, subsection 3-C; or wells or water wells as defined in Title 32, section 4700-E, subsection 8.

Substantial start - completion of thirty (30) percent of a permitted structure or use measured as a percentage of estimated total cost.

Subsurface sewage disposal system – any system designed to dispose of waste or waste water on or beneath the surface of the earth; includes, but is not limited to: septic tanks; disposal fields; grandfathered cesspools; holding tanks; pretreatment filter, piping, or any other fixture, mechanism, or apparatus used for those purposes; does not include any discharge system licensed under 38 M.R.S.A. section 414, any surface waste water disposal system, or any municipal or quasi-municipal sewer or waste water treatment system.

Sustained slope - a change in elevation where the referenced percent grade is substantially maintained or exceeded throughout the measured area.

Tidal waters – all waters affected by tidal action during the highest annual tide.

Timber harvesting - the cutting and removal of timber for the primary purpose of selling or processing forest products. “Timber harvesting” does not include the cutting or removal of vegetation within the shoreland zone when associated with any other land use activities. The cutting or removal of trees in the shoreland zone on a lot that has less than two (2) acres within the shoreland zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to Section 15 (P), *Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting*.

Trail Spur - A pathway, extending toward the shoreline from a primary nonmotorized trail. Such pathways shall extend, generally, perpendicular from the primary trail but shall be constructed as a winding pathway.

Tree - a woody perennial plant with a well-defined trunk(s) at least two (2) inches in diameter at four and one half (4.5) feet above the ground, with a more or less definite crown, and reaching a height of at least ten (10) feet at maturity.

Tributary stream – means a channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil, parent material or bedrock; and which is connected hydrologically with other water bodies. “Tributary stream” does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by human activity.

This definition does not include the term "stream" as defined elsewhere in this Ordinance, and only applies to that portion of the tributary stream located within the shoreland zone of the receiving water body or wetland.

Upland edge of a wetland - the boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation and/or the highest annual tide level, including all areas affected by tidal action. 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) feet) tall or taller.

Vegetation - all live trees, shrubs, and other plants including without limitation, trees both over and under 4 inches in diameter, measured at 4 1/2 feet above ground level.

Velocity zone - an area of special flood hazard extending from offshore to the inland limit of the primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

Volume of a structure - the volume of all portions of a structure enclosed by roof and fixed exterior walls as measured from the exterior faces of these walls and roof.

Water body - any great pond, river or stream.

Water crossing - any project extending from one bank to the opposite bank of a river, stream, tributary stream, or wetland whether under, through, or over the water or wetland. Such projects include but may not be limited to roads, fords, bridges, culverts, water lines, sewer lines, and cables as well as maintenance work on these crossings. This definition includes crossings for timber harvesting equipment and related activities.

Wetland - a freshwater or coastal wetland.

Woody Vegetation - live trees or woody, non-herbaceous shrubs.

(Added by Ord. of 9/14/2015, 4/24/2017)

402 Flood Plain Zone

4021 **Purpose and Establishment.** Areas of the city are subject to periodic flooding that cause serious damage to properties. Relief is available in the form of flood insurance, as authorized by the National Flood Insurance Act of 1968.

The City has chosen to become a participating community in the National Flood Insurance Program, and has agreed to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as set forth in this Floodplain Management Ordinance.

By adopting this Ordinance, the City intends 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 has the legal authority to adopt land use and flood control measures to reduce future flood losses pursuant to Title 30-A M.R.S.A., Sections 3001-3007, 4352 and 4401-4407.

The National Flood Insurance Program, established in the aforesaid Act, provides that those areas of the city having a special flood hazard be identified by the Federal Emergency Management Agency, and that floodplain management measures be applied in such 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 Westbrook, 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 Westbrook, Maine, Cumberland County,” dated July, 1980, with accompanying “Flood Insurance Rate Map” dated January 2, 1981, and “Flood Boundary and Floodway Map,” dated January 2, 1981, which are hereby adopted by reference and declared to be a part of this Ordinance.

4022 **Permit Required.** Before any construction or other development (as defined in section 402.13 of this Ordinance), including the placement of manufactured homes, begins within any areas of special flood hazard established in section 402.1 of this Ordinance, a Flood Hazard Development Permit shall be obtained from the Code Enforcement Officer. This permit shall be in addition to any other permits that may be required pursuant to the codes and ordinances of the City of Westbrook.

4023 **Application for Permit.** The application for a Flood Hazard Development Permit shall be submitted to the Code Enforcement Officer, and shall include:

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

(Items H-K(2), below, apply to only new construction and substantial improvements.)

H. The elevation in relation to the National Geodetic Vertical Datum (NGVD), or to a locally established datum in Zone A only, of the:

- (1) Base flood at the proposed site of all new or substantially improved structures, which is determined:

- (a) In zones A1-30, from data contained in the “Flood Insurance Study – City of Westbrook, Maine,” as described in Section 402.1 of this Ordinance, or
 - (b) In zone A:
 - (i) 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 402.6.K. and Section 402.3.D. of this Ordinance.
 - (ii) 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 Registered Land Surveyor in the State of Maine or Professional Engineer, if the floodplain boundary has a significant correlation to the elevation contour line(s); or in the absence of all other data,
 - (iii) To be the elevation of the ground at the intersection of the floodplain boundary and a line perpendicular to the shoreline which passes along the ground through the site of the proposed building.
- (2) Highest and lowest grades at the site adjacent to the walls of the proposed building,
 - (3) Lowest floor, including basement; and whether or not such structures contain a basement, and,
 - (4) Level, in the case of non-residential structures only, to which the structure will be floodproofed.
- I. A description of an elevation reference point established on the site of all developments for which elevation standards apply, as required in Section 402.6 of this Ordinance,
 - J. A written certification by a Registered Land Surveyor in the State of Maine, Professional Engineer or Architect, that the base flood elevation and grade elevations shown on the application are accurate,
 - K. The following certifications as required in Section 402.6 by a Professional Engineer or Architect:
 1. 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 floodproofing criteria of Section 402.3.H.(4).; Section 402.6.G.; and other applicable standards in Section 402.6 of this Ordinance,

2. A Hydraulic Openings Certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of Section 402.6.L.(2).(a).
 3. A certified statement that bridges will meet the standards of Section 402.6.M. of this Ordinance,
 4. A certified statement that containment walls will meet the standards of Section 402.6.N. of this Ordinance.
- L. A description of the extent to which any water course will be altered or relocated as a result of the development, and,
- M. A statement of construction plans describing in detail how each applicable development standard in Section 402.6 of this Ordinance will be met.

4024 **Application Fee and Expert's Fee.** A non-refundable application fee of \$50.00 shall be paid to the Code Enforcement Officer, and a copy of a receipt shall accompany the application.

An additional fee may be charged if the Code Enforcement Officer needs the assistance of a Professional Engineer, registered in the State of Maine, or other expert. Applicant shall pay the expert's fee in full within ten (10) days after the City submits a bill to the applicant. Failure to pay the bill shall constitute a violation of the Ordinance and be grounds for the issuance of a stop work order.

An expert shall not be hired by the municipality at the expense of an applicant until the applicant has either consented to such hiring in writing or has 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.

4025 **Review Standards for Flood Hazard Development Permit Applications.** The Code Enforcement Officer shall:

- A. Review all applications for the Flood Hazard Development Permit to ensure that proposed developments are reasonably safe from flooding and to determine that all pertinent requirements of Section 402.6 of this Ordinance have been, or will be, met,
- B. Utilize, in the review of all Flood Hazard Development Permit applications:
 - (1) The base flood data contained in the "Flood Insurance Study - City of Westbrook, Maine," as described in Section 402.1 of this Ordinance,

- (2) In special flood hazard areas where base flood elevation data are not provided, the Code Enforcement Officer shall obtain, review and reasonably utilize any base flood elevation and floodway data from federal, state, or other technical sources, including information obtained pursuant to Section 402.3.H.(1).(b).; Section 402.6.K.; and Section 402.8.D., in order to administer Chapter IV of this Ordinance, and,
 - (3) When the community establishes a base flood elevation in a Zone A by methods outlined in Section 402.3.H.(1).(b)., the community shall submit that data to the Maine Floodplain Management Program in the State Planning Office.
- C. Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in Section 402.1 of this Ordinance,
- D. 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 limited to Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334,
- E. Notify adjacent municipalities, the Department of Environmental Protection, and the Maine Floodplain Management Program 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,
- F. If the application satisfies the requirements of this Ordinance, approve the issuance of one of the following Flood Hazard Development Permits based on the type of development:
- (1) A two part Flood Hazard Development Permit for elevated structures. Part I shall authorize the applicant to build a structure up to, and including, the first horizontal floor only above the base flood level. At that time, the applicant shall provide the Code Enforcement Officer with a Elevation Certificate completed by a Professional Land Surveyor, Professional Engineer, registered in the State of Maine, or Architect based on the Part I permit construction, "as built", for verifying compliance with the elevation requirements of Section 402.6, paragraphs F, G, or H. Following review of the Elevation Certificate data, which shall take place within 72 hours of receipt of the application, the Code Enforcement Officer shall issue Part II of the Flood Hazard Development Permit. Part II shall authorize the applicant to complete the construction project, or,
 - (2) 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 402.6.G.(l).(a).(b). and (c) of this Ordinance. The application for this permit shall include a Floodproofing Certificate signed by a registered Professional Engineer, registered in the State of Maine, or Architect, or

- (3) A Flood Hazard Development Permit for Minor Development for all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. Minor development also includes, but is not limited to: accessory structures as provided for in Section 402.6.J. of this Ordinance, 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.

- G. Maintain, as a permanent record, copies of all Flood Hazard Development Permit Applications, corresponding permits issued, and data relevant thereto. This includes reports of the Board of Appeals on variances granted under the provisions of Section 402.9 this Ordinance, and copies of Elevation Certificates, Floodproofing Certificates, Certificates of Compliance and certifications of design standards required under the provisions of Sections 402.3, 402.6, and 402.7 of this Ordinance.

402.6 **Development Standards.** All developments in areas of special flood hazard shall meet the following applicable standards:

- A. All Development. All development shall:

- (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 flood 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) Zones 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 402.3.H.(1).(b).; Section 402.5.B.; or Section 402.8.D. of this Ordinance.
- G. Non Residential. New construction or substantial improvement of any non-residential structure located within:
- (1) Zones 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 Professional Engineer, registered in the State of Maine, 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 402.3.K. 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 402.3.H.(1).(b).; Section 402.5.B; or Section 402.8.D. of this Ordinance, together with attendant utility and sanitary facilities meet the floodproofing standards of Section 402.6.G.(1). of this Ordinance.

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

(1) Zones 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:
 - (i) Over-the-top ties anchored to the ground at the four corners of the manufactured home, plus two additional ties per side at intermediate points (manufactured homes less than 50 feet long require one additional tie per side),
 - (ii) Frame ties at each corner of the home, plus five additional ties along each side at intermediate points (manufactured homes less than 50 feet long require four additional ties per side),
 - (iii) All components of the anchoring system, as described in Section 402.6.H.(1).(c).(i)&(ii) of this Ordinance, shall be capable of carrying a force of 4800 pounds.

(2) Zone A shall:

- (a) Be elevated on a permanent foundation, as described in Section 402.6.H.(1).(b). of this Ordinance, 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 402.3.H.(1).(b).; Section 402.5.B; or Section 402.8.D. of this Ordinance, and
- (b) Meet the anchoring requirements of Section 402.6.H.(1).(c). of this Ordinance.

I. Recreational Vehicles. Recreational Vehicles located within:

(1) Zones A1-30 shall either:

- (a) Be on the site for fewer than 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 402.6.H.(1). of this Ordinance.

J. Accessory Structures. Accessory Structures, as defined in Section 402.13 of this Ordinance, located within Zones A1-30 and A, are exempt from the elevation criteria of Section 402.6.F. & G. of this Ordinance, if all the other requirements of Section 402.6 of this Ordinance and the following are met.

- (1) Are 500 square feet or less and have a value less than \$3,000,
- (2) Have unfinished interiors and not be used for human habitation,
- (3) Have hydraulic openings, as specified in Section 402.6.L.(2). of this Ordinance, in at least two different walls of the accessory structure,
- (4) Are located outside the floodway,
- (5) When possible are constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed farther from the source of flooding than the primary structure, and
- (6) Contain 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 and development including fill, new construction, substantial improvement, and other development shall not be permitted within a regulatory floodway that is designated on the City's Flood Boundary and Floodway Map, unless a technical evaluation, certified by a Professional Engineer, registered in the State of Maine, is provided. This evaluation shall demonstrate 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 and other development including fill, new construction, and substantial improvement shall not be permitted in the floodway, as determined in section 402.6.K.(3). of this Ordinance, unless a technical evaluation certified, by a Professional Engineer, registered in the State of Maine, is provided. This evaluation shall demonstrate 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 the channel of the river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain, as measured from the normal high water mark to the upland limit of the floodplain.
- 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 402.6 of this Ordinance, including the elevation requirements of Section 402.6, paragraphs F, G, or H of this Ordinance 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 402.13 of this Ordinance,
 - (2) Enclosed areas are 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 Professional Engineer, registered in the State of Maine, or Architect, or
 - (b) Meet or exceed the following minimum criteria:
 - (i) Contain a minimum of two openings having a total net area of not less than one square inch for every square foot of the enclosed area,
 - (ii) The bottom of all openings shall be below the base flood elevation and no higher than one foot above the lowest grade,
 - (iii) 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 foot above the base flood elevation, and
- (2) A Professional Engineer, registered in the State of Maine, certifies that:
 - (a) The structural design and methods of construction meet the elevation requirements of this section and the floodway standards of Section 402.6.K. of this Ordinance, and
 - (b) The foundation and attached superstructure 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 Zones A1-30 and A shall:

- (1) Elevate the containment wall to at least one (1) foot above the base flood elevation,
- (2) Contain structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy,
- (3) Be certified by a Professional Engineer, registered in the State of Maine, 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 402.3.K. of this Ordinance.

O. Wharves, Piers and Docks. New construction or substantial improvement of wharves, piers, and docks is 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 Professional Engineer, registered in the State of Maine, shall develop or review the structural design, specifications, and plans for the construction.

4027 **Certificate of Compliance.** No land in a special flood hazard area shall be occupied or used and no structure which has been constructed or substantially improved shall be occupied until a Certificate of Compliance is issued by the Code Enforcement Officer, subject to the following provisions:

- A. For New Construction or Substantial Improvement of any elevated structure, the applicant must submit to the Code Enforcement Officer, an Elevation Certificate completed by a Registered Land Surveyor, Professional Engineer, registered in the State of Maine, or Architect, for compliance with Section 402.6, paragraphs F., G., or H. of this Ordinance.
- B. The applicant shall submit written notification to the Code Enforcement Officer that the development is complete and complies with the provisions of this Ordinance.
- C. The Code Enforcement Officer, within 10 working days of the receipt of the above information, 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.

4028 **Review of Subdivision and Development Proposals.** The Planning Board shall assure the following when reviewing subdivisions and developments requiring review under federal, state, or local law, and all projects on five (5) or more disturbed acres, or manufactured home parks divided into two or more lots:

- A. The proposal is consistent with the need to minimize flood damage,
- B. Public utilities and facilities, such as sewer, gas, electrical and water systems, are located and constructed to minimize or eliminate flood damage,
- C. Adequate drainage is provided so as to reduce exposure to flood hazards,
- D. Applications 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. 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, be constructed in accordance with Section 402.6 of this Ordinance. Such requirement shall 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 condition of plan approval 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.

4029 **Appeals and Variances.** The Board of Appeals of the City of Westbrook may, upon written application of an aggrieved party, hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer in the administration of the provisions of this Ordinance.

The Board of Appeals may grant a variance from the requirements of this Ordinance, consistent with state law and the following criteria:

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

- B. Variances shall be granted only upon:
 - (1) A showing of good and sufficient cause, and,
 - (2) A determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, create nuisances, cause fraud or victimization of the public, conflict with existing local laws or ordinances,
 - (3) A showing that the issuance of the variance will not conflict with other state, federal or local laws or ordinances,
 - (4) A determination that failure to grant the variance would result in "undue hardship," which in this sub-section means:
 - (a) That the land in question cannot yield a reasonable return unless a variance is granted,
 - (b) That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood,
 - (c) That the granting of a variance will not alter the essential character of the locality,
 - (d) That the hardship is not the result of action taken by the applicant or a prior owner.

- C. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief. The Board of Appeals may impose conditions to a variance as it deems necessary.

- D. Variances may be issued for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that:
- (1) Other criteria of Section 402.9 and Section 402.6.K. of this Ordinance are met,
 - (2) The structure or other development is protected by methods that minimize flood damages during the base flood, and create no additional threats to public safety.
- E. Variances may be issued for the repair, reconstruction, rehabilitation, or restoration of Historic Structures upon the determination that:
- (1) The development meets the criteria of Section 402.9, paragraphs A. through D. above,
 - (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 Section 402.9, paragraphs A. through E. of this Ordinance shall be notified by the Board of Appeals in writing that:
- (1) The issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance, up to amounts as high as \$25 per \$100 of insurance coverage,
 - (2) Such construction below the base flood level 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.
- G. Procedure for Administrative Appeals. Administrative appeals will follow the procedure defined in Chapter VII, Section 703 of the City of Westbrook Zoning Ordinance.

402.10 Enforcement and Penalties.

- A. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance 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 Ordinance.
- C. Upon determination that a violation exists, the Code Enforcement Officer, in addition to any other actions, shall submit a declaration to the Administrator of the Federal Insurance Administration requesting a denial of flood insurance. The 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,
 - (5) A clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

402.11 **Validity and Severability.** If any section or provision of this Ordinance is declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.

402.12 **Conflict with Other Ordinances.** This Ordinance shall not in any way impair or remove the need for compliance with any other applicable rule, ordinance, regulation, bylaw, permit, or provision of law. Where this Ordinance imposes a greater restriction upon the use of land, buildings, or structures, the provisions of this Ordinance shall control.

402.13 **Definitions.** Unless specifically defined below, words and phrases used in this Ordinance shall have the same meaning as they have at common law, and shall be defined to give this Ordinance its most reasonable application. Where definitions in this Ordinance conflict with other definitions in the Westbrook Zoning Ordinance, the definitions in this Ordinance shall take precedence within flood plain zones.

Words used in the present tense include the future, the singular number includes the plural, and the plural number includes the singular. The word "may" is permissive; "shall" is mandatory and not discretionary.

- 402.13.1 **Accessory Structure.** A small detached structure that is incidental and subordinate to the principal structure.
- 402.13.2 **Adjacent Grade.** The natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
- 402.13.3 **Area of Special Flood Hazard.** The land in the floodplain having a one (1) percent or greater chance of flooding in any given year, as specifically identified in the Flood Insurance Study cited in Section 402.1 of this Ordinance.
- 402.13.4 **Base Flood.** The flood having a one (1) percent chance of being equaled or exceeded in any given year, commonly called the 100-year flood.
- 402.13.5 **Basement.** Any area of the building having its floor subgrade (below ground level) on all sides.
- 402.13.6 **Building.** See Structure.
- 402.13.7 **Certificate of Compliance.** A document signed by the Code Enforcement Officer stating that a structure is in compliance with all of the provisions of this Ordinance.
- 402.13.8 **Code Enforcement Officer.** Any person or board responsible for performing the inspection, licensing, and enforcement duties required by a particular statute or ordinance.
- 402.13.9 **Development.** Any change caused by individuals or entities to improved or unimproved real estate, including but not limited to the construction of buildings or other structures; the construction of additions or substantial improvements to buildings or other structures; mining, dredging, filling, grading, paving, excavation, 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.
- 402.13.10 **Elevated Building.** A non-basement building
- A. In Zones A1-30 or A, buildings constructed to have the top of the elevated floor elevated above the ground level by means of pilings, columns, post, 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 Zones A1-30 or A, Elevated Building also includes a building elevated by means of fill or solid foundation perimeter walls with hydraulic openings sufficient to facilitate

the unimpeded movement of flood waters, as required in section 402.6.L. of this Ordinance.

- 402.13.11 **Elevation Certificate.** An official form (FEMA Form 81-31, 07/00, as amended) that is used to verify compliance with the floodplain management regulations of the National Flood Insurance Program, and is required for purchasing flood insurance.
- 402.13.12 **Flood or Flooding:**
- A. A general and temporary condition of partial or complete inundation of normally dry land areas from:
- (1) The overflow of inland or tidal waters,
 - (2) The unusual and rapid accumulation or runoff of surface waters from any source.
- B. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or water currents 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 paragraphs A. (1) and (2) of this definition.
- 402.13.13 **Flood Elevation Study.** An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.
- 402.13.14 **Flood Insurance Rate Map (FIRM).** An official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.
- 402.13.15 **Flood Insurance Study.** See Flood Elevation Study.
- 402.13.16 **Floodplain or Flood-prone Area.** Any land area susceptible to being inundated by water from any source (see flooding).
- 402.13.17 **Floodplain Management.** The operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.
- 402.13.18 **Floodplain Management Regulations.** Zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance, and erosion control ordinance) and other applications of the police power. The term describes state or local regulations, which provide standards for the purpose of flood damage prevention and reduction.

- 402.13.19 **Floodproofing.** Any combination of structural and non-structural additions or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and contents.
- 402.13.20 **Floodway.** See Regulatory Floodway.
- 402.13.21 **Floodway Encroachment Lines.** The lines marking the limits of floodways on federal, state, and local floodplain maps.
- 402.13.22 **Freeboard.** A factor of safety, usually expressed in feet above a flood level, for purposes of floodplain management. Freeboard compensates for 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.
- 402.13.23 **Functionally Dependent Use.** A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are 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.
- 402.13.24 **Historic Structure.** Any structure that is:
- A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register,
 - B. Certified, or preliminarily determined by the Secretary of the Interior, as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district,
 - C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior, or
 - D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (1) By an approved state program, as determined by the Secretary of the Interior, or
 - (2) Directly by the Secretary of the Interior, in states without approved programs.
- 402.13.25 **Locally Established Datum.** An elevation established for a specific site to which all other elevations at the site are referenced. This elevation is generally not referenced to the National Geodetic Vertical Datum (NGVD) or any other established datum and is used in areas where Mean Sea Level data is too far from a specific site to be practically used.

- 402.13.26 **Lowest Floor.** The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for vehicle parking, building access or storage in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements described in section 402.6.L. of this Ordinance.
- 402.13.27 **Manufactured Home.** A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes, the term manufactured home also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.
- 402.13.28 **Manufactured Home Park or Subdivision.** A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
- 402.13.29 **Mean Sea Level.** For purposes of the National Flood Insurance Program, 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.
- 402.13.30 **Minor Development.** All development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions whose value is less than 50% of the market value of the structure. It also includes, but is not limited to: accessory structures as provided for in Section 402.6.J. of this Ordinance, 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.
- 402.13.31 **National Geodetic Vertical Datum (NGVD).** 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)".
- 402.13.32 **New Construction.** Structures for which the "start of construction" commenced on or after the effective date of the initial floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.
- 402.13.33 **100-year flood.** See Base Flood.
- 402.13.34 **Recreational Vehicle.** A vehicle that is:
- A. Built on a single chassis,
 - B. 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
- D. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

402.13.35 **Regulatory Floodway:**

- A. The channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot, and
- B. When not designated on the community's Flood Boundary and Floodway Map, it is considered to be the channel of a 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.

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

402.13.37 **Special Flood Hazard Area.** See Area of Special Flood Hazard.

402.13.38 **Start of Construction.** 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 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 excavation stage; 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 part of the main 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, or modification of any construction element, whether or not that alteration affects the external dimensions of the building.

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

402.13.40 **Substantial Damage.** Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

402.13.41 **Substantial Improvement.** Any reconstruction, rehabilitation, addition to, 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. The term, however, does not include either:

- A. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- B. Any alteration of a Historic Structure, provided that the alteration does not preclude the structure's continued designation as a historic structure, and provided that a variance is obtained from the Board of Appeals.

402.13.42 **Variance.** A grant of relief by the Board of Appeals from the terms of a floodplain management regulation.

402.13.43 **Violation.** The failure of a structure or development to comply with a community's floodplain management regulations.

402.14 **Abrogation.** This Ordinance repeals and replaces any floodplain ordinance previously enacted to comply with the National Flood Insurance Act of 1968 (P.L. 90-488, as amended).

(Ord. of 12-13-04)

403 Village Review Overlay Zone

403.1 Purpose.

- A. The Westbrook Comprehensive Plan calls attention to both national and local historic district properties. A survey by Greater Portland Landmarks identified potential national historic districts and four local districts. The Village Review Overlay Zone, corresponding to these areas, will provide architectural guidance to property owners within the zone. No change to the exterior of an existing building, no addition to an existing building, or any new construction shall occur in the Village Review Overlay Zone without the approval of either City Staff or the Planning Board. This section will guide owners in the maintenance of important architectural qualities of the property, or creating new ones that relate to surrounding properties.
- B. As a supplement to the Village Review Overlay Zone regulations and within the area designated as the Downtown District, it is hereby declared to be the intent of this article to establish design and development standards for the Downtown District, hereinafter called the "Downtown". The purpose of this article is to foster and strengthen economic vitality in the city's Downtown while respecting and enhancing the special character of the existing development in the area.
1. The Downtown is a compact assembly of storefront buildings, short walkable blocks, mixed uses, pedestrian amenities, and consolidated on- and off-street parking as well as residential developments.
 2. The Downtown is especially vulnerable to intrusion from incompatible uses and physical development practices. The Downtown is so important and significant to the city that it justifies a special set of regulations designed to protect and enhance its character when considering new development.
 3. The purpose of this article is to establish requirements for building and site design for new developments and for the modification of existing developments within the Downtown.
 4. This article is intended to protect the existing character of the downtown and encourage orderly development in accordance with the comprehensive plan for the City of Westbrook and the 2009 Downtown Streetscape Planning Study by Wilbur Smith Associates & MRLD.
 5. The following principles serve as the foundation for this article:
 - a. Efficient use of land and services.
 - b. A mix of land uses which strengthen opportunities for economic vitality and support pedestrian activity as well as housing opportunities.
 - c. Provide for community gathering places and pedestrian/visitor amenities.
 - d. Maintain and expand a distinct storefront character for commercial properties associated with the Downtown, specifically two- or more story tall buildings, rectangular in mass with complementary design features.
 - e. Maintain and enhance the area's character through design standards
 - f. Increase pedestrian activity through the enhanced character, comfort, and interest of the pedestrian environment.
 - g. Importance of protecting existing historical properties and resources.

403.2 Area of Zones.

- A. Village Review Overlay Zone. The area to be included in the “Village Review Overlay Zone” (VROZ) is depicted on the Westbrook Zoning Map.
- B. Downtown District. For the area included in the “Downtown District” within the VROZ, see the Westbrook Zoning Map.
- C. Heart. Enhanced design standards are included for a sub-area within the Downtown District termed the “Heart” of Downtown. The “Heart” is defined as properties fronting along Main Street from William Clarke Drive to Spring Street, or included in the “Downtown Housing Overlay” southerly of the Presumpscot River.

403.3 **Applicability.**

- A. For VROZ properties, when a permit from the Code Enforcement Office is required, the work to be performed will be reviewed subject to the standards within Section 403. Areas to be reviewed will include:
 - 1. Exterior alterations to the appearance of an existing building, which may include but are not limited to the installation of new or replacement siding, windows or other architectural features;
 - 2. Signage; (Sign applications are exempt from the VROZ application fee and abutter notification requirements.)
 - 3. Changing the use within a building which requires alterations to the storefront appearance of an existing building;
 - 4. Building a new structure;
 - 5. Additions to an existing building.

403.4 **General Factors.**

- A. The following general factors shall be considered in the review of VROZ application.
 - 1. The applicant shall incorporate the U.S. Secretary of Interior's Standards and Practices and Guidelines *for Preservation, Restoration or Reconstruction*, a copy of which is on file in the City Planner’s Office, in the design.
 - 2. The distinguishing qualities, character or stylistic features of the structure must be preserved, including features which have taken on historic significance in their own right. All structures must be recognized as products of their own time.
 - 3. Historic Significance is defined as being associated with events that have contributed to the formation and development of the City of Westbrook, or with the lives of people who have been important to the community, or with the lives of people who have made a contribution to the broader patterns of our common history.
 - 4. Any building, or any part or appurtenance thereof, including, but not limited to, walls, fences, light fixtures, steps, driveways, and parking areas may only be moved, constructed, reconstructed, or altered in a manner that will preserve their architectural significance. Where repair or replacement is considered, any new material used must be consistent with previous materials.

Architectural Significance is defined by whether or not a building or structure embodies distinctive characteristics of a type, period or method of construction, or represents the work of a master architect or builder, or possesses high artistic values.

403.5 Criteria.

A. Visual Factors. The following visual factors shall be considered in the review of a VROZ application.

1. Scale of the Building. The scale of the building depends on its overall size, its mass in relationship to the open space around it, and the size of its doors, windows, porches and balconies. The scale of a building, and its windows, doors, porches and balconies must be compatible with its site and the proportions of any existing features of the building, where applicable. In addition, the scale of a building must be compatible with adjacent properties and buildings in its neighborhood.
2. Height. Change in the building height can have a negative impact on how a street appears. While maintaining a particular height is not required, changes in height must be compatible with the streetscape, adjacent buildings and the neighborhood.
3. Rhythm of Front Facades. In reviewing any facade, the pattern of doors, windows and wall surface, their height and width, should be compatible with the neighboring structures.
4. Relationship of Facade Shapes and Materials. The relationship of the facade shapes and materials should be considered in relation to the structure's context within the neighborhood significance, as defined. In particular, the rhythm of shapes, pitch, and orientation to the street on which the structure fronts should be maintained. Facades shall not be significantly altered or interrupted without Staff or Planning Board review and approval.

Neighborhood Significance is defined as contributing to the creation of a physical setting that represents a period in time that is important to the evolution of the City. It is understood that the physical setting of a structure(s), which is comprised of buildings, landscape features and open space, and other natural and architectural features, is an important factor in creating a sense of history.

Examples of neighborhood significance are as follows:

- a. A group of buildings that are similarly constructed and/or designed by a particular individual important in the City's history
- b. A group of buildings that are of similar or significant architectural styles
- c. A group of buildings whose location, layout on the property or size serves as an important element in the neighborhood.

403.6 Demolition Approval.

A. In order to demolish or remove a building within the Village Review Overlay Zone, a property owner must first obtain a unanimous recommendation from the Village Review Overlay Zone Committee. If the Village Review Overlay Zone Committee is not unanimous in their recommendation a Certificate of Approval is required from the Planning Board. The Planning Board shall either grant the certificate or declare a 90-day moratorium from demolition. The purpose of the moratorium is to:

1. Provide time to examine alternative ways to meet the owner's needs,
2. Provide an opportunity to relocate, rather than demolish, the structure,
3. Allow time to make a photographic survey of the structure for recording purposes.

If, at the end of the 90-day period no satisfactory alternative to demolition has been found, then the Planning Board shall authorize the Code Enforcement Officer to issue a Certificate of Approval to demolish the structure or relocate it.

403.7 Downtown District Regulations.

- A. The following regulations shall apply in the review of VROZ applications within the Downtown District as defined in this section, unless a waiver to any of the standards is approved by the reviewing authority.
1. In addition to the standards of 403.7, Residential Uses within the Downtown District are subject to the standards and restrictions as described in Section 301, City Center District.
 2. For all new building construction, minimum building height: two-stories or 26' (Maximum height: See Zoning District regulations)
 3. A licensed architect shall be required to aid in façade design efforts at the discretion of the reviewing authority.
 4. Building entrances should be defined with a recessed door and have other features that accentuate the entrance such as awnings and pedestrian scale lighting.
 5. Upper story windows should be oriented with proportions that relate to the overall building scale.
 6. Existing windows shall be maintained and not infilled or altered.
 7. Building colors shall represent natural building materials. Painting facades with complementary color tones accenting the architectural features of the building may be considered. Buildings should utilize (3) three colors or less. Brick and stone building materials are encouraged, but thoughtful and creative designs utilizing contemporary materials may be considered.
 8. For stairs and decks that front on a street, the stairs and decks shall be painted wood, colored composite material, sheathed wood members or other similar style material. Bare wood (pressure treated) decks and stairs are prohibited on street facing sides.
 9. Building materials shall be impact-resistant, durable materials that are visually appropriate to the streetscape. The following exterior siding materials are not permitted: EIFS, vinyl and aluminum. For existing structures conducting partial renovations, a waiver to this standard may be granted by the reviewing authority.
 10. Building material(s) shall be visually integrated and compatible on all sides. Buildings at street corners shall use consistent materials on both facades.
 11. To maintain visual vibrancy, 70% of facades facing streets shall be articulated with windows, transoms, signs, cornices, and other coordinated architectural features.
 12. Buildings with flat roofs shall have a defined cornice at the roofline to offer architectural aesthetic borders.
 13. Loading/Service areas, Storage, Drive-Thru's, and other utility components shall be accessed from the rear of the building to maintain a consistency of use and a pedestrian orientation of the streetscape. However, where buildings have a 'rear of the building'

that is highly visible from a street, access drive, or public lands, buildings must be designed like a front face with sufficient screening or masking of service areas.

a. Trash receptacles should be located internal to buildings; however, if outdoor trash receptacles are used, they shall be in an enclosed/screened area that visually fits its surroundings.

14. Awnings – Material required – Canvas or metal. Colors – Dark based colors. Height – Bottom of awning must be nine (9) feet above average grade of the public sidewalk beneath it and shall not extend more than four (4) feet into a public right of way and shall not extend into the curb line of a public street. Awnings may include the street address and or business name only. Any writing or signage on an awning must receive a sign permit. Please refer to Section 404 of this Land Use Ordinance for information on Awning Signage. Awnings cannot be internally illuminated or have lighting attached to the awning itself.

B. Heart Regulations. (Heart of Downtown) In addition to the Downtown District regulations, these additional standards shall apply to VROZ application within the Heart, as defined in this section.

1. Properties shall have commercial or retail on the first floor (street level) and mixed uses on the upper floors, which can include residential. No residential use will be permitted on street level, directly on the public right of way. For all new building construction, minimum building height: two-stories or 26’.
2. Where a property has frontage on both Main Street and a side street, buildings shall be oriented to Main Street and the primary entrance shall be on Main Street, unless demonstrated to the reviewing authority that an alternative is in the best interest of the Downtown and in keeping with the intent of the streetscape.
3. On the first floor (street level), windows shall be free of visual obstructions, that are not an integral part of the window, allowing views of merchandise and the viewing of activities within the building and to the street, to maintain a visually vibrant streetscape and increase connection to the pedestrian way, except for issue of confidentiality; avoid dark colored reflective window tints that obscure views into the building;
 - a. Existing buildings are not required to meet these standards, until the owner makes alterations to the building that require a permit. Current internal visual obstructions shall be removed to the greatest extent practical upon a change of use that no longer needs confidentiality. An alternate to visual transparency into the building, if a use would not work for full transparency, could be reviewed on a case by case basis, such as the use of architectural elements or an alternate window type/layout that still complements the scale and intent of the streetscape.
4. The creation of a new professional office that requires privacy measures shall incorporate such measures in the interior of the building and not as part of the exterior of the building. Privacy measures should be at least 3 feet back from the windows to allow for window displays.

403.8 Application Process.

A. **Submission Requirements.** The applicant shall submit to the Planning Office a permit application form which must attach the following information to describe the exterior changes or new construction to be in compliance with the regulations of Section 403:

1. Current elevations of all building facades that are to be affected.
 - a. Photographs of the existing structure, where applicable.
2. Proposed elevations of all building facades that are to be affected.
 - a. Include dimensions of facades/window/doors/signage/awning/etc. in square feet.
3. A list and description of all materials proposed to be used, as applicable.
4. A sample of the building materials, as applicable.

403.9 **Review Process.**

A. **Staff Review (Minor).** This level of review applies to changes to the exterior appearance of a building or an addition with a footprint or floor area equal to, or less than, three thousand (3,000) square feet to an existing building, unless in the opinion of the City Planner the application should be referred to the Planning Board. For the purposes of this Ordinance, attached or detached garages shall be classified as building additions. Minor changes can consist of changes to the exterior, such as installation of new windows, or the installation of new siding, or restorative alterations:

1. Upon receipt of a complete application, the City Planner shall send notice of the application to all owners of property that abut the property on which the construction activity is proposed. Where applicable, owners of property directly across a public or private way shall also receive notification of the application's receipt. The notice shall include the following:
 - a. Address of property.
 - b. Name of applicant.
 - c. General description of the work to be completed.
 - d. General description of the staff review process - review in accordance with Section 403.
 - e. General description for public comment on the application.
 - f. Description of the appeal process to the administrative decision.
2. Applications shall be approved, approved with conditions, or denied by the City Planner within thirty (30) days of the receipt of a complete application. The City Planner may consult with other appropriate City Staff, the Village Review Overlay Zone Committee, and/or other appropriate outside professionals. The City Planner shall review the application with the owner to make any changes to the plan that would make the proposal more consistent with the criteria of Section 403.

B. **Planning Board Review Process.** New buildings or additions over three thousand (3,000) square feet (footprint or floor area), or applications referred to the Planning Board by the City Planner shall be reviewed by the Planning Board. For the purposes of this Ordinance, the addition of new floors to an existing building shall be calculated using the footprint of each proposed floor. This calculation includes both usable and unusable space within the proposed addition.

1. The Board shall review the application with the owner, and work with the owner to make any changes to the plan that would make the proposal more consistent with the criteria in Section 403 as applicable.

2. Where Site Plan Review is necessary, the Village Review Overlay Zone Committee shall review the project and make a recommendation to the Planning Board. The Village Review Overlay Zone Committee shall review the application using the criteria of Section 403 as applicable.
3. Where Site Plan Review is necessary, the Planning Board shall use the criteria of Section 403 as part of any final action.
4. Once the Board is in receipt of a complete application and has made that determination, the application shall be approved, approved with conditions, or denied by the Planning Board.

403.10 Appeal.

- A. **Staff Review (Minor).** Within thirty (30) days of the City Planner's decision, the applicant or any other aggrieved party may appeal the decision of the City Planner to the Planning Board. The Planning Board will review the application de novo and issue its own decision on whether the application meets the requirements of Section 403 of the Ordinance.
- B. **Planning Board Review.** Within thirty (30) days of the Planning Board's vote, the applicant, abutting landowner or aggrieved party may appeal the decision of the Board to the Superior Court.

403.11 Fees.

- A. See Master Fee Schedule.

(Ord. of 01-08-07; 06-19-17)

404 Sign Regulations

404.1 **Purpose:** A sign or advertising device of any nature may not be erected on or affixed to any building except as specifically permitted by Section 404.

404.2 **Application Process.**

- A. **Permit Required.** Except as otherwise provided herein, a sign or advertising device of any nature may not be erected on a lot or affixed to the exterior of any building or structure without first obtaining a sign permit from the Code Enforcement Officer.
- B. **Computation of Area.** The area of a sign is determined by connecting the exterior points of the signboard or display elements, whichever is larger. It must include any open space between display elements. Display elements include letters, words, trademarks, medallions, symbols, and other devices intended to advertise or indicate the name of the premises, products or services available.(Ord. 8/21/06)
- C. **Submission Requirements.** All permit applications shall include:
 - (1) A color drawing showing all sign dimensions and building dimensions as necessary, types of materials, wording, colors to be used, along with any proposed illumination and a visual depiction of where the sign would be located on the site.
 - (2) Day and night renderings for illuminated signs may be required.
 - (3) A fee shall be assessed for the review and administration of all sign permits as set forth in the Master Fee Schedule.
- D. **Permit Decision.** Once the CEO is in receipt of a complete application, the CEO shall approve, approved with conditions, or deny the application.
 - (1) The applicant can proceed with sign installation once the Code Enforcement Officer has issued the sign permit.
 - (2) Applicant to contact the Code Enforcement Office once sign is install for verification by CEO that sign was installed per approved plans.

404.3 **General Provisions.**

- A. **Location/Setback.** A sign requiring a sign permit shall be set back a minimum of ½ the minimum yard depth of the underlying zoning district.
- B. **Illumination.** In all districts, a lighting fixture that directly or indirectly illuminates a sign, must be designed so that the light source itself is shielded from view and does not shine directly into the right-of-way or onto adjacent properties. This does not apply to signs illuminated by neon or illuminated tube type signs.
- C. **Highway Guide Signs.** The City of Westbrook or the Westbrook/Gorham Community Chamber of Commerce may erect a guide sign on each entrance to Westbrook. Each sign must be placed so as to be in view only from Routes 302, 25, 22, Spring Street, and Stroudwater Street. Maximum size shall be ten feet by twenty feet (10" x 20"), with directions focused on general areas rather than as advertisement for specific businesses.
- D. **Consolidated Service Club Sign.** Service clubs in the city may have a consolidated sign in any district on each of Routes 25, 302, 22, Spring Street and Stroudwater Street entering the city. Each sign must meet the following requirements:

- Size. May not exceed a height of ten (10) feet or a width of ten (10) feet. The sign area for each individual club may not exceed ten (10) square feet.
- Content. May contain only the name, symbol, meeting time, and meeting place of each service club.
- Illumination. May not be internally illuminated.

E. Temporary Signs on Public Property or within the Public Right-of-Way. Temporary signs shall be allowed on public property or within the public right-of-way, with no permit required, for a period of no more than twelve (12) weeks in a calendar year provided the following criteria are met:

1. Only noncommercial signage is permitted on public property or within the public right of way. Signs bearing a commercial message are prohibited.
2. A temporary sign may not exceed two feet by three feet (2'x3') in size.
3. A sign under this paragraph must include or be marked with the name and address of the individual, entity or organization that placed the sign within the public right-of-way and the date the sign was erected within the public right-of-way.
4. A temporary sign shall not result in a sight, traffic, health or welfare hazard to pedestrian or vehicular traffic due to placement, or manner of construction or display.
5. Any damage to public property or utilities that is caused by a temporary sign, including but not limited to sign installation, is the responsibility of the sign owner. The Director of Public Services shall determine whether damage has occurred and the cost of repair. The sign owner will then be notified in writing and payment is required within 30-days of the date of notice.
6. A temporary sign may not be placed within 30-feet of another temporary sign bearing the same or substantially the same message.
7. Illumination of a temporary sign is prohibited
8. For the purpose of temporary signs located within the Shoreland Zone, signs shall be considered to be a structure and must comply with all Shoreland Standards, including but not limited to, setbacks and permitting. No signs are permitted below the normal high-water line of a water body or within a wetland.
9. Signs shall not be erected or maintained on the following:
 - a. A traffic control sign or device
 - b. A public utility pole or fixture
 - c. A rotary traffic island
 - d. A tree on public property or within a public right-of-way
 - e. A control-of-access right of way area
 - f. A median less than six (6) feet wide
10. Temporary Signs are prohibited from being affixed to the grounds of the following locations:
 - a. Saccarappa Park, Warren Memorial Sculpture Garden, Riverbank Park,

Westbrook Commons.

- b. Temporary signs located on the Westbrook Community Center parcel (010-029B) unless such signs are set back a minimum of two hundred fifty (250) feet from Bridge Street.
- c. Public school grounds.
- d. Cemeteries.

11. Removal Process: Removal of unlawful signs shall be conducted in accordance with Maine State Statutes Title 23 Part 1 Chapter 21 Section 1917.

F. Banner Signs in the Public Right-of-Way.

1. The Director of Public Services may permit a system of decorative banners or banners identifying community events open to the public to be placed by a business group or civic group on light poles on public property along Main Street, William Clark Drive, or Bridge Street. Signage shall not be deemed permanent.
2. The Director of Public Services may permit a person or organization to install a banner sign across a public right-of-way under the following conditions:
 - a. Citywide Interest. The purpose of the banner must be to announce a function of citywide interest, including church events, concerts, fund-raisers or similar activities.
 - b. State and Local Law. The installation of the banner must meet all the requirements of state and local law. The person requesting the installation of the banner must provide a sketch showing the dimensions, method of installation, materials, and text of the banner. The Director of Public Services shall establish the dates of installation and removal.
 - c. See Chapter 29 Art. VII for Process on Banner Signs in the Public Right of Way.

G. Nonconforming Signs. Nonconforming signs shall be subject to the following provisions

1. **Continuance.** Nonconforming signs may continue to exist, so long as the use remains the same, the business remains open to the public, and if the signs are maintained in a safe, neat and clean conditions.
2. **Discontinuance.** Any sign, along with its supports, which no longer advertises an existing business, primary product sold, activity being conducted, or public notice, shall be taken down and removed by the owner, agent or person having beneficial use of the building or premises upon which such sign may be found within twelve (12) months after the activity has ceased.
3. **Alteration or Relocation.** The Code Enforcement Officer may approve the alteration or relocation of a lawfully nonconforming sign so long as it is reduced in size by at least twenty-five percent (25%) of the original sign size. This could be achieved through eliminating signs or reducing the overall size of the sign. Where there are additional alterations or relocations beyond that there must be an additional reduction in size of at least twenty-five percent (25%) until such time as the sign size is no longer non-conforming. Alteration could include a change in illumination, or of any component of the sign other than for basic maintenance to ensure a safe, neat and clean condition

- a. The repair or replacement of a panel within a nonconforming sign is permitted without reduction provided no other components of the sign, including but not limited to sign frame, supports and illumination are altered or relocated.
 - b. The Code Enforcement Officer may permit the repair of a nonconforming sign without reduction provided the repair is to the benefit of public health and safety, or the damage was caused by a weather or other third-party event that is no fault of the property owner.
4. Any entity proposing a development requiring Site Plan Review shall, as a condition of any approval of such development proposal, be required to bring any signs into conformance with the provisions of this ordinance, except as follows:
- a. Individual lawfully nonconforming signs which are within developments seeking amended Site Plan Review approval and which will not be altered as part of the proposed project are not required to be brought into conformance with this ordinance unless the development proposal involves at least a twenty percent (20%) increase in the total on-site building footprint or a change in use of the property. New and altered signs in such developments shall conform to this Ordinance.

H. **Variance.** The granting of a variance from the Sign Ordinance provisions is prohibited.

404.4 **Signs in Residential Growth Area 1, Residential Growth Area 2, Residential Growth Area 3 and Rural Districts.** The following provisions apply to signs in residential zoning districts:

A. General

- 1. All signs or advertising devices must be permanently affixed to the real estate. They may only identify the occupant of the premises or advertise the article or services available on the premises on which they are situated.

B. Sign Types

1. Ground Mounted Signs

a. Bulletin Board or Identification Sign.

- i. One (1) bulletin board or identification sign for a permitted non-residential building or use, containing not more than six (6) square feet of signboard area.
- ii. For churches, schools, and public institutions, two (2) bulletin boards or identification signs are permitted for each building. Each sign may contain not more than ten (10) square feet of signboard area.
- iii. A bulletin board or informational sign must be set back at least one-half (1/2) of the required front yard depth.

b. Rental Area. On the premises of an apartment building or rental housing area, there may be one (1) identifying sign containing not more than six (6) square feet of signboard area.

c. Subdivision Sign.

- i. Temporary. A temporary sign is allowed without a permit to advertise an approved subdivision site while construction is under way. The sign may not contain more than twelve (12) square feet of signboard area.

- ii. Permanent. A permanent sign is permitted to identify a neighborhood that has been created as the result of a subdivision approved by the Planning Board. The sign may not be placed in the right-of-way, nor block safe sight distances along a road. Total area of sign shall not exceed 16 square feet.

2. Temporary Signs not located on Public Property or within the Public Right-of-Way

- a. Real Estate Signs. One (1) "For Sale," "For Rent," or "For Lease" sign is allowed without a permit on the property, containing not more than six (6) square feet of signboard area and advertising only the premises on which the sign is located. Where the property fronts on two streets, one (1) sign is permitted facing each street.
- b. Construction Sign. On the premises of a building under construction or renovation, one (1) sign not exceeding five (5) square feet of signboard area is allowed without a permit per contractor, subcontractor, or architect actually employed on the premises. Total area of all signs shall not exceed thirty-two (32) square feet.

3. Building Mounted Signs.

a. Sign Allowance

- i. On the premises of a business which is legally operating in a residential zoning district, other than those described in Section 404.4.A, there may be one (1) sign advertising that business containing an area of not more than sixteen (16) square feet.
- ii. All signs or advertising devices must be permanently affixed to the structure in which the business is located. Unless otherwise permitted, signs shall not contain any visible moving or movable parts.

4. Changeable Message Board. Changeable message board signs are allowed and are calculated within the allowable sign area for the business. Changeable message boards may change not more than once every 5-minutes and shall maintain an unlit background with only the illumination of the lettering or text.

C. **Illumination.** The lighting of neon or other illuminated tube-type signs or advertising device is not allowed in Residential Growth Area 1, Residential Growth Area 2, Residential Growth Area 3 and Rural districts.

D. **Materials.**

- 1. Signs shall be constructed of sturdy material.
- 2. No sign shall be constructed of banners, ribbons, spinners, feather flags or other similar devices that represent a visual distraction to the motoring public.

404.5 **Signs in Highway Services District, Gateway Commercial District, Industrial Park Zoning District, Manufacturing District and Prides Corner Smart Growth Area.** The following provisions apply to signs in the Highway Services District, Gateway Commercial District, Industrial Park District, Manufacturing District and Prides Corner Smart Growth Area: (Ord. of 03-07-05; 05-15-06; 06-22-09)

A. General.

1. All signs or advertising devices must be permanently affixed to the real estate. They may only identify the occupant of the premises or advertise the article or services available on the premises on which they are situated.
2. Number of Signs. Maximum Height. On each lot, not more than two (2) signs are permitted affixed to each exterior face of a building fronting on a public street or parking lot for each occupant. The topmost element of any sign may not be higher than ten (10) feet above the cornice line of the building. (Ord. of 6-22-09)
3. Overhanging Signs. Signs may not overhang the public right-of-way.

B. Total Sign Allowance

1. Highway Services and Gateway Commercial Districts.

- a. The total area of all signs for properties located in the Highway Services and ~~the~~ Gateway Commercial Districts that are forty thousand (40,000) square feet or less in land area shall not exceed five hundred (500) square feet.
- b. The total area of all signs for properties located in the Highway Services and Gateway Commercial Districts that are ~~of~~ more than forty thousand (40,000) square feet of land area shall not exceed five hundred (500) square feet for the first 40,000 square feet of land area plus one hundred (100) square feet for each additional forty thousand (40,000) square feet of land area.

2. Industrial Park District. The total area of all signs for a properties in the Industrial Park District shall not exceed three hundred (300) square feet.

3. Manufacturing District and Prides Corner Smart Growth Area. The total area of all signs for properties located in the Manufacturing District and Prides Corner Smart Growth Area shall not exceed two hundred and fifty (250) square feet. (Ord. 01-26-06; 05-15-06; 6-22-09; 11-19-12)

C. Sign Types Allowed

1. Building Mounted Signs

- a. The total area of all signs permitted on the face of a building fronting on a public street or parking lot may not exceed one hundred (100) square feet for each twenty-five (25) feet of building frontage; except that in the Industrial Park District, the total area may not exceed two hundred (200) square feet.

2. Ground Mounted Signs.

- a. Sign Allowance. Where buildings are set back at least forty (40) feet, one (1) free-standing sign may be erected within the open space fronting upon a public street. The topmost element of a free-standing sign may be no more than twenty-five (25) feet above the average level of the ground between the supports of the sign. The sign must not obstruct the view of oncoming pedestrian or motor vehicle traffic.
 - i. Divided Building. Where a building is divided by partitions and is occupied by separate entities, and where the building is constructed so that part of it is located within forty (40) feet of a public way and one or more of the entities within is entirely located at least forty (40) feet back from that way, there may be one (1) free-standing sign within the open space fronting upon the

way. Only those entities located at least forty (40) feet back may utilize space on this sign.

- b. Computation of Sign Area. A free-standing sign may have an area of not more than one hundred (100) square feet. Any exterior linear dimension of a free-standing sign may not exceed sixteen (16) feet. (Ord. 05-15-06; 08-21-06; 6-22-09)
3. Changeable Message Boards.
 - a. Changeable message board signs are permitted provided they are a permanent component of the sign and are calculated within the allowable sign area for the structure. Messages shall change at intervals of no more than once every five (5) minutes. Changeable message boards shall maintain an unlit background with only the illumination of the lettering or text. The total size of a changeable message board area shall not exceed sixty (60) square feet.
 4. Directional Signs. Directional signs no larger than four (4) square feet, and containing no advertising are permitted on private property to direct traffic flow, indicate parking space, or provide other essential information to guide vehicular or pedestrian traffic flow with respect to that property.
 5. Time and Temperature Signs. Time and temperature signs are permitted and must be included in the total square footage allotment for the structure.
 6. Awning signs.
 - a. Awning signs are permitted and are calculated within the allowable sign area for building mounted signage.
 - b. Awnings may not be internally illuminated but may include lighting located beneath the awning directed downward for the purpose of illuminating the building entrance only.
 - c. Awnings are allowed no lower than nine (9) feet above the average grade of the ground beneath it
 - d. Awning signs may include the street address and/or business name only.
 - i. Such information shall be no more than twelve (12) inches in height and shall be placed on the front flap of the awning.
 7. Temporary Signs not located on Public Property or within the Public Right of Way. The following signs are allowed on a temporary basis as follows and, unless otherwise stated, shall be securely affixed to the ground during the time allowed.
 - a. Real Estate Signs. One real estate sign of no more than sixteen (16) square feet is allowed without a permit per lot proposed for lease, sale, or rent. The subject sign must be placed on the lot proposed for lease, sale, or rent. Such sign must be moved within two (2) weeks after the transaction. Such sign may be freestanding or building mounted.
 - b. New Business Sign. One (1) sign is permitted advertising the opening of a new business. Such sign shall be of no more than fifteen (15) square feet and shall not remain on the premises more than thirty (30) days. Such sign shall be building mounted.
 - c. Construction Signs. One (1) sign relating to construction projects for new or renovated buildings is allowed without a permit. Such sign shall be no more than thirty-two (32) square feet and may include the name of multiple contractors. Such

sign shall be removed one (1) week after issuance of the Certificate of Occupancy. Such sign may be freestanding.

- D. **Illumination.** Illuminated signs are permitted but they may not be intermittently illuminated or animated, with the exception of changeable message board signs which must comply with the standards as stated in this section.
- E. **Prohibited Materials.** Signs shall be constructed of sturdy material. No sign shall be constructed of banners, ribbons, spinners, feather flags or other similar devices that represent a visual distraction to the motoring public.

404.6 Signs in the City Center District. The following provisions apply to signs in the City Center District: (Ord. of 6-1-09; 6-22-09; 4-5-10)

A. **Purpose.** The purpose of regulating signs is to promote and protect the public health, safety, and welfare by regulating existing and proposed outdoor advertising, outdoor advertising signs, and outdoor signs of all types; to protect property values; enhance and protect the physical appearance of the community; preserve the scenic and natural beauty, and provide a more enjoyable and pleasing community; to reduce sign or advertising distractions and obstructions that may contribute to traffic accidents; reduce hazards that may be caused by signs overhanging or projecting over public right of way; provide more open space, and curb the deterioration of natural beauty and the community environment.

B. General.

1. **Traffic safety**

- a. No sign, whether new or existing, shall be permitted that causes a visual obstruction or a traffic, health or welfare hazard or results in a nuisance due to illumination, placement, or manner of construction or display.
- b. No sign, except traditional barber poles for licensed and operating barber shops, shall have visible moving parts, blinking, moving or glaring illumination, or any part consisting of pennants, ribbons, streamers, spinners, feather flags or other similar devices that represent a visual distraction to the motoring public.

2. **Business Signs.** Business signs are allowed and shall be constructed, installed and maintained so as to ensure public safety. Such signs shall be clearly incidental, customary to, and commonly associated with and in the same site as the building or establishment to which it refers and shall be limited in subject matter to name, design, picture or trademark of the establishment. It shall not include any general commercial advertising materials unrelated to a principal business within the building. Signs not directly related to the business shall be prohibited. All such signs shall be appropriate in scale and appearance. Business signs on adjacent buildings located on the same parcel shall be of compatible design and character. Sign types and placement are further described herein.

3. **Insurance.** For any sign proposed to be placed on (sandwich board sign only) or that shall extend into (blade and/or awning only) the public right-of-way a permit is required on an annual basis and shall be accompanied by proof of general liability insurance coverage in the amount of \$400,000.00 or any higher limit of liability imposed by the Maine Tort Claims Act in order to protect the City of Westbrook from any and all liability for personal or property damage to the public by reason of the erection and maintenance of such sign on and into the public right- of-way and shall maintain such

insurance as long as such sign exists on and into the public right-of-way. The City shall be named as an additional insured on such insurance policy.

4. Sign Area Computation. Signs shall be measured from the outermost part of the sign, but not to include wall supports. Sign area includes borders or framing not required to affix a sign to a building. Sign area does not include the base for a ground mounted monument sign or the supportive pole(s) of a pylon sign. A sign with a double signboard or display area shall be construed to be one sign for the purpose of this Ordinance.

C. Sign Types Allowed.

1. Building Mounted. Building mounted signs include those that are painted or flush-mounted directly on an exterior building façade. Backlit characters and internally lit characters are considered flush mounted for the purpose of this Ordinance.
 - a. Signage Limitations
 - i. The total area of all building mounted signs may not exceed five percent (5%) of the exterior wall facing a public way or parking lot on which the sign(s) is to be placed.
 - ii. On any exterior wall facing a public way or parking lot, one (1) sign is permitted per individually owned and operated business within the building based on the sign area allowed per this subsection.
 - iii. No sign shall extend above the roofline or parapet of the building on which it is placed.
 - b. Identification Sign.
 - i. All buildings are required to display one (1) street number sign per exterior face of building fronting on a public way or parking lot.
 - ii. Such sign may be no more than one and one-half (1.5) square feet in size, and it
 - iii. must be located on the first-floor façade area of a building or on a sign.
 - iv. Such sign shall not count toward the overall sign allowance.
2. Ground Mounted Signs. Sign area for ground mounted signs shall be no more than eighteen (18) square feet including all tenant signage.
 - a. Monument Signs. Ground mounted monument signs are signs mounted to the ground by a solid (opaque) base structure made of wood (painted or varnished and weather treated), brick, or stone. Such sign shall be no taller than six (6) feet including the base.
 - b. Pylon Signs. Pylon signs are signs mounted to the ground by poles made of materials consistent with this section. Such sign shall be no taller than nine (9) feet including the base.
3. Blade. Blade signs are attached directly to the building and extend perpendicular from the building wall
 - a. Blade signs may be no more than fifty (50) square feet in size,
 - b. Shall be placed no lower than ten (10) feet above the average grade beneath the sign, and
 - c. Shall be no higher than twenty (20) feet above the average grade beneath the sign.
 - d. Blade signs shall extend no further into a right of way than the lessor of four (4) feet or the backside of the curb abutting a public street.

- e. Blade signs may be permitted every twenty-five (25) feet of linear frontage on a freestanding building.
4. Changeable Message Board. A changeable message board sign is a sign attached to and associated with a freestanding (ground mounted or pylon) sign.
- a. Changeable Message board signs are permitted where freestanding signs area permitted and are calculated within the allowable sign area for the proposed freestanding sign.
 - b. Such signs shall be no taller than twelve (12) inches including framing and shall include no more than two (2) lines of text.
 - c. Such sign may include a changeable message but the message may not change more than once every five (5) minutes.
 - d. The time and temperature may be posted and are part of the maximum allowable sign area of the message board.
 - e. The changeable message board shall maintain an unlit background with only the illumination of lettering or text permitted.
5. Sandwich Board Signs.
- a. One (1) small A-frame sandwich board sign is allowed per twenty-five (25) feet of linear building frontage on Main Street or Bridge Street.
 - b. Such signs shall not count toward the number of signs allowed per exterior face of building.
 - c. Such signs are allowed when there is at least four (4) feet of clear travel space on a public sidewalk.
 - d. Sandwich board signs may be no more than eight (8) square feet in size and shall not extend into the four (4) feet of clear travel space.
 - e. Such signs may have writing on both sides,
 - f. May not be illuminated,
 - g. Shall have no moving parts,
 - h. Must be placed adjacent to the business which it supports, and
 - i. Shall not block pedestrian movement along a sidewalk or vehicular visibility.
 - j. Such signs shall face on-coming sidewalk traffic and not the street.
 - k. In the event that these provisions are violated or in the event of inclement weather, the Code Enforcement Officer may have such signs removed from the public way.
 - l. Sandwich board signs shall be temporary in nature and shall advertise temporary events.
6. Entry Point Tenant Listing Sign. One (1) small tenant listing sign is allowed per individual building and may list multiple tenants. Such sign may be no more than one and a half (1.5) square feet.
7. Directional Signs.
- a. Such signs may be freestanding or building mounted and shall not count toward the number of signs allowed per exterior face of building.
 - b. Directional signs shall contain no business advertising and are permitted on private property in order to direct traffic flow, indicate the location of parking, or provide other essential information necessary to guide vehicular or pedestrian traffic flow within the private property.
 - c. Such signs shall be no larger than two (2) square feet. Tenant listing signs shall not be considered directional signs.
8. Window Signs.
- a. Window signs shall be permitted on the first or ground floor only.

- b. In no event shall window signs cover more than twenty-five (25) percent of the area of any individually framed window.
 - c. Window signs shall not be included in the sign area when calculating the total area of all building mounted signs.
9. Awning.
- a. Awnings may not be internally illuminated but may include lighting located beneath the awning directed downward for the purpose of illuminating the building entrance only Awnings are allowed no lower than nine (9) feet above the average grade of the public sidewalk beneath it, and
 - b. Shall not extend more than four (4) feet into a public right-of-way, and
 - c. Shall not extend into the curb abutting a public street.
 - d. Awnings may include the street address and/or business name only.
 - e. Such information shall be no more than twelve (12) inches in height and shall be placed on the front flap of the awning.
 - f. In addition to these standards, awnings located within the Village Review Overlay Zone shall conform to the standards as outlined in Section 403, Village Review Overlay Zone. (Ord. 4-5-10)
10. Open Flag.
- a. A standard flag, no larger than 3’x5’ in size suspended from a pole that is attached to a structure indicating that an establishment is “open for business”.
 - b. An Open Flag may not impede pedestrian travel within the public right-of-way.
 - c. One (1) open flag is permitted per individually owned and operating business within a building.
 - d. Open Flags are allowed every twenty-five (25) feet of linear frontage on a freestanding building.
11. Temporary Signs not located on Public Property or within the Public Right of Way. The following signs are allowed on a temporary basis as follows and, unless otherwise stated, shall be securely affixed to the ground during the time allowed.
- a. Real Estate Signs. One real estate sign of no more than eight (8) square feet is permitted without a permit per lot proposed for lease, sale, or rent. The subject sign must be placed on the lot proposed for lease, sale, or rent. Such sign must be moved within two (2) weeks after the transaction. Such sign may be freestanding or building mounted.
 - b. New Business Sign. One (1) sign is permitted advertising the opening of a new business. Such sign shall be of no more than fifteen (15) square feet and shall not remain on the premises more than thirty (30) days. Such sign shall be building mounted.
 - c. Construction Signs. One (1) sign relating to construction projects for new or renovated buildings is permitted without a permit. Such sign shall be no more than thirty-two (32) square feet and may include the name of multiple contractors. Such sign shall be removed one (1) week after issuance of the Certificate of Occupancy. Such sign may be freestanding.

D. Illumination.

1. Illumination Methods Allowed:

- a. Individual internally lit characters;
- b. individual backlit characters or “halo” effect;

- c. gooseneck fixture;
- d. spotlight fixture.

2. Illumination Types Allowed:

- a. LED;
- b. neon;
- c. incandescent.

3. Illumination Standards:

- a. In order to conserve energy and reduce light pollution, on properties abutting residential development, illumination of signs shall be permitted only between the hours of 7:00 a.m. and 11:00 p.m., except that this time restriction shall not apply to the illuminated signs of emergency facilities and retail, commercial, and industrial establishments during such hours as the establishments are open to the general public.
- b. All lighting must be Nationally Registered Testing Laboratory (NRTL) listed and stamped.
- c. Energy efficiency should be considered a priority in sign design and lighting.

4. External Illumination

- a. Signs shall be illuminated only by steady, stationary, shielded light sources. A lighting fixture that directly or indirectly illuminates a sign must be designed so that the light source itself is shielded from view and does not shine directly into the right-of-way or onto adjacent properties. This does not apply to signs illuminated using neon.

5. Internal Illumination.

- a. Sign Cabinets. Signs may be illuminated from within if the only components illuminated are the characters and limited graphics used to convey the name of the business and its purpose and/or the street number. The balance of the sign face must be opaque with no light visible except to for the cut face characters and logos. No other portion of the sign face may be illuminated. See section 404.6.D for permitted materials. (Ord. of 4-5-10). Internally illuminated flex face signs are not allowed.
- b. Internally lit routed faced vinyl characters and/or logos are allowed so long as the characters and/or logos are the sign, they are building mounted, are limited to 12 inches in height and meet the other size requirements of this section.

E. Sign Materials.

1. Non-Internally Illuminated.

- a. Unless otherwise stated, Signs shall be solid and be constructed of the following materials: wood (painted or varnished and weather treated), stone, metals, concrete, and/or composite material providing similar density.
- b. Signs may incorporate a vinyl wrap, or layer, which displays the graphics proposed, used in lieu of paint. This material standard does not apply to the components of a changeable message board.

2. Internally illuminated.

- a. Internally lit routed faced vinyl characters and/or logos are permitted
- b. Sign Cabinets may consist of an illuminated vinyl sign face. Internally illuminated flex face signs are not permitted, unless:
 - i. Used to identify the major tenant of buildings over three (3) floors, as measured from the street level. Such signs are subject to the following:

- (a) The sign shall be placed at the top floor;
 - (b) The sign may not be placed on facades facing a property line that directly abuts a residentially zoned property; and
 - (c) The sign may be internally illuminated or back lit.
3. Awnings. Metal or canvas awnings are permitted.
 4. Window signs. Vinyl window decals are permitted.
 5. Open Flags. Fabric flags are permitted.

(Repealed and replaced in its entirety on 8/3/2020 by Ord. 2020-78)

405 Review of Paper Street Development

406.1. **Review and permit required.** Where a person seeks to construct, extend, widen or otherwise improve any street that is shown on a subdivision plan or plat recorded in the Cumberland County Registry of Deeds, the person shall first acquire a permit from the City as required by this Section 406.

406.2. **Application.** A person seeking a permit for the construction or improvement of a paper street or streets shall submit to the City an application containing the following items:

- A. A survey showing the area of the Paper Street or streets proposed to be developed or improved, together with the boundaries of any lots located along that area of the paper street or streets.
- B. Evidence of the applicant's right, title or interest in the lots and in the Paper Street or streets.
- C. A plan or plans prepared by a Professional Engineer, registered in the State of Maine, showing the following information:
 1. The name of all owners of property abutting the portion of the Paper Street or streets proposed to be developed or improved.
 2. Scale, date, north point, and delineation of the entire area proposed to be developed or improved.
 3. The location of all existing and proposed monuments for the area of the street or streets proposed to be developed or improved.
 4. The names of the developer of the street or streets, the engineer preparing the plan and the surveyor, together with the professional registration numbers of those who prepared the plan. Any plan submitted shall also bear the stamp of the professional who prepared the plan.
 5. The location of all proposed improvements, the width of paving and rights-of-way, profile, cross-section dimensions, curve radii of all existing and proposed streets; profiles of centerlines of proposed streets, of a horizontal scale of one (1)

inch equals fifty (50) feet and a vertical scale of one (1) inch equals five (5) feet with all elevations referred to U.S.G.S. data and appropriate GIS references as set forth in Section 502.4, subsection B.24.

6. A general street plan noting circulation, direction, any proposed traffic control devices, the location and type of any proposed street lighting.

7. Accurate dimensions of rights of way, length and bearing of lot lines, and length or radii of horizontal curves.

8. Type, location, profile and cross-section of all existing and proposed drainage, both within and adjacent to the area of any street construction or improvement, and a description of storm water management plan.
 9. Location of features, natural and man-made, affecting the street, such as water bodies, streams, swamps, wetlands, vegetation, ditches, and areas of soils with severe or very severe limitations.
 10. Location of existing and proposed utilities including, but not limited to; water, sewer, electrical lines and telecommunications lines and profiles of all underground facilities.
 11. Existing and proposed location, size, profile and cross section of sanitary sewers proposed to be located within the street construction or improvement area.
 12. Topography with contours at elevation intervals of not more than 2 feet.
 13. Location of all existing trees and vegetation, within the proposed area of improvements and on any lots proposed to be developed in conjunction with the street and a delineation of which trees and vegetation will be retained and which, if any, will be removed.
 14. Location map to same scale as tax map, on a separate sheet if necessary; assessor's map and lot number.
 15. Grading, erosion control, and landscaping plan; proposed finish grades, slopes, swales and ground cover or other means of stabilization.
 16. A statement from the Maine Department of Inland Fisheries and Wildlife as to whether any significant wildlife habitats are located on the site.
 17. A statement from the Maine Department of Conservation as to whether any rare or significant botanical species are located on the site.
- D. A statement by a licensed engineer as to the adequacy of the storm water management program to serve the watershed area within which the project is listed.
- E. A statement from the Portland Water District of conditions under which the District will supply water and approval of the size and location of mains, valves and hydrants proposed. Responsibility for such design shall remain with the Portland Water District and any other appropriate agencies.
- F. .Names and addresses of all property owners within a five hundred (500) foot radius of the proposed street construction or improvement. The names and addresses of such owners shall be determined by use of the most current records of the Assessor's Office.

G. A listing of any other State or local permits that will be required for the development of the paper street or streets or for any lots adjacent to the portion of the paper street or streets proposed to be developed.

- 406.3. **Application fee.** Any application for approval of construction or improvement of a paper street or streets shall be accompanied by a fee of \$100.00 for each 50 feet of street to be constructed or improved.
- 406.4. **Other costs.** An applicant seeking approval for the construction or improvement of a paper street or streets shall be responsible for the costs of all notice required under Section 406.6. Such costs shall be paid prior to the completion of review of the application. No permits shall be issued if fees due under this section remain unpaid.
- 406.5. **Pre-application meeting.** Any person who is proposing the construction or improvement of a paper street or streets may request a meeting with the City Planner and the City Engineer prior to the submission of an application in order to review the procedures for review and specific issues associated with a proposal.
- 406.6. **Submission of application; notice.** Upon receipt of any application for construction or development of a paper street, the Planning Department shall indicate upon the application the date of its submission. Within twenty-one (21) days of the date of submission of the application, the Planning Department shall mail, by first class mail, postage pre-paid, notice to all residents and property owners within a five hundred (500) foot radius of the proposed paper street construction or improvement. The notice shall include a brief description of the application and will notify the recipient of the right to request Planning Board review under Section 406.7 and that comments concerning an application must be made in writing to the City Planner. In addition, the notice may include the date and time of any neighborhood meeting that is scheduled by the applicant. The Planning Department shall keep a list of persons notified and shall indicate on the list the date that the notice was mailed. Failure of a person to receive notice under this section will not invalidate any decision made by the Planning Department or the Planning Board and will not require any rehearing of the application.
- 406.7. **Request for Planning Board review.** A person who receives notice under Section 406.6 may request that the Planning Board review the application under the provisions of Section 406.10. The request must be made in writing and must be received by the City within thirty (30) days of the date of the City's mailing of notice under Section 406.6. In the event that an application is determined to be incomplete under Section 406.8, any request for Planning Board review shall remain valid for the completed application.
- 406.8. **Determination of completeness.** After the receipt of an application, the City Planner shall commence review of the application under the standards set forth in Section 406.11. The City Planner shall determine within twenty-one (21) days whether the application is complete and shall notify the applicant of any additional required information or submissions. This twenty-one (21) day period may be extended by mutual agreement in writing by the City Planner and the applicant.

406.9. **Review by City Planner and City Engineer.** Once the application is determined to be complete, the City Planner and the City Engineer shall complete review of the application within thirty (30) days of the date of determination of completeness. The review shall be made under the standards and requirements set forth in Section 406.11. This thirty (30)-day period may be extended upon mutual agreement in writing by the City Planner and the applicant. Where no one has requested a Planning Board review under Section 406.7, the City Planner shall issue a written decision. Any approval granted may be subject to conditions required to ensure compliance with Section 406.11 or to regulate the conduct of the development of the Paper Street or streets. Any conditions will be included in the written decision.

406.10 **Planning Board review .** Where a person has filed a request for Planning Board review under Section 406.7, the City Planner will forward to the Planning Board proposed findings and any proposed conditions of approval. The proposed decision shall be placed upon the Planning Board's consent agenda and a joint public comment period shall be held for all items on the consent agenda, unless a member of the Planning Board requests the removal of a specific application from the consent agenda for separate review and consideration. The Planning Board shall review all applications under the standards set forth in Section 406.11 and shall have the authority to impose conditions on any approval. The Planning Board may request that the applicant perform a traffic study if the Planning Board determines that such a study is needed to determine whether the application complies with the requirements of Section 406.11.G.

406.11. **Review standards.**

- A. Storm water. Any application for construction or improvement of a paper street or streets shall demonstrate that adequate provision will be made to collect, treat and dispose of storm water. The plan shall demonstrate that, to the extent reasonably possible, storm water shall be retained on the site using natural features, that contaminants shall be reduced before leaving the area of the improved paper street and that the rate of flow onto properties in the area shall not exceed conditions existing prior to the construction or improvement of the paper street.
- B. Street Construction Standards. All construction or improvement of a paper street or streets shall meet the requirements of Section 502.5C of this Land Use Ordinance. Any street that will have a dead end shall provide a turnaround approved by the City Engineer and the Fire Chief for adequacy to support and accommodate maintenance and emergency vehicles.
- C. Erosion Control. Any construction or improvement of a paper street or streets shall be subject to best management practices for erosion control. All site activities shall utilize natural conditions to the maximum extent possible so that filling, excavation and earth moving is kept to a minimum. Site activities will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results;
- D. Lot Development. Lots adjacent to a paper street or streets proposed to be constructed or improved shall be developed in accordance with the applicable

zoning requirements for the district in which the property is located. No trees shall be cut from the required rear setback area of such a lot until the issuance of a final certificate of occupancy for the principal structure on the lot. Each such lot shall include at least two (2) street trees along the paper street area to be developed, unless the topography, geography or soils of the lot will not accommodate more than one (1) tree, and other appropriate landscaping for the proposed structures and shall retain existing vegetation to the extent possible. Street trees shall be located between the edge of the travel lane and the edge of the street right-of-way.

- E. Provision of Open Space. Where the proposed construction or improvement of a paper street or streets shall exceed one hundred fifty (150) feet in total combined length, the applicant shall set aside as open space an area that is at least ten (10) percent of the total area of the lots fronting on the paper street or streets being constructed or improved, excluding the area of the lots fronting on the first one hundred fifty (150) feet. Such land either shall be set aside within the area of those lots or shall be in close proximity to those lots. For purpose of this section “close proximity” shall mean land that is located within two thousand two hundred fifty (2,250) feet from those lots and that is not separated from those lots by a street that is more than two lanes in total width or that has a posted speed limit of more than thirty-five (35) miles per hour. Land to be set aside as open space shall either be deeded to an organization or entity that is authorized as a holder of conservation easements as defined in 33 M.R.S.A. § 476, or it shall be protected by deed restrictions, which shall be reviewed and approved by the City for compliance with the requirements set forth herein. No structures other than small structures accessory to a recreational use shall be permitted on the open space land and no pavement shall be allowed, except for the creation of trails. Any open space provided off-site shall be usable for active or passive recreation purposes or shall include areas that are identified by the Department of Inland Fisheries and Wildlife as significant wildlife habitat. Wetland areas as defined in 38 M.R.S.A. § 436-A shall not be included in open space under this section. An applicant may elect to pay a fee in lieu of provision of open space. That fee shall equal \$1,500.00 for every fifty (50) feet of paper street that is constructed or improved, excluding the first one hundred fifty (150) feet.
- F. Water and Sewer Capacity. Where the proposed construction or improvement involves the extension of public water or public sewer, the applicant shall demonstrate that the existing service is adequate to support the proposed extension of the service or shall upgrade the existing facilities as required to provide the service.
- G. Traffic. The proposed paper street development will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed.

406.12 Performance guarantee.

- A. Posting of guarantee. Prior to the commencement of any construction related to the paper street development or the issuance of any building permits associated with the

paper street development, the developer shall file a performance guarantee with the City. The performance guarantee shall be a certified check payable to the City, a performance bond running to the City, or a letter of credit from a financial institution in amount and form acceptable to the City. The check, bond or letter of credit must equal at least the total cost of furnishing, installing, and completing the paper street construction and all related improvements within 2 years of its date.

B. Release of guarantee. Before the City releases a performance guarantee, the developer shall obtain the following:

(1) A statement by the Public Works Department that all streets and storm drain systems have been constructed and completed in conformance with the approved plan.

(2) A statement by the City Engineer that all sewer lines and connections in the street have been constructed and completed in conformance with the approved plan.

(3) A statement by the Superintendent of the Portland Water District that all water mains and hydrants have been installed and completed in conformance with the approved plan.

(4) A statement by a land surveyor, registered in the State of Maine, that all permanent boundary monuments on street and lot lines have been installed in the locations designated on the approved plan. The applicant shall be responsible for the cost of obtaining this statement.

Upon release of the performance guarantee, the City shall provide the applicant with a certificate of compliance. At the discretion of the Planning Department, a phased release of the performance guarantee can be implemented.

406.13 Other reviews. Review and approval under this Section 406 are in addition to any other review and approval required under State law, federal law or any provision of the City Code. Where there is any inconsistency between such review standards, the more stringent standard shall control. (ord. 4/03/06)

407 Residential Growth Area 1 Business Office Overlay Zone

407.1 **Purpose.** The purpose of this overlay district is to allow limited business offices in existing structures within the Residential Growth Area 1. Businesses must receive a conditional use to locate within the district. Particular interest will be paid to the potential impacts of businesses upon adjoining residential uses. In particular, parking, traffic and building appearance will be taken into consideration.

407.2 **Area of Zone.** The area to be included in the Residential Growth Area 1 Business Office Overlay Zone is depicted on the Westbrook Zoning Map.

407.3 **Permitted Uses.** Those uses permitted as a matter of right in the underlying zoning district.

407.4 **Conditional Use.** Those uses permitted as a conditional use, in accordance with Section 204, in the underlying zoning district, plus the following:

Business Office 2

407.5 **Performance Standards.** In addition to those standards defined in the underlying zoning district, Village Review Overlay Zone, and/or for conditional use in Section 204, the following performance standards apply in the Residential Growth Area 1 Business Office Overlay Zone:

- A. Minimum Lot Size: 10,000 S.F.
- B. Signs: The regulations in Section 404.4 Signs in Residential Growth Area 1, Residential Growth Area 2, Residential Growth Area 3 and Rural Districts, shall apply to all uses in Section 407.
- C. Parking: The minimum parking standards for Offices in Section 505.1 must be met as part of the conditional use review.
- D. Building Additions and Alterations: Building additions may only be allowed on the side or rear of the structure. On corner lots, building additions must be constructed on the rear or side that does not face a public street. Building additions and/or alterations must retain the residential style of the structure. This includes, but is not limited to, windows, doors, roof pitches, siding material, and exterior lighting fixtures.

(Ord. of 02-05-07; Amended 8/3/2020 by Ord. 2020-78)

408 County Road Commercial Overlay Zone

408.1 **Purpose.** The purpose of this overlay district is to allow limited retail and service uses to serve the vibrant industrial and manufacturing zones surrounding County Road in Westbrook. This overlay zone does not represent a change in the vision for this area, which is to preserve suitable remaining undeveloped lands for industrial and manufacturing uses, which benefit from convenient highway access, provide higher wage jobs, and add to the tax base while requiring few public services. This overlay district is intended to serve the needs of the businesses in the County Road corridor without creating a destination retail and service corridor which could compromise the attractiveness of the area for its target user, industrial and manufacturing businesses.

While it is the intent of this overlay zone to provide for limited retail and service opportunities, such uses can be inherently focused on the convenience of the automobile and can include lot layouts, building design and structures that are inconsistent with the appearance and scale of the County Road area, therefore this overlay establishes policies to promote a harmonious relationship between industrial and manufacturing uses, retail and service uses and the established built environment in this corridor. Development utilizing this overlay zone shall meet the objectives of the Long Creek Watershed Management Plan.

408.2 **Area of Zone.** Those properties with frontage on County Road and located no closer than 700 feet to Spring Street may utilize the provisions of this overlay zone, which is depicted on the Westbrook Zoning Map, provided that they meet all of the criteria set forth in this section, in addition to all other applicable criteria established by this Ordinance. The spacing requirement from the intersection of Spring Street and County Road is intended to maintain the Level of Service that was achieved there with the recent publicly funded rebuild of this intersection.

408.3 **Permitted Uses.** Those uses permitted as a matter or right in the underlying zoning district. Accessory uses are not allowed except for those uses that are allowed herein or in the underlying district.

408.4 **Conditional Use.** Those uses permitted as a conditional use, in accordance with Section 310, in the underlying district, plus the following:

Retail Class 1, 2 and 4	Restaurant Class 1 and 2
Neighborhood Grocery	Medical Office
Auto Repair	Bank Class 1 and 2

408.5 **Performance Standards.** In addition to those standards defined in the underlying zoning district, the following performance standards apply in the County Road Commercial Overlay Zone. Where there is conflict with the underlying zoning district, the provisions of this overlay zone shall apply.

A. Maximum lot size: 60,000 S.F.

- B. Minimum lot frontage: 200'. Flag lots are prohibited.

Building placement. New buildings shall be located so that they generally match the established building line of the immediate area, along the County Road frontage. The immediate area is measured on the same side of the street, by counting 6 principal buildings to the left, and six principal buildings to the right of the proposed building. For the purposes of this district, the established building line means the predominant building setback, as measured in this paragraph. Along County Road, the building setback for new primary structures shall be no more than 100 feet.

- C. Accessory structures. For the purposes of this district, accessory structures, such as but not limited to drive-in and drive-up windows, gas station canopies, fuel pumps, and/or pump islands, shall be located directly between the principal building and the rear lot line. In no event shall accessory structures be located between the primary structure and County Road. Accessory structures shall be architecturally integrated with the principal building through the use of the same or compatible materials and colors. Accessory structures shall be no taller than the principal building. Any lighting fixtures or sources of light that are a part of the underside of an accessory structure shall be recessed in to the underside so as to not protrude below the ceiling surface. Service bay doors shall not be located facing County Road.
- D. Building Additions and Alterations: Building additions and alterations shall meet the building placement requirements and shall retain architectural style of the existing building. This includes, but is not limited to siding materials and colors.
- E. All service and repair operations shall occur within buildings enclosed by a roof and a wall on all sides.
- F. Storage. Outdoor storage shall be located between the principal building and the rear lot line and shall be screened from view of public ways.
- G. Set Back Requirements From Natural Resources: No buildings, outbuildings, or storage areas may be located within 75 feet of a wetland or designated water body.
- H. If land disturbance for construction is expected to be less than 1 acre, a stormwater management plan shall be developed and submitted to the LCWMD for review. The Stormwater Management Plan shall address expected stormwater runoff volumes and treatment methods in order to control peak flows and to treat stormwater runoff from the property those levels established by Chapter 500, the Stormwater Management Rules promulgated by Maine Department of Environmental Protection, as may be amended from time to time. Plans shall also contain an erosion and sedimentation control plan, details for any best management practices recommended to meet treatment requirements, and a post construction maintenance plan that includes good housekeeping appropriate to the land use.
- I. Proposed construction drawings and stormwater management plans shall be submitted to the LCWMD for review and approval at the developer's expense.

- J. The Developer shall provide at their expense Third Party Inspection for construction of all required erosion and sedimentation control measures and stormwater best management practices proposed for the site and provide documentation to the LCWMD related to their construction. The Developer may use a third party inspector who has MDEP certification or directly hire the LCWMD to perform the inspections and provide the documentation.

- K. The Developer and/or Owner must have a certified professional perform annual inspections of any installed stormwater best management practices on the property and provide annual reporting to the LCWMD. The Developer and/or Owner must also maintain their stormwater best management practices in accordance with design engineer recommendations to ensure their continued performance.

(Ord. of 3-4-13)

409 *Reserved.*

410 Retail Class 4 Overlay District

410.1 Purpose

The purpose of the Retail Class 4 Overlay District is to allow Retail Class 4 as a conditional use in defined locations within the City Center District.

410.2 Area of Zone

The area to be included in the Retail Class 4 Overlay District is depicted on the Westbrook Zoning Map. (Lots – 032/104, 033/041, 033/111, 040/018)

410.3 Permitted Uses

Those uses permitted as a matter of right in the underlying zoning district. Only permitted or conditional uses in the underlying zoning district shall be permitted as an accessory use.

410.4 Conditional Uses

Those uses permitted as a Conditional Use, in accordance with Section 204, in the underlying zoning district, plus the following:

Retail Class 4

410.5 Prohibited Uses

Any use not listed as permitted or conditional uses is not allowed, including, but not limited to, any car wash or redemption center.

410.6 Performance Standards

Businesses shall comply with those standards as defined in the underlying zoning district and in accordance with Section 204, Conditional Use, unless otherwise stated:

1. Dimension Requirements

a. Maximum footprint factor

i. The principle structure of a Retail Class 4 Use may not exceed a footprint of 3500 S.F.

b. Maximum Gross Density Factor

85%

c. Landscape Factor

15%

2. Design Standards

a. An individual business shall be limited to four (4) fuel dispenser units. Each fuel dispenser unit may not exceed four (4) fuel pump nozzles.

b. Canopy shall be a single color consistent with or complementary to the principle structure.

c. Under-canopy music or audio advertising is prohibited

d. Building materials shall be brick. For existing structures conducting partial renovations, a waiver to this standard may be granted by the reviewing authority.

411 Residential Growth Area 2 Service Business Overlay Zone

411.1 **Purpose.** The purpose of this overlay district is to allow Service Business as a use in a defined area within the Residential Growth Area 2. Service Businesses must receive a Conditional use Permit. Particular interest will be paid to the potential impacts of businesses upon adjacent residential uses, such as, parking, traffic and building appearance.

411.2 **Area of Zone.** The area to be included in the Residential Growth Area 2 Service Business Overlay Zone is depicted on the Westbrook Zoning Map. (Lots – 44/56A, 44/68A, 44/67, 44/68)

411.3 **Permitted Uses.** Those uses permitted as a matter or right in the underlying zoning district.

411.4 **Conditional Use.** Those uses permitted as a Conditional Use, in accordance with Section 204, in the underlying zoning district, plus the following:

Service Business

411.5 **Performance Standards.** Businesses shall comply with those standards as defined in the underlying zoning district and in accordance with Section 204, Conditional Use. (Established by Ord. of 08/01/16)

Chapter V. Subdivision and Site Plan Review

500 Subdivision and Site Plan Review Process.

500.1 Reviewing Authority. The Planning Board shall be responsible for subdivision and site plan reviews unless otherwise stated in this ordinance. In this capacity, the Planning Board, or their designee, shall act in accordance with the provision outlined in Chapter 2 of the City Charter, establishing the Planning Board.

500.2 Review Process. The following is an overview of the subdivision and site plan review process:

A. Pre-application conference;

B. Neighborhood meeting;

C. Sketch Plan

Sketch plan review may be required at the discretion of the City Planner and Planning Board Chair based on the complexity of the project and does not constitute substantive review of an application for purposes of 1 M.R.S.A. Section 302. The purpose of sketch plan is to obtain preliminary feedback from the Planning Board and the Public on the proposed project; and

D. Final Plan.

500.3 Applications

A. Application, notice; completed application. This subsection governs the procedure to be followed after receiving an application for a proposed subdivision and site plan review.

(1) When an application is submitted, the City Planner shall schedule an application review conference for the following week.

(2) When an application is received, the municipal reviewing authority shall:

(a) Give a dated receipt to the applicant,

(b) Notify by mail all property owners within 500 feet of any portion of the property submitted for subdivision and site plan review; public and private rights-of-way do not limit the 500-foot distance measurement.

(c) Notify by mail the City Clerk and the reviewing authority of municipalities that abut or include any portion of the subdivision or site plan.

(3) Within thirty (30) days after receiving an application, the municipal reviewing authority shall notify the applicant in writing either that the application is complete or, if the application is incomplete, the specific additional material needed to complete the application.

(4) After the municipal reviewing authority has determined that a complete application has been filed, it shall begin its full evaluation of the proposed subdivision and site plan.

(5) The municipal reviewing authority may not accept or approve final plans that are not sealed and signed by the professional land surveyor or professional engineer under whose responsible charge they were completed.

B. Public Hearing; Notice. If the municipal reviewing authority decides to hold a public hearing on an application for site plan or subdivision approval, it shall hold the hearing within thirty (30) days after determining it has received a complete application. The municipal reviewing authority shall give notice of the date, time and place of the hearing:

(1) To the applicant, and

(2) By publication, at least 2 times, in a newspaper having general circulation in the municipality in which the subdivision is proposed to be located. The date of the first publication must be at least 7 days before the hearing.

C. Decision; Time Limits. The municipal reviewing authority shall within thirty (30) days of the public hearing or, if no hearing is held, within sixty (60) days of determining it has received a complete application, or within any other time limit that is otherwise mutually agreed to with the applicant issue one of the following decisions:

(1) Deny approval of the proposed site plan or subdivision,

(2) Grant approval of the proposed site plan or subdivision,

(3) Grant approval, subject to terms and conditions that it considers advisable, in order to:

(a) Satisfy the criteria listed in 30-A M.R.S.A. section 4404,

(b) Satisfy any other regulations adopted by the municipality, and

(c) Protect and preserve the public health, safety and general welfare

D. Approval Expiration. A

(1) S

Site Plan approval expires unless the work is necessary to accomplish the purpose for which it was requested is commenced within one year and completed within two years after the date of Planning Board approval or is completed in accordance with a phased completion schedule proposed by the applicant and approved by the Planning Board, as incorporated in the final approval. Failure to complete a subsequent phase within the required period shall also have the effect of causing the permit to expire.

(a) D
Deadline dates for phased developments shall be established at the time of approval.

(2) A
Any applicant may come back before the Board and request a permit

extension.

- (a) n extension request must occur within one year after approval was granted. A
- (b) n extension of the completion date established for the project must be requested within two (2) years after the project was approved by the City. A
- (c) he Planning Board may deny any requests for additional extensions after the second extension if it determines that substantial work has not occurred on the project during the extension periods and the applicant is unable to show good cause for such delay. T

E. Appeal. The applicant, abutting landowner, or aggrieved party may appeal a site plan / subdivision review decision of the Planning Board to the Superior Court of the State of Maine within thirty (30) days of the final Planning Board decision.

500.4 Joint Hearing and Application. If a proposed final plan requires both subdivision and site plan review, the applicant must apply for a joint review of the final plan. Procedures for both subdivision and site plan review must be met in order to initiate the review and hearing process.

500.5 Change in Ownership. Where there is a change in ownership of a project after approval has been granted and prior to the completion of all required improvements, the board may request new financial capability information, as well as other factors that the board deems necessary because of changing conditions.

500.6 Notification Costs. The applicant shall incur all costs for notices and public hearings conducted pursuant to this Ordinance.

500.7 Revision to Approved Plans. When an applicant applies for approval of a revision to a plan approved by the Planning Board, such application shall, in all respects, follow the procedures and satisfy the requirements of Chapter V of this Ordinance. All appropriate changes must be in accordance with this zoning ordinance. (Amended per Ord. of 11/17/14)

500.8 Fees for Consulting, Review and Inspection

A. Notwithstanding any other provision(s) of the City's Land Use Ordinances, Chapters I through VIII (the "Code"), to the contrary, and in addition to such fees as are otherwise specified by the Code, the City shall assess fees to cover 100 percent of its costs related to independent geotechnical, hydrologic, engineering, planning, legal, and similar professional consulting services incurred in the review of site plan and subdivision applications. Such fees shall be subject to the following limitations:

- (1) Such fees shall only be as expressly provided by this Ordinance;
- (2) Such consultation shall be limited to reasonable and necessary review, as

allowed by the pertinent ordinance, which exceeds the expertise of City staff or their ability to review the application materials within the time limits otherwise required by law or Ordinance.

- (3) Such fees shall be assessed only to recover costs directly associated with review of the application submitted by the applicant to whom they are assessed;
 - (4) Such fees shall be reasonable in amount, based upon the consulting time involved and the complexity of the review;
 - (5) The results of the consultation for which such fees are assessed shall be available for public review, but such results shall be deemed to have been made solely for the benefit of the City of Westbrook and shall remain its property; and
 - (6) Such fees shall be assessed for the privilege of review and shall be payable without regard to consultation results or the outcome of the application.
- B. An escrow account shall be established with the City by the applicant to guarantee payment in advance of actual fees assessed pursuant to this Ordinance. The original deposit shall be an amount specific to the application, as accorded elsewhere in this Code. If the balance in the escrow account shall be drawn down by 75 percent, the City shall notify the applicant and require that an additional amount be deposited to cover the cost of remaining work before any such remaining work is undertaken. The City shall continue to notify the applicant and require that any such additional amount(s) be deposited whenever the balance of the account is drawn down by 75 percent of the original deposit. Any excess amount deposited with the City in advance shall be promptly refunded to the applicant after final action on the application.
- C. Any dispute regarding the application of this Ordinance or the amount required to be paid, either in advance or upon completion, may be appealed in writing within 10 days to the City Administrator. The City Administrator, after due notice and investigation and for good cause shown, may affirm, modify, or reverse the disputed decision or reduce the amount assessed.
- D. In an effort to minimize the use of outside or independent consulting, the provisions of this Ordinance shall be subject to the following additional limitations:
- (1) The City Engineer will devote no less than two (2) hours, if needed, to each development project and, if in the City Engineer's sole judgment his/her work load permits, he/she may work additional time on an individual development project without referring it to outside or independent consulting, but the City shall charge for such additional time at a rate determined by the City Council on a fee schedule adopted for that purpose; and
 - (2) The City Planner will devote no less than four (4) hours, if needed, to each

development project and, if in his/her sole discretion his/her work load permits, he/she may devote additional time to a project without referring it to outside or independent consulting, but the City shall charge for his/her time at a rate determined by the City Council on a fee schedule adopted for that purpose; provided, however, in his/her sole discretion, he/she may immediately refer to outside or independent consulting any major subdivision having five (5) or more lots or dwelling units or any major site plan.

- E. Prior to issuance of a Street Opening Permit, or the first permit required for the project, the applicant shall pay to the City a site improvement inspection fee equal to the amount of 2% of the site improvement costs. This shall be separate from Building Permit fees, which cover inspection of buildings. While this requirement applies to both subdivision and site plan approvals, a project with both subdivision and site plan approval is subject to a single site improvement inspection fee.

(Ord. of 4-5-10)

- F. This Ordinance shall be administered by the City Planner or other City employee responsible for administering the ordinance under which review is sought. No building permit or certificate of occupancy may be issued nor subdivision plat released until all fees assessed hereunder have been paid in full.

(Ord. of 07-11-05)

501 Waiver Provisions.

- A. Factors which may be waived include, but are not limited to, final plan submission requirements; design standards for streets or sidewalks; storm water management requirements; erosion and sedimentation requirements; public open space requirements; appearance assessment; and solar access design.

- B. Process

- (1) The applicant shall meet with appropriate city staff to discuss potential waivers.
- (2) The city staff shall make recommendations to the Planning Board concerning any requested waiver.
- (3) When the Board determines that the application is acceptable for review, it shall also determine which waivers are approved.

501.1 Waiver Criteria. The Planning Board may waive the requirements of subdivision or site plan review, provided that the waiver does not result in:

- A. Undue water or air pollution,
- B. An inadequate water supply,
- C. Unreasonable soil erosion,
- D. Unreasonable traffic congestion or safety risk,

- E. Inadequate sewage disposal capacity,
- F. Inadequate solid waste disposal capacity,
- G. An adverse impact on scenic or natural beauty, aesthetics, historic sites, or rare or irreplaceable natural areas,
- H. Substantial non-conformance with this Ordinance or the Comprehensive Plan.

501.2 Affordable Housing Waiver. The Planning Board may waive development impact fees in return for the creation of affordable housing. The Board shall reduce the fee based on the number of units that shall be sold or rented on the market at 80% of median price or rent for the Greater Portland area, as established by MSHA or HUD, respectively.

502 Subdivision Review.

502.1 Purpose: The subdivision review process is designed to protect the public health and safety, promote the general welfare of the community, and conserve the environment by assuring that subdivision development is designed and developed in a manner which assures that adequate provisions are made for the traffic safety and access; emergency access; water supply; sewage disposal; management of stormwater, erosions and sedimentation; protection of groundwater; protection of the environment, wildlife habitat, fisheries, and unique natural areas; protection of historic and archaeological resources; minimizing the adverse impacts on adjacent properties; and fitting the project harmoniously into the fabric of the community.

502.2 Applicability: Subdivision review is required for any project that meets the definition of a subdivision set forth in 30-A M.R.S.A. Section 4401 or any project that seeks an amendment to a subdivision previously approved by the Planning Board.

502.3 Authority. In accordance with Maine Revised Statutes Annotated, the power to grant subdivision approval is vested in the Planning Board, which is the municipal reviewing authority.

502.4 No Building Permit without Subdivision Approval; Required Mylar Submission and Recording. The Code Enforcement Officer shall not issue any permits until a subdivision plan has been approved by the Planning Board and a Mylar signed by the Planning Board. Signed Mylars must be recorded with the Cumberland County Registry of Deeds within 90 days of Planning Board approval or the approval shall be null and void. The period for recording of the Mylar may be extended by the Planning Board as part of the subdivision approval or any time prior to the expiration for any of the following reasons:

- a. The applicant is still seeking other required approvals or permits.
- b. An appeal of the subdivision approval has been filed.
- c. The applicant has not finalized financing for the subdivision.

502.5 Recording and Construction Prohibited. A subdivision plan may not be recorded in the Cumberland County Registry of Deeds, nor shall utility installation, ditching, grading, tree removal, site preparation or construction of any structure be commenced on a subdivision, until the Board has approved the final plan and the performance bond is in place.

502.6 Subdivision Submission Requirements

502.6.1 Sketch Plan Requirements. The following information is required for subdivision sketch plan review:

- A. Names of property owner, applicant, project and consultant(s); For subdivisions of 5 or more (lots or) units, a multidisciplinary design team comprising of a landscape architect, surveyor, and engineer is required for the design of the project

layout.

- B. Date, north point, scale,
- C. Perimeter boundary, locations reserved for future development,
- D. Tentative easements or rights-of-way locations, lot lines, lot numbers, lot acreage,
- E. Estimated soil boundary locations from the United States Department of Agriculture's Soil Survey of Cumberland County, Maine, as revised, noting areas of severe and very severe soil limitations, as applicable
- F. Land cover areas (e.g. woods, fields),
- G. Topographic features, including areas of steep slopes, bedrock outcrops, ponds, streams, aquifers, groundwater areas, and recharge floodplain areas in accordance with the Federal Emergency Management Administration Program. Acceptable data for the sketch plan submission can also be obtained from sources such as the U.S.G.S. and NWI,
- H. Location of existing and proposed structures,
- I. Names and addresses of abutting land owners
- J. Special conservation and recreation areas, and
- K. Locator map.
- L. Non-refundable Sketch Plan application fee in an amount established by the City Council. (Ord. of 11/17/14)
- M. An electronic copy of all application materials in a format acceptable to the City Planner. (Ord. of 03-07-05; 11/17/14)

502.6.2 Final Plan Requirements. The following additional information is required for subdivision final plan review.

- A. Application Information. An applicant for subdivision must submit the following as part of the final plan:
 - (1) Project name,
 - (2) Name, address, phone number of applicant and owner,
 - (3) Name, address, phone number of authorized representative,
 - (4) Name, registration number, address, phone number of engineer, surveyor, architect, landscape architect or planner,
 - (5) Interest of applicant in property
 - (6) Tax map and lot numbers,
 - (7) Zoning,
 - (8) Acreage to be developed,
 - (9) Encumbrances currently affecting the property including but not limited to covenants, deed restrictions, easements, or rights of way existing or planned,
 - (10) Existing use of the property,
 - (11) Variances requested of the Zoning Board of Appeals,
 - (12) A cost estimate and financial capacity statement from a financial institute confirming the ability of the applicant to carry out the project,
 - (13) Where a septic system is proposed, evidence of soil suitability by a certified soils scientist or evaluator.
 - (14) Non-refundable final plan application fee in an amount established by the City Council.
 - (15) Electronic copy. An electronic copy of all application materials shall be

submitted with the initial and each subsequent submission. This shall be in a file format acceptable to the City Planner.

B. Map Requirements. The final plan shall consist of 1 mylar for recording purposes, and 15 prints to be retained by the City, with a maximum size of 24" x 36" at a scale between 1"= 40' and 1"=100' and to include:

- (1) Name of subdivision, Tax map and lot numbers
- (2) Scale, date, north point, acreage, number of lots,
- (3) Boundaries of tracts with accurate distances and bearings, location of all permanent monuments properly identified as existing or proposed; and certification by a licensed land surveyor that the land has been surveyed and the boundaries established,
- (4) Zoning requirements, proposed project and yard dimension calculations in relation to existing zoning standards.
- (5) Names of owner, engineer and surveyor; and professional registration numbers of those who prepared the plan,
- (6) Names and addresses of abutting landowners,
- (7) Name, location, width of paving and rights-of-way, profile, cross-section dimensions, curve radii of all existing and proposed streets; profiles of centerlines of proposed streets, of a horizontal scale of 1" = 50' and a vertical scale of 1" = 5', with all elevations referred to U.S.G.S. datum and appropriate GIS reference (as noted in section 502.4, subsection (m)),
- (8) A general road plan noting circulation, direction, traffic control devices, street lighting, and type of lighting proposed,
- (9) Accurate dimensions of rights of way, length and bearing of lot lines, lot areas, length or radii of horizontal curves, lot numbers, and building setbacks,
- (10) Existing and proposed easements and dedications associated with the subdivision,
- (11) Type, location, profile and cross-section of all existing and proposed drainage, both within and adjacent to the subdivision, and description of storm water management plan,
- (12) Location of features, natural and manmade, affecting the subdivision, such as water bodies, streams, swamps, wetlands (consistent with Army Corp and DEP requirements), vegetation, railroads, ditches, buildings, and areas of soils with severe or very severe limitations,
- (13) Location of existing and proposed utilities including, but not limited to; water, sewer, electrical lines, telecommunications lines and profiles of all underground facilities,
- (14) Existing and proposed location, size , profile and cross section of sanitary sewers; description, plan and location of other means of sewage disposal with evidence of soil suitability,
- (15) Topography with contours at elevation intervals of not more than 2 feet;
- (16) On land one acre or less in size, the location of all existing trees 24" or more dbh; to be retained and those to be removed. On land over an acre in size, all areas of tree preservation, groves of important species and those trees, outside of preservation areas and 24" or more dbh, to be retained or to be removed. (Ord. of 4-5-10)
- (17) Existing and proposed locations, widths, and profiles of sidewalks and walking paths,

- (18) Location map
- (19) Approximate location and dimensions of specified parking areas,
- (20) Proposed ownership and approximate location and dimensions of open spaces for conservation and recreation,
- (21) Grading, and erosion control; proposed finish grades, slopes, swales and ground cover or other means of stabilization,
- (22) Landscaping plan; for subdivisions of 5 or more units, a landscaping plan stamped by a landscape architect is required.
- (23) Reference to special conditions as stipulated by the Planning Board, on the plan or identified as specific documents filed with the Board, and
- (24) Digital Transfer of any subdivision data in GIS format on the City's Horizontal Datum: Maine Stateplane Coordinate System: Maine West Zone 4101, FIPS Zone 1802, North American Datum 1983; Units: Feet; Vertical Datum: National Geodetic Vertical Datum, 1929,
- (25) Digital Transfer on a compact disc (CD) of any subdivision data in Computer Aided Design (CAD) format as a .dwg file,
- (26) Waivers and conditions of approval granted by the Planning Board.
- (27) If needed, additional copies (on 11x17 sized paper) of the overall subdivision plan sheet for review by the Recreation and Conservation Committee. (Ord. of 03-07-05)

C. Supporting Documents. Prior to approval, the following supporting documents are required, as applicable:

- (1) Legal documents including, but not limited to: easement or rights of way associated with the subdivision, deed or covenant restrictions, homeowners association by-laws, and easements,
- (2) Any required permit from the Department of Environmental Protection, Marine Resources, Army Corps of Engineers, or Department of Inland Fisheries and Wildlife, wherever applicable,
- (3) Any additional statements or studies required by the Planning Board which are deemed necessary in accordance with this Ordinance, including but not limited to the following
 - (a) A statement by a Professional Engineer, registered in the State of Maine, as to the adequacy of the storm water management program to serve the watershed area within which the project is listed,
 - (b) A statement from the Portland Water District of conditions under which the District will supply water, and approval of the size and location of mains, valves and hydrants proposed. Responsibility for such design shall remain with the Portland Water District and any other appropriate agencies,
 - (c) A statement from the Fire Chief approving the number, size, and location of hydrants, available pressure levels, road layout and street and project name and any other fire protection measures to be taken,
 - (d) A statement by the Portland Water District of the conditions under which the Sewer District will provide sewage disposal service and approval by the Public Works Department of the diameter, slope, and invert elevations of the sanitary sewers proposed within the subdivision; or a statement relative to the septic tank pumping capacity of the sewage disposal system,
 - (e) A statement by the Public Works Department relative to all street and

appropriate utilities designs,

(f) A statement from the Police Chief relative to traffic circulation,

(g) A statement from the Recreational Conservation Commission relative to issues of open space and recreation areas,

(h) A statement from the Public Works Director addressing any plan for solid waste removal and recycling,

502.7 Subdivision General Provisions:

- A. Unusable Land. Unusable land as defined in Section 201 of this Ordinance, may not be considered in the determination of buildable lots, but it may, with the approval of the Planning Board, be designated for parks or other open or common space, provided that there is no danger to health or safety.

- B. Preservation of Natural Areas. The Planning Board may require that the plan of a proposed subdivision provide for the preservation or enhancement of natural features such as water courses, trees with diameter in excess of 10", scenic vistas, and wetland areas. Streets and lots must be laid out so as to take advantage of natural topography and southerly exposure. Wherever possible, extensive grading and filling must be avoided.

- C. Design Standards for Streets and Private Rights-of-Way. All streets in a proposed subdivision must be constructed to the following specifications, and the cost of construction must be paid by the applicant. All streets and private ways must be designed by an engineer registered in the State of Maine. The plan and profile of the design must be approved by the City Engineer. (Ord. of 03-07-05; 4-5-10; 8-6-12)

Table 502.7.C.1

	Arterial	Collector	Local St.	Private Way
(1) Minimum right-of-way	120'	60'	50-60'	50'
(2) Minimum width of pavement	(4) 12 foot traffic lanes	(2) 12 foot traffic lanes	24'	20'
(3) Minimum grade	0.5%	0.5%	1%	1%
(4) Maximum grade	0.6%	8%	8%	8%
(5) Maximum grade at intersections	3%	3%	3%	
(6) Minimum angle of intersections	60 degrees	60 degrees	60 degrees	60 degrees
(7) Minimum center line radius curves	200'	200'	100'	200'
(8) Minimum paved shoulder width	10'	8'	1'	1'
(9) Minimum road base				
Excavation	24"	21"	21"	21"
Sub-base; Compacted-gravel	21"	18"	18"	18"
Upper-base; Crushed gravel	3"	3"	3"	3"
(10) Bituminous concrete				
Lower base; 12.5mm or 19mm superpave	2"-4"	1 ^{3/4} "-2"	1 1/2"	1 1/2"
Top; 9.5mm or 12.5mm superpave	1 1/2" – 1 3/4"	1 1/2" – 1 3/4"	1 1/4" – 1 1/2"	1 1/4" - 1 1/2"
(11) Minimum Underdrain	4"	4"	4"	4"
(12) Property line minimum				
Radii at intersection	20'	20'	20'	20'
(13) Road crown minimum	1/4"/ft.	1/4"/ft.	1/4"/ft.	1/4"/ft.
(14) Curb radii at intersection				
90 degree intersection	25'	25'	25'	25'
Less than 90 degree intersection	30'	30'	30'	30'
(15) Sidewalks				
Minimum width	5'	5'	5.5'	0
Compacted gravel base course	12"	12"	12"	
Top	(Approval of City Engineer)			

- (16) Streets and Future Planning. The street design must provide for proper continuation of streets from adjacent subdivisions and built-up areas. Street design must also provide for streets projected to lead into affected land and for future streets in conformance with the Comprehensive Plan.
- (a) Minor Streets. Minor streets must be designed to discourage through traffic.
 - (b) Street Intersections. There must be maximum centerline length of 500 feet between street intersections.
 - (c) Dead End Streets and Private Rights-of-Way. A dead-end street or private way shall have a maximum length of 800 feet with either a cul-de-sac with a minimum turning radius of 35 feet or a T-intersection utilizing a 30 foot x 30 foot hammerhead. A dead end street, either public or private, may not begin from any point along another existing or proposed dead end street. A private right of way may only be taken off a City Street, while a driveway may be taken off either a private right of way or a City street. (Ord. of 03-07-05)
 - (d) Street Construction over Ledge. Where street construction is over ledge, a minimum of 15 inches of compacted gravel is required for the sub-base. If deemed necessary, the City may require more than 15 inches of compacted gravel.
 - (e) Street Impact. The applicant is responsible for the assessment and improvement of other street systems that would suffer direct and continued impact from the proposed development. If the Planning Board finds it necessary, the applicant shall undertake to improve, repair, or reconstruct the street systems. This assessment will look at speed, volume, type of vehicles, peak periods and critical rate factors.
 - (f) Curbs. Granite curbing is required for all new streets.
 - (g) Sidewalks. All projects shall have an internal sidewalk system that makes connections to existing systems whenever possible.
 - (h) Pavement. Where Private Rights of Way and driveways connect with a City Street, the Private Right of Way or driveway must have a paved apron with a minimum depth and width of twenty (20) feet to reduce impacts to City Streets. (Ord. of 03-07-05; 4-5-10)
- D. Water Supply. Where it is proposed to connect the project with the public water supply, a water main of at least eight (8) inches in diameter is required. The main must be designed and installed with the approval of the Portland Water District. The cost of installation shall be borne by the applicant. During subdivision design, and prior to final plan submission, the applicant shall complete an analysis of water demand in accordance with community impact requirements.
- E. Sewage Disposal. One of the following requirements for sewage disposal must be met.
- (1) Off-site Disposal. Sewer lines not less than eight (8) inches in diameter must be designed for all off-site disposal. Final plan approval is subject to approval by the Portland Water District and the Public Works Department. The applicant must pay all costs of installation and analysis.

- (2) On-site Disposal. If the municipal sewer system is not available, a description of the proposed sewage disposal system is required. The testing for, and design of, this system must meet standards established by the State of Maine.
- (3) Communal Septic Systems. Communal septic systems are permitted for cluster housing developments only. Such systems shall meet all state and local requirements.

F. Storm Water Management, Groundwater Pollution and Erosion/Sedimentation Requirements.

- (1) Storm Water Management Plan. The storm water management plan must be included in the final plan application. The primary objective of the program is to limit peak discharge, after development, to equivalent levels before development. In the development of the plan, the following practices are required:
 - (a) Peak Discharge Measurement. Peak discharge must be measured for the 2, 10 and 25-year storm period. Estimation of the peak discharge and volume must be completed, using HydroCAD software based on the Department of Agriculture's TR-55 "Urban Hydrology for Small Watersheds" (1986) standards, as from time to time updated. The engineering design must include provisions for surface and subsurface runoff, especially where the displacement of surface and subsurface water is involved. Pre-construction and post-construction water flow estimates, and estimates of surrounding watershed impact and displacement of subsurface water are required.
 - (b) Reduction of Peak Discharge. In reducing peak storm water runoff so as to maintain pre-construction water flow levels, the management plan must include techniques to detain water on the proposed site by, but not limited to:
 - (i) Minimizing slope length through trenching and maintaining flat slopes where possible,
 - (ii) Infiltrating precipitation at the source prior to runoff, which may be accomplished by delaying runoff from flat roofs, utilizing stone drains for low water table soils, or precast concrete lattice blocks and bricks,
 - (iii) Increasing the flow length by using diversion ditches and level lip spreaders,
 - (iv) Infiltrating runoff after concentration in dry wells or trenches, natural swales or dugout basins, seepage beds or ditches, where there are low water flows,
 - (v) Delaying runoff by using detention ponds for short-term storage of runoff, or permanent retention ponds for long-term storage.

Embankments for such ponds must have a slope ratio of no less than 4 units horizontal to one unit vertical.

- (c) Construction Standards. In developing storm drainage plans, the following construction standards apply:
 - (i) Shoulders beyond the pavement must be compacted and stabilized, and storm water runoff from adjoining properties and from the roadway must be conducted so that road shoulder embankments and pavement edges will not be undermined or eroded,
 - (ii) Storm drain culverts and conduits must be at least 12 inches in diameter or larger if required by the City,
 - (iii) Depending on conditions, storm drains must be laid with a cover depth of at least 24 inches,
 - (iv) Headwalls, catch basins, manholes and all other elements of the stormdrain system must be constructed according to specifications approved by the Public Works Department. Catch basins must be located to accept drainage from all low points and sags in the roadway, and to prevent storm water from flowing along the gutters for more than 400 feet,
 - (v) Construction standards shall also incorporate methods by which contaminants in stormwater are removed prior to leaving the development site,
 - (vi) Best management practice standards shall be followed for the treatment of storm water quality such that all potential toxins or contaminants are removed before the storm water leaves the property.
 - (d) Improvement Costs. If the development depends upon storm water control which affects the existing system, whether natural or man-made, all costs of improvements shall be paid for by the applicant.
 - (e) Impact of Individual Lot Development. The developer shall set base elevations for individual foundations and identify on-site drainage paths to ensure that subsequent development does not impede drainage or result in excess stormwater on an individual lot.
- (2) Groundwater Pollution. The Planning Board shall require the applicant to demonstrate that there will be no adverse effect on subsurface water quality. The applicant may have to establish present water quality conditions and install a monitoring system. Standards for assessment will include nitrate loading.
- (3) Erosion and Sedimentation Plan. A subdivision plan must include a plan for erosion and sedimentation control during and after the construction period. The range of erosion and sedimentation control options to be incorporated in the plan is stated below. Any individual option or combination is acceptable, as long as it is considered in relation to the overall storm water management plan.
- (a) Prevention of Erosion Prevention of erosion on construction sites may be accomplished by, but not limited to:

- (i) Minimizing the area of exposed fill, soil or subsoil, and the exposure time,
 - (ii) Seeding critical sediment-producing areas for a period of 2 to 12 months,
 - (iii) Preserving vegetation at critical sediment-producing and sediment entrapment locations,
 - (iv) Using contoured cross-slope ground preparation by roto-tilling, harrowing, fertilizer spreading, or hydro-fertilizing and seeding.
 - (v) Utilizing erosion controls applicable to road construction and construction sites,
 - (vi) Installing temporary graded channels with ridges on the downhill side to intercept surface water that may be used in conjunction with temporary chutes or flexible downdrails,
 - (vii) Installing temporary checkdams on all waterways draining more than one half acre of land under construction by using straw bale checks with filter fabric fence; filter fabric fence alone or filter fabric fence with wire fence, or other device deemed appropriate by the City.
- (b) Fine Grained Sediment. The applicant shall use a combination of sediment basins, filter fences, vegetation, tillage, top-soiling or crushed stone or gravel in controlling fine-grained sediment,
 - (c) Entrapment and disposal of sediment from runoff prior to discharge. For entrapment, the applicant may use existing vegetation, sediment basins, and sediment traps. Trapped materials may be used for topsoil or fill for the project,
 - (d) Stabilization of critical areas. In order to prevent erosion, the stabilization of critical areas using mulching, sod, existing vegetation, or new vegetation is required,
 - (e) Design and stabilization of drainage channels. The plan must provide for the design and stabilization of drainage channels. Channel construction may include grassed water ways, rip-rap and permanent diversions to reduce velocity. Design should also incorporate structures at pipe conduit outlets to de-energize water movement, such as plunge pools, aprons or level lip spreaders. Any plan for drainage channels should include a program for maintenance,
 - (f) Stabilization of stream channels and banks. The program must provide for the protection of existing stream channels, by utilizing vegetation, riprap, obstruction removal, banksloping, or other acceptable method,
 - (g) Removal of excess subsurface water. Where appropriate, the use of subsurface water storage is required. High water tables in the City will require designs which address points of discharge, storage capacity, and potential impact,
 - (h) Revegetation. The applicant must include a plan for the preservation of existing vegetation, selective clearing, and re-vegetation as part of the erosion and sedimentation control plan.

- G. Utility Easements. All utilities shall be underground. Easements for utilities at least 15 feet wide must be provided, either within or outside the subdivision. The applicant is required to install underground conduits and other necessary subsurface structures to provide underground power, internet, phone service, and other telecommunications services including, but not limited to television cable, throughout the subdivision. Underground structures must be constructed according to the requirements of the appropriate utility company.

502.8 Additional Requirements.

A. Public Open Space:

- (1) Reservation of Land. The Planning Board shall require the reservation of land for parks, playgrounds, or conservation areas to benefit the public or residents of the proposed development. The reserved land must be of suitable dimension, topography, and general character for the proposed recreational use and must be reasonably accessible to residents of the development. It must be designated on the plan as "Reserved for Conservation or Recreation Purposes". The area to be reserved must be determined according to the following table:

Table 502.8.A.1.a

Average Size of Single Family	Percentage of Development Tract to be Reserved for Recreation Purposes
80,000 S.F. or greater	1.6%
40,000 S.F.	3.3%
20,000 S.F.	6.5%
15,000 S.F.	8.7%
10,000 S.F. or less	13.02%
Multiple Family Units	300 S.F. per unit

- b. The applicant shall improve reserved land according to the requirements of the Planning Board. In determining these requirements, the Board shall consider the Comprehensive Plan, and the long-range plans and recommendations of the Recreation and Conservation Commission.
- (2) Fee in lieu of land. Where a developed conservation or recreation area exists near a proposed subdivision, an applicant may make a cash contribution to the City, in lieu of land reservation for the purpose of further improving the recreational area to benefit the proposed development.
 - (a) The contribution must equal the per acre value of an undeveloped housing site, as set by a disinterested appraiser who is satisfactory to the Planning Board, multiplied by the required area for reservation according to the table above.
 - (b) The funds must be used for improvement of the recreation or conservation area, as mutually agreed by the applicant and the Planning

Board, and placed into a dedicated account for the agreed upon recreation or conservation purpose.

(3) Recreation Land Ownership. As soon as the use of the recreation or conservation land has been established, the means of future ownership and control must be determined. The following alternatives are available, as agreed upon by the applicant and the Planning Board:

- (a) The land may be held and maintained in common by the future owners of the development, under the by-laws of a homeowners' association, as approved by the Planning Board.
- (b) It may be held and maintained in perpetuity by a conservation trust or other suitable private organization. It may be deeded to the City for future maintenance and improvement, if acceptable to the City.

B. Performance Guarantee.

- (1) As a condition of final approval for subdivision, the applicant, in accordance with the conditions of the final approval, must file a performance guarantee with the City.
- (2) Prior to the start of any construction, the applicant shall deliver either a certified check payable to the City, a performance bond running to the City, or a letter of credit running to the City in amount and form acceptable to the City. The check, bond or letter of credit must equal at least the total cost of furnishing, installing, connecting and completing all appropriate construction items within 2 years of its date.
- (3) Appropriate construction items includes, but is not limited to, all public infrastructure items such as roads, sidewalks, utilities, recreation facilities. (Ord. of 03-07-05)
- (4) Release of Check or Guarantee. Before releasing a check or bond the City must obtain the following:
 - (a) A statement by the Public Works Department that all street and storm drain systems have been constructed and completed in conformance with the Final Plan,
 - (b) A statement by the Westbrook Engineer, that all sewage disposal systems have been constructed and completed in conformance with the Final Plan,
 - (c) A statement by the Superintendent of the Portland Water District that all water mains and hydrants have been installed and completed in conformance with the Final Plan,
 - (d) A statement by a land surveyor, registered in the State of Maine, that all permanent boundary monuments on street and lot lines have been installed in the locations designated on the Final Plan. The cost of obtaining this statement shall be borne by the applicant. In releasing the check or bond, the City shall provide the applicant with a certificate of compliance. At the discretion of the Department, a phased release of the check or bond can be implemented.
 - (e) An affidavit from the applicant confirming that all construction bills, and other monies and credits owed as a result of the development activity have been paid to their respective parties.

- (5) Conditional Agreement. The applicant may substitute for the performance guarantee a conditional agreement with the City. The agreement must be described on the final plan and must include the conditions that:
- (i) No lot in the subdivision may be sold, and
 - (ii) The Code Enforcement Officer shall not issue a building permit for the construction of a building on any lot in the subdivision until a certificate of compliance is issued.
- C. Driveway Access to Subdivision Lots. If excessive slopes, sharp curves or other safety factors exist, the applicant shall show planned driveway entrances onto streets shown on the final plan. Additionally, the Board may require that driveways be shared.
- D. Monuments. The following permanent reference monuments must be installed:
- (1) Granite. At all street corners and angles, granite reference monuments must be at least four (4) feet long, four (4) inches square in width, have #6 rebar in their center, and have no more or less than six (6) inches, give or take an inch, exposed above the ground.
 - (2) Iron. Along all lot lines, #6 rebar iron reinforcement rods must be installed at 100 foot intervals, must be at least four (4) feet long, and must have no more or less than six (6) inches, give or take an inch, exposed above the ground.
- E. Water Course Easement. The Planning Board may require easements, established under, and maintained by a homeowner's association, or in their absence an environmental agency, for the protection of natural water courses. These easements must be at least 20-foot wide and described on the final plan. Where improvements to natural water courses are required, all costs shall be paid by the applicant.
- F. Special Flood Hazards Area. The applicant must show that land designated as 'Special Flood Hazard Area' on the flood insurance rate maps meets the following requirements:
- (1) Proposed Land Use. That the proposed land use will not experience flood damage,
 - (2) Utility System. That all proposed public and private utility systems are constructed by the applicant to minimize or eliminate flood damage,
 - (3) Drainage Plans. That the drainage to be provided is adequate to reduce exposure to flood hazards. Preliminary information concerning special flood hazard areas may be drawn from Flood Insurance Rate Maps. The applicant must provide flood elevation data and show engineering justification when identifying the location of the special flood hazard area.
- G. Appearance Assessment. In preparing the final plan, the applicant shall incorporate the following criteria to ensure the harmonious relationship of the project to surrounding properties, buildings, and natural features. The following factors must be considered:
- (1) Relationship of Project to Site. The plan must provide for smooth transitions between the streetscape, driveway entrances, and project landscaping. Height and scale of

proposed structures must be consistent with existing structures.

- (2) Relationship of Project to Surrounding Property. The plan must provide for smooth transitions between land, proposed structures, and surrounding properties. Compatible transitions may be achieved by utilizing screening materials, landscaping, and natural topography.
 - (3) Relationship of Landscape Design. Landscape design includes all forms of planting and vegetation, including existing vegetation, topography, water patterns, and utilitarian structures such as, but not limited to, fencing and curbing. Wherever practicable, the applicant shall maintain existing topography and vegetation. Landscaping must provide a transition between buildings, parking, and pedestrian walkways, while breaking up long open areas and traffic patterns. Suitable plant material must be selected according to its structure, texture, color, ultimate growth, and hardness. It should be equally effective in winter and summer. The design may provide for the use of materials such as fences, walls and a variety of paving types where there is difficulty in achieving vegetative growth.
 - (4) Relationship of Lighting to Project. The design, type, and location of street lighting are to be reviewed. The lighting materials must blend with the overall project scheme enhancing design and landscaping. Standards and fixtures must be compatible with surrounding developments and, if maintained by a public utility, meet their requirements. Excessive brightness must be avoided and lighting must be confined to areas in accordance with this Ordinance.
 - (5) Relationship of Signs to the Project. Sign installation or modification must conform to this Ordinance. Sign materials and design must be an integrated element of the overall site plan and must blend with proposed landscaping. Signing must be compatible with surrounding properties and not obstruct or interfere with the vision of drivers.
 - (6) Village Review Structure. Where a structure lies within the Village Review Overlay Zone, the applicant must incorporate the standards of the Village Review Overlay Zone.
- H. Development Impact Fees. The Planning Board may require the applicant to participate in municipal infrastructure improvements. Where it is demonstrated that the applicant's proposed development will result in a negative impact or decline in level of service of any existing municipal infrastructure system or services, the Planning Board shall assess and establish the applicant's level of participation in accordance with improvements of that system or service.
- I. The Planning Board may make additional requirements concerning trees, esplanades, public walks, driveways, and similar public improvements that must be included in the final plan.

502.9 Solar Access Requirements. An applicant must take into consideration the solar orientation of proposed housing units. In planning for solar contingencies, the applicant shall consider the following:

- A. Southerly Exposure. When practicable, the project must utilize southerly exposure

and topography in lot layouts and building locations. Higher densities should be oriented towards southerly exposures.

- B. Building Design. Where the review of building elevations is appropriate, the applicant shall incorporate into the building design a balanced solar exposure. The applicant shall identify building techniques designed to minimize energy costs and shall consider the height and impact on adjacent buildings.
- C. Landscape Design. Landscape plans must include a reference to the vegetative impact on exposure, solar access during colder periods and shade potentials during warmer periods. The design, height, and canopy for all trees shall be taken into consideration.

502.10 Findings of Fact. Prior to granting approval, the Planning Board shall make its findings of fact based on the information provided by the applicant. The findings shall address the following:

- A. STANDARDS - The Planning Board shall review the subdivision application to determine compliance with the following standards:
 - 1. Pollution. The proposed subdivision will not result in undue water or air pollution. In making this determination, the Planning board shall at least consider the following:
 - a. The elevation of the land above sea level and its relation to the flood plains;
 - b. The nature of soils and subsoils and their ability to adequately support waste disposal;
 - c. The slope of the land and its effect on effluents;
 - d. The availability of streams for disposal of effluents; and
 - e. The applicable state and local health and water resource rules and regulations;
 - 2. Sufficient water. The proposed subdivision has sufficient water available for the reasonably foreseeable needs of the subdivision;
 - 3. Municipal water supply. The proposed subdivision will not cause an unreasonable burden on an existing water supply, if one is to be used;
 - 4. Erosion. The proposed subdivision will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results;
 - 5. Traffic. The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed and, if the proposed subdivision requires driveways or entrances onto a state or state aid highway located outside the urban compact area of an urban compact municipality as defined by 23 M.R.S.A. Section 754, the Department of Transportation has provided documentation indicating that the driveways or entrances conform to 23 M.R.S.A. Section 704 and any rules adopted under that section;
 - 6. Sewage disposal. The proposed subdivision will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are

utilized;

7. Municipal solid waste disposal. The proposed subdivision will not cause an unreasonable burden on the City's ability to dispose of solid waste, if municipal services are to be utilized;
8. Aesthetic, cultural and natural values. The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Maine Department of Inland Fisheries and Wildlife or the City, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline;
9. Conformity with City ordinances and plans. The proposed subdivision conforms with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan or land use plan, if any. In making this determination, the Planning Board may interpret these ordinances and plans;
10. Financial and technical capacity. The subdivider has adequate financial and technical capacity to meet the standards of this section;
11. Surface waters; outstanding river segments. Whenever situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in 38 M.R.S.A., chapter 3, subchapter I, article 2-B, the proposed subdivision will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.
 - a. When lots in a subdivision have frontage on an outstanding river segment, the proposed subdivision plan must require principal structures to have a combined lot shore frontage and setback from the normal high-water mark of 500 feet.
 - (1) To avoid circumventing the intent of this provision, whenever a proposed subdivision adjoins a shoreland strip narrower than 250 feet which is not lotted, the proposed subdivision shall be reviewed as if lot lines extended to the shore.
 - (2) The frontage and set-back provisions of this paragraph do not apply either within areas zoned as general development or its equivalent under shoreland zoning, 38 M.R.S.A. chapter 3, subchapter I, article 2-B, or within areas designated by ordinance as densely developed. The determination of which areas are densely developed must be based on a finding that existing development met the definitional requirements of section 4401, subsection 1, on September 23, 1983;
12. Ground water. The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water;
13. Flood areas. Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the subdivider shall determine the 100-year flood elevation

and flood hazard boundaries within the subdivision. The proposed subdivision plan must include a condition of plan approval requiring that principal structures in the subdivision will be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation;

14. Freshwater wetlands. All freshwater wetlands within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of freshwater wetlands may be done with the help of the local soil and water conservation district;
- 14-A. Farmland. All farmland within the proposed subdivision has been identified on maps submitted as part of the application. Any mapping of farmland may be done with the help of the local soil and water conservation district;
15. River, stream or brook. Any river, stream or brook within or abutting the proposed subdivision has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in 38 M.R.S.A. Section 480-B, subsection 9;
16. Stormwater. The proposed subdivision will provide for adequate stormwater management;
17. Spaghetti-lots prohibited. If any lots in the proposed subdivision have shore frontage on a river, stream, brook, great pond or coastal wetland as these features are defined in 38 M.R.S.A. Section 480-B, none of the lots created within the subdivision have a lot depth to shore frontage ratio greater than 5 to 1;
18. Lake phosphorus concentration. The long-term cumulative effects of the proposed subdivision will not unreasonably increase a great pond's phosphorus concentration during the construction phase and life of the proposed subdivision;
19. Impact on adjoining municipality. For any proposed subdivision that crosses municipal boundaries, the proposed subdivision will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located; and
20. Lands subject to liquidation harvesting. Timber on the parcel being subdivided has not been harvested in violation of rules adopted pursuant to 12 M.R.S.A. Section 8869, subsection 14. If a violation of rules adopted by the Maine Forest Service to substantially eliminate liquidation harvesting has occurred, the Planning Board must determine prior to granting approval for the subdivision that 5 years have elapsed from the date the landowner under whose ownership the harvest occurred acquired the parcel. A municipal reviewing authority may request technical assistance from the Department of Agriculture, Conservation and Forestry, Bureau of Forestry to determine whether a rule violation has occurred, or the municipal reviewing authority may accept a determination certified by a forester licensed pursuant to 32 M.R.S.A. chapter 76. If the Planning Board requests technical assistance from the bureau, the bureau shall respond within 5 working days regarding its ability to provide assistance. If the bureau agrees to provide assistance, it shall make a finding and determination as to whether a

rule violation has occurred. The bureau shall provide a written copy of its finding and determination to the Planning Board within 30 days of receipt of the Planning Board's request. If the bureau notifies the Planning Board that the bureau will not provide assistance, the Planning Board may require a subdivision applicant to provide a determination certified by a licensed forester.

For the purposes of this subsection, "liquidation harvesting" has the same meaning as in 12 M.R.S.A. Section 8868, subsection 6 and "parcel" means a contiguous area within one municipality, township or plantation owned by one person or a group of persons in common or joint ownership. This subsection takes effect on the effective date of rules adopted pursuant to 12 M.R.S.A. Section 8869, subsection 14.

503 - Reserved

504 Site Plan Review.

504.1 Purpose. The site plan review process is designed to ensure that a given project fits harmoniously with surrounding properties. Site plan review insures that public infrastructure is adequate enough to absorb the impacts of new or expanded developments by requiring the applicant to make such improvements prior to moving forward.

504.2 Applicability. Site Plan Review is required for any project consisting of commercial, retail, industrial or institutional structures, or multiple family dwellings consisting of three or more attached dwelling units, and their accessory uses and structures that exceeds 3,000 square feet of any combination of the following within a 5-year period:

- New structures
- Expansions
- Alterations
- New or altered impervious cover

504.3 Authority. The authority over site plan review is vested in the Westbrook Planning Board, unless otherwise stated in this document.

504.4 No building permits may be issued without Site Plan approval; Required Mylar Submission. Mylars must be submitted to the City within 90 days of Planning Board approval or the approval shall be null and void. The Code Enforcement Officer shall not issue any permits until a site plan has been approved by the Planning Board and a Mylar signed by the Planning Board.

504.5 Minor Amendment to an Approved Site Plan.

- A. A person seeking approval under this section shall submit a completed application form and shall include a plan that shows the proposed changes and the existing conditions and a detailed statement of how the proposed changes meet the criteria of this section.
- B. The applicant shall be responsible for paying the application fee set forth in the Master Fee Schedule.
- C. A minor amendment to a Planning Board approved site plan may be reviewed

administratively by the City Planner provided all the following requirements are met:

- a. The site plan was approved since adoption of this ordinance (adopted 2/9/2004) and has obtained no more than two administrative change approvals;
- b. The proposed change(s) would be located within existing structures, and there would be no demolitions, or building expansions other than those permitted by subsection c of this section;
- c. Any necessary building expansion would have an increased maximum gross density factor of no greater than five (5) percent, there would be no increase in the number of dwelling units and the proposed change(s) would require a minimal increase in paved surfaces;
- d. The proposed change(s) would not add curb cuts or driveways; would not disrupt the circulation and parking on-site; and would add no drive-thru services;
- e. The curbs and sidewalks adjacent to the lot shall meet minimum requirements and shall be in sound condition and sidewalks in good repair with uniform material and level surface and meet the accessibility requirements of the Americans with Disabilities Act;
- f. The proposed change(s) would not increase parking demands as determined by Section 505.1 or traffic generation as determined by the International Traffic Engineers Trip Generation Manual, latest edition and would result in no significant increase in hours of operation;
- g. The proposed change(s) would not increase stormwater impacts to the site or to adjoining properties;
- h. The proposed change(s) would not reduce screening from adjoining properties and would not reduce the amount, intent or quality of landscaping; and
- i. The proposed change(s) would not increase demand on public or private utilities and would pose no disturbance or require improvements within the public right-of-way.

D. Based on the review of the proposed change(s) the City Planner may:

- a. Grant administrative approval of the proposed change, with or without conditions;
- b. Place the item on the consent agenda for Planning Board approval; or
- c. Determine that the proposed change is not minor and requires Planning Board approval of a site plan amendment application.

E. Changes to aspects of the approved site plan that were at issue during the approval process may require Planning Board approval of a site plan amendment.

F. Changes to any condition of approval placed by the Planning Board during its approval will require review and approval by the Planning Board and cannot be approved under this section. (Ord. of 6-1-09; 6-22-09)

G. A proposal that does not require Planning Board site plan review is not exempt from other approvals or permits, nor is it an authorization for construction. The Code Enforcement Officer will determine what other permits, such as a building permit, are to be required.

504.6 Site Plan Submission Requirements.

504.6.1 Sketch Plan. The following

information is required for sketch plan submission:

- A. Project name, names of property owner, applicant, and designer,
- B. Date, north point, scale,
- C. Perimeter boundary, area of proposed development and preliminary building footprints, areas reserved for future development,
- D. Tentative easements or rights of way locations, lot lines, lot numbers, acreage,
- E. Estimated soil boundary locations from the U.S.A.D.A./S.C.S medium-intensity soil survey noting areas of severe and very severe soil limitations, as applicable
- F. Land cover areas, (e.g. woods, fields),
- G. Topographic features: areas of steep slopes, bedrock outcrops, ponds, streams, aquifers, aquifer groundwater recharge areas, floodplains, and
- H. Location of existing and proposed structures,
- I. Names and addresses of abutting land owners
- J. Locator map
- K. Non-refundable Sketch Plan application fee in an amount established by the City Council.
- L. An electronic copy of all application materials in a format acceptable to the City Planner

504.6.2 Final Plan The following information is required for final plan submission:

- A. Application Information. An applicant for site plan review shall submit the following as part of the final plan.
 - (1) Project name,
 - (2) Name, address, phone number of applicant,
 - (3) Name, address, phone number of owner,
 - (4) Name, address, phone number of authorized representative,
 - (5) Name, registration number, address, phone number of engineer, surveyor, architect, landscape architect or planner,
 - (6) Interest of applicant in property,
 - (7) Tax map and lot numbers,
 - (8) Acreage to be developed,
 - (9) Acreage of the site,
 - (10) Covenants deed restrictions, easements, or rights of way existing or planned,
 - (11) Existing use of the property,
 - (12) Variances requested of the Zoning Board of Appeals,
 - (13) A cost estimate worksheet and a financial capacity statement from a financial institute confirming the ability of the applicant to carry out the project,
 - (14) Statement of technical capacity
 - (15) Electronic copy. An electronic copy of all application materials shall be submitted with the initial and each subsequent submission. This shall be in a file format acceptable to the City Planner.
 - (16) Non-refundable Final Plan application fee in an amount established by the City Council, and

(Amended per Ord. of 11/17/14)

B. Map Requirements. The Site Plan Map must consist of 15 blueprints to be retained by the City, with a maximum size of 30"x40" and at a scale that is appropriate for the size of the project, level of detail involved, and needs of the reviewer(s).

- (1) Date, title, scale, north arrow, name of project,
- (2) A boundary outline with dimensions and lot area, in relation to surrounding streets, walls and adjoining fond and land uses,
- (3) Names and addresses of present landowners and abutting landowners,
- (4) Locations of existing buildings and other structures, fire hydrants, street lights, utility poles, underground water and sewer facilities, existing trees greater than 10" in diameter on property less than one acre in size OR areas of tree save and other natural landscape features on property one acre or more and any other utilities on the site,
- (5) Preliminary design drawings of site plans, floor plans, elevations in sufficient detail to show access, layout and building construction or modification,
- (6) Location and dimension of all proposed buildings, and private and public utilities.
- (7) Location map,
- (8) Performance bond or conditional agreement, as required by the Planning Board.
- (9) All necessary easements, shown on plan,
- (10) Accurate dimensions of streets, right-of-ways, width of pavement, parking, loading and associated curbing,
- (11) Identification of soils with severe or very severe limitations for the type of development proposed in accordance with the U.S.D.A.S.C.S medium intensity soil survey for Cumberland County, the location of any sand and gravel aquifer and aquifer recharge area, and any wetland area as defined by DEP and Army Corp of Engineer requirements,
- (12) Digital Transfer of any site plan data in GIS format on the City's Horizontal Datum: Maine Stateplane Coordinate System: Maine West Zone 4101, FIPS Zone 1802, North American Datum 1983; Units: Feet; Vertical Datum: National Geodetic Vertical Datum, 1929,
- (13) Digital Transfer on a compact disc (CD) of any site plan data in Computer Aided Design (CAD) format as a .dwg file,
- (14) Zoning requirements, proposed project dimension calculations in relation to existing zoning standards.

C. Supporting Documents. Any of the following sketches or plans may be combined in one plan for presentation purposes:

- (1) Site plan showing existing natural and topographical features including watercourses and waterbodies, trees and other vegetation, and any other pertinent features,
- (2) A plan of all buildings with new construction or expansion of an existing facility, including type, size, and footprint, floor layout, setback, elevation of first floor slab, storage and loading areas,
- (3) An elevation view of all buildings

indicating their height, color, bulk, surface treatment, and signs attached to buildings,

- (4) A circulation plan noting all pedestrian and vehicle traffic flow, both within the development and in terms of ingress and egress impact on surrounding road systems,
- (5) The size and proposed location of water supply and sewage disposal systems and provision for future expansion of those systems,
- (6) A landscaping plan indicating grade change, vegetation to be preserved, new plantings used to stabilize areas of cut and till and screening; the size, location, purpose, type of vegetation, and number of planting categorized by the type of plant.
- (7) A drainage plan, including location, elevation, layout of catch basins, stormwater retention or detention area, and other surface and subsurface drainage features,
- (8) A topographical plan, at 2-foot intervals, showing existing and proposed contours and finished grade elevations,
- (9) Any other exhibits or data deemed necessary by the Planning Board to evaluate the proposed development for site plan review purposes,
- (10) Statements from the following officials:
 - (a) The Portland Water District as to the conditions under which the District will supply water and sewage removal, approval of the size and location of mains, valves and hydrants proposed, and the approval of and required pre-treatment facility. If septic is to be used, a statement from the plumbing inspector that the system is adequately designed to serve the facility,
 - (b) The Fire Chief approving the safety features related to fire and emergency protection,
 - (c) The City Engineer regarding the adequacy and design of drainage and street systems, both proposed and existing,
 - (d) The Police Chief relative to traffic circulation,
 - (e) Where the use may involve the production of a substantial amount of waste, the applicant shall request review by the Director of Public Works for an appropriate recycling plan,
 - (f) Director of the public transit authority regarding the potential to serve the site, and how internal circulation for public transit vehicles will be provided,
 - (g) Any other agency or committee deemed appropriate by the Planning Board.

504.7 Dual Reviews. Where the development also involves subdivision, all appropriate subdivision standards apply. The review process for both may occur at the same time. All conditional uses shall be required to receive Planning Board approval during the subdivision or site plan review process.

504.8 Development Impact Fees. The Planning Board may require the applicant to participate in municipal infrastructure improvements. Where it is demonstrated that the applicant's proposed development will result in a negative impact or decline in level of service of any existing municipal infrastructure system or services, the Planning Board shall assess and establish the applicant's level of participation in accordance with improvements of that system or service.

505 Site Plan Review Design and Performance Standards.

505.1 The General design and performance standards for site plan review are as follows:

- A. Utilization of the Site.** The plan for development must reflect the natural capabilities of the site to support development. Environmentally sensitive and natural drainage areas must be buffered and preserved to the maximum extent possible. The landscape must be preserved in its natural state as practicable. This includes minimizing tree removal and disturbance of soil whenever possible.
- B. Handicap Access.** The plan must indicate the location and type of handicap access to restroom facilities, parking areas, and entrances and exits. The plan must be in accordance with the standards established in the Americans with Disability Act (ADA), as revised.
- C. Appearance Assessment.** In preparing the final plan, the applicant shall incorporate the following criteria to ensure the harmonious relationship of the project to surrounding properties, buildings, and natural features. The following factors must be considered:
 - (1) Relationship of Project to Site. The plan must provide for smooth transitions between the streetscape, driveway entrances, and project landscaping. Height and scale of proposed structures must be consistent with existing structures.
 - (2) Relationship of Project to Surrounding Property. The plan must provide for smooth transitions between land, proposed structures, and surrounding properties. Compatible transitions may be achieved by utilizing screening materials, landscaping, and natural topography.
 - (3) Relationship of Landscape Design. Landscape design must include all forms of planting and vegetation, including existing vegetation, topography, water patterns, and utilitarian structures such as, but not limited to, fencing and curbing. Wherever practicable, the applicant shall maintain existing topography and vegetation. Landscaping must provide a transition between buildings, parking, and pedestrian walkways, while breaking up long open areas and traffic patterns. Suitable plant material must be selected according to its structure, texture, color, ultimate growth, and hardness. It must be protected through appropriate buffering to avoid damage where vegetation is used for screening purposes, and it must be equally effective in winter and summer. The design may provide for the use of materials such as fences, walls and a variety of paving types where there is difficulty in achieving vegetative growth.
 - (4) Relationship of Lighting to Project. The design, type, and location of street lighting are to be reviewed. The lighting materials must blend with the overall project

scheme enhancing design and landscaping. Standards and fixtures must be compatible with surrounding developments and, if maintained by a public utility, meet their requirements. Excessive brightness must be avoided and lighting must be confined to areas in accordance with this Ordinance.

(5) Relationship of Signs to the Project. Sign installation or modification must conform to this Ordinance. Sign materials and design must be an integrated element of the overall site plan and must blend with proposed landscaping. Signing must be compatible with surrounding properties and not obstruct or interfere with the vision of drivers.

(6) Village Review Structure. Where a structure lies within the Village Review Overlay Zone, the applicant must incorporate the standards of the Village Review Overlay Zone.

D. Landscape Plan. The landscape plan shall be consistent with existing vegetation, provide significant buffers where such are determined to be necessary, and result in a harmonious blend with surrounding properties.

E. Odors. Odorous matter released from any operation or activity shall be controlled in accordance with the provisions of this ordinance. In addressing changes in odors as a result to the Board may require the applicant to establish pre- and post-development odor threshold levels. Any measurement conducted shall be conducted in accordance with the "Standard Method for Measurement of Odor in Atmosphere" or the "Dilution Method," as developed by the American Society for Testing and Materials. City Staff or a designated consultant shall act as the observer in this assessment.

F. Noise. Adequate provision must be made to control unnecessary noise from and at the site in accordance with the standards for each zoning district in this Ordinance. The Planning Board may require the applicant to establish pre and post-construction noise levels.

G. Technical and Financial Capacity. The applicant has demonstrated technical and financial capacity to carry out the project.

H. Solid Waste. The project must demonstrate an adequate plan for solid waste disposal.

I. Historic, Archaeological and Botanical Resources or Unique Features. Adequate provision must be made to mitigate adverse impact on existing scenic or natural beauty, rare or irreplaceable historic sites, or other features of importance to the City. Where such sites are identified, appropriate measures to protect or study these areas shall be put in place, be part of the site design and take into consideration the timing of construction.

J. Hazardous Matter. The handling, storage and use of materials identified by a state or federal agency shall have an appropriate plan of action and be done so in accordance with appropriate standards. For any toxic or hazardous waste storage, consistent DEP definitions, the Planning Board may require:

(1) Environmental Evaluation. An environmental evaluation of geologic, hydrologic, and soils conditions of the site in question,

- (2) Description of Wastes. A description of wastes to be stored, the manner in which they are to be stored and the manner of removal,
- (3) Ground water quality. A background establishing existing ground water quality around the site, and a system to monitor any changes should contamination occur,
- (4) Other Provisions. The findings and use of hazardous matter must be shown to be consistent with other provisions of this Ordinance.

K. Vibrations. Adequate provision must be made to control vibrations in accordance with the standards for each zoning district in this Ordinance. The Planning Board may require the applicant to establish pre and post-construction vibration levels.

L. Others. Based on particular cases, the Planning Board may choose to add other criteria in their final decision

505.2 Parking and Loading Design and Site Circulation.

A. Table of Off-Street Parking. The following minimum parking requirements apply unless the zoning for a particular district provides otherwise.

Table of Off-Street Parking 505.2.A.1

Principal Use	Number of Spaces
Single Family and Duplex	2 per unit
Efficiency Units/Multi-Family	1 per unit
1-2 bedrooms/Multi-Family	1.5 per unit
3 or more bedrooms/Multi-Family	2 per unit
Hospital	1.2 per employee/largest shift
Theatre/Stadium	0.3 per seat
Restaurant	0.3 per seat
Industrial	0.6 per employee at the largest shift
Church	0.3 per seat
College	0.5 per student
College Housing	1 per two beds
General Retail	6 per 1000 S.F. of sales area
Offices,Banks,Funeral Homes	5 per 1000 S.F.
Major Retail Center	5.5 per 1000 S.F.
Hotels,Motels,Boarding Houses	1 per rented room and 0.5 per employee
Inn, Boarding Houses	1 per rented room and 2 for the owner
Elementary/Junior High School	1.3 per classroom
Senior High School	1 per staff plus 1 per 5 students
Medical Offices	4 per 1000 S.F.
Auto Sales and Service	1.5 per 100 S.F.
Bowling Alleys	4.2 per lane
Sanitariums/Nursing Homes	1 per 3 rooms plus 1 per employee

Drive-in Window Services

8 stacking spaces for 1st window, and

2 per additional window

Other Commercial or Business

1 per 250 S.F.

B. Design of Off-Street Parking. Each off-street parking area must be designed with adequate access, turning radii, and snow storage areas in addition to the following minimum standards:

Table 505.2.B.1

Parking Angle	Stall Width	Skew Width	Stall Depth	Aisle Width
90°	9'0"	0"	18'5"	24'0"
60°	8'6"	10'5"	19'0"	(1 way) 16'0"
45°	8'6"	12'9"	17'5"	(1 way) 12'0"
30°	8'6"	17'0"	17'5"	12'0"

(Amended per Ord. of 11/17/14)

C. Parking On and Off Site

- (1) On-Site Parking Facilities. Except as provided in subsection (2), parking must be provided on the lot occupied by the use to which the space is appurtenant.
- (2) Off-Site Parking Facilities. Parking may be located off-site if it is located so that it will adequately service the use for which it is intended. In making this determination under site plan review, the Planning Board shall consider the following factors:
 - (a) The proximity of the off site parking,
 - (b) Ease of pedestrian access to the off-site parking including any necessary improvements,
 - (c) The legal interest of the applicant in the land for which the off site parking is proposed. The applicant must have a legally sufficient interest to establish control as long as the use exists.

D. Parking Required for Each Use. Where multiple use occurs, on-site parking facilities or loading bays must be provided in accordance with the standards above and below, respectively, except where the applicant can show through a parking study that each use has different operating hours, so that the peak period parking demand is non-conflicting. Non-conflicting periods may consist of daytime as opposed to evening hours of operation or weekday as opposed to weekend hours of operation. Where the applicant can demonstrate non-conflicting periods of use, the Planning Board may grant approval for shared use of parking spaces.

E. Screening. All parking may be screened from adjacent properties with either fencing or natural materials. In making this determination the Planning Board shall take the need of the abutters into consideration.

F. Circulation. The layout of the site must provide for safe movement of passenger, service and emergency vehicles within the site. Turning movements shall meet minimum standards for the designated activity. All roadways and parking areas shall be designed to harmonize with topographic and natural features to minimize grading and fill.

G. Loading Facilities. Following is the Table of minimum Off-Street Loading Space

Requirements.

Table 505.2.G.1

Number of Loading Bays Required for New Structures

Type of Use	Gross Floor Area of Structure (in thousands of S.F.)				
	1-7	8-24	25-100	101-250	Each 250 add.
Commercial & Industrial Uses.	1	2	3	4	1
Institutional, Office Buildings, Hotels, Residential.	1	1	1	3	1
Truck Terminals & Storage (Dependent on facility)	15 bays/ 100,000 S.F. of gross floor area				

H. Size of Loading Areas. Each truck-loading bay must be between 12 and 14-feet wide depending on conditions of ingress and egress. Access to the bay must include a minimum maneuvering area of 125 feet in length, or more where required. The bay area must be long enough to accommodate standing trucks so as to remove them from the flow of traffic. All loading bays must be screened, with areas for trucks to park in when waiting for loading activities.

I. Planning Board Discretion. The Planning Board may relax or expand any of the requirements in this section in the case of site plan review if the applicant can describe statistically how its operation will require a different treatment.

(Ord. of 4-5-10)

505.3 Transportation Network Standards

A. Adequacy of Road System. Vehicular access to the site must be on roads which have adequate capacity to accommodate additional traffic. Intersections in the vicinity of the project must be maintained at a level of service D.

- (1) If the intersection is already below D, improvements shall at least maintain the existing level of service for that intersection. This requirement may be waived if the project is within a designated growth area or there is an approved project to modify the existing traffic system.

B. Vehicular Access. The site layout must provide for safe ingress and egress to and from public and private roads by requiring adequate location, numbers and control of access points including minimum site distance, turning lanes, and traffic signals if necessary.

- (1) The Planning Board may also require a study showing the existing and projected levels of service for entrances and intersections that are substantially affected by the proposed development.
- (2) The project’s design must also provide for the best possible access for public safety

and health personnel and vehicles.

- (3) Points of access shall avoid hazardous conflicts with existing turning movements, especially where an accident critical rate factor equal to or greater than one (1) exists.
- (4) A minimum of curb cuts is desired, shared access with adjacent properties is used whenever practicable.

C. Pedestrian and other modes of Transportation. The site must provide a system of pedestrian movement where there are safe and convenient connections between buildings and parking areas.

- (1) The system shall also encourage alternative modes of transportation and provide convenient access.
- (2) Connections shall also be made to the neighborhood, and to other corridor systems planned for the community.

505.4 Utilities/Services/Erosion and Sediment Control Standards

A. General. Standard requirements for water, sewer, storm drainage systems and street construction, where applicable, shall be the same as those required in subdivision ordinance. The Planning Board reserves the right to increase those minimum standards where it is deemed necessary. All utilities shall be underground.

B. Capacity. The development shall not exceed the capacity of utilities such as sewer, storm drains and water lines or on municipal services such as, but not limited to, fire, police, solid waste disposal, or other services. Any improvement costs required as a result of this impact, shall be borne by the applicant.

C. Storm Water Management, Groundwater Pollution. Adequate provisions must be made for the collection, treatment and disposal of stormwater. To the extent possible, the plan retains stormwater using natural features, has a program to reduce contaminants before they exit the property, and the rate of flow shall not exceed pre-existing conditions.

D. Erosion and Sedimentation Control. Best management practices shall be used in erosion control. All site activities shall utilize natural conditions to the best extent possible such that filling, excavation and earth moving is kept at a minimum. In designing a storm water management plan, groundwater pollution plan, and erosion and sedimentation plan, the applicant must observe the standards described in Westbrook's subdivision ordinance.

505.5-505.12. Reserved.

505.13 Site Plan Design and Performance Standards in the Gateway Commercial District adjacent to specific Residential Zones

505.13.1 **Purpose.** The purpose of this section of the Site Plan Review Ordinance is to ensure that commercial/retail development in the Gateway District is compatible with adjacent residential neighborhoods. (Ord. of 11/17/14)

505.13.2 **Applicability.** The additional standards in this subsection 505.11 must be met when a commercial or retail development, but not an industrial use, is proposed in the Gateway Commercial District that:

- A. Is situated on a parcel of land that is within 500 ft. of a residentially zoned and residentially occupied property at the time the development's site plan receives its first substantive review, as defined in 1 M.R.S.A. § 302, and
- B. Is situated on a parcel or combination of parcels greater than 10 acres.
- C. Projects in a common scheme of development within 500 ft. of a residentially zoned and residentially occupied property shall also be subject to the provisions of subsection 505.13.
- D. If the provisions of this subsection conflict with any other provisions in this ordinance, the more restrictive provision shall govern; further, no waivers of the provisions of this subsection may be granted. (Ord. of 11/17/14)

505.13.3 **Definitions.** Items defined in Section 201 of the Land Use Ordinances apply to all terms in Section 505.13. In the case of conflict, the definitions in this section will apply to terms in Section 505.13. (Ord. of 11/17/14)

Common Scheme of Development: A plan or process of development which:

- A. Takes place on contiguous or non-contiguous parcels or lots in the same immediate vicinity; and
- B. Exhibits characteristics of a unified approach, method, or effect such as:
 - (1) unified ownership, management, or supervision;
 - (2) sharing of common equipment or labor; or
 - (3) common financing.

Decibel: The practical unit of measurement for sound pressure level, abbreviated dB. The abbreviated dB(A) shall refer to readings taken on the A-weighted scale.

Earthen Berms: A mound comprised of clean fill or rock that is at a minimum covered with loam and seed. Berms may have trees and shrubs planted on them to increase their efficiency in visual and audio screening.

Residentially zoned occupied property: A parcel or parcels of land in a Residential Growth Area 1, Residential Growth Area 2, or Residential Growth Area 3 zone of the city on which one or more residences are established.

Visual Screening: The combination of buffer materials that block the development site from view.

505.13.4 **Standards**

A Buffering: In addition to any other buffering requirements in this ordinance, uses governed by this subsection shall provide buffering and screening between the proposed use and all abutting residentially zoned occupied property. The types of screening include, but are not limited to, earthen berms, vegetation with year-round foliage, and sound barrier walls – all of which are subject to the approval of the Planning Board based on materials and design. The approved buffering system must be installed prior to the issuance of any permanent occupancy permit, and the Planning Board may require installation of some or all of the buffering prior to demolition or site preparation where reasonably necessary to protect the health and safety of surrounding residentially improved properties.

The Planning Board shall review the buffering/screening system in accordance with the following standards:

(1) Space and Bulk Standards

- (a) Minimum height: Buffering/screening must be at least 10 feet high as measured from the existing ground level as established prior to the beginning of grading, excavation or construction, but in no case be less than 10 feet above finished grade;
- (b) Minimum width: A buffer of at least 150 feet as measured from the lot line of the proposed development must be maintained between the proposed building and any residentially zoned occupied property. If the proposed buffering utilizes plantings or earthen berms, these must be placed within the 150' buffer in a location that maximizes screening.
- (c) Minimum length: The buffer zone and all screening within it must be continuous in the area between the proposed site and any residentially zoned occupied property. A gap may be allowed in the buffering for the sole purpose of emergency vehicle access, provided that the gap shall be limited to the minimum necessary for such access.

(2) Performance

- (a) Visual Screening: The buffering must provide complete visual screening of the proposed development, including, but not limited to, any buildings, roof-top equipment, loading areas, parking areas, light poles and other light fixtures. The measurement of the visual screening will be taken from the property line of all abutting residentially zoned occupied property at an elevation at least 5 feet above ground level.
 - (i) As part of the site plan application submission, the applicant must provide photo-simulations. The simulations must show the view from at least one (1) vantage point along each property line of the development site that abuts residentially zoned occupied property.

(ii) After the visual screen has been installed, the Code Enforcement Officer must make a positive determination that complete visual screening has been achieved at all points along the property line(s) where residentially zoned occupied property abuts. A gap may be allowed in the visual screening for the sole purpose of emergency vehicle access, provided that the gap shall be limited to the minimum necessary width for such access.

(b) Lighting: The buffering system must limit the spill of artificial light onto abutting residentially zoned occupied property based on the standards of this subsection:

- (i) A study, submitted by a recognized lighting specialist or engineer, must demonstrate that the buffer and screening will minimize the spill of lighting off-site to no more than [0.2 foot-candles] in any location, and that no artificial light will spill onto any adjacent residentially zoned occupied property,
- (ii) Lighting must minimize “night glow” by using the lowest wattage possible and have an amber hue,
- (iii) Fixtures must be 90 degree cutoffs and no portion of the bulb or its glass shield shall extend below the bottom of the lighting case,
- (iv) Lighting affixed to any exterior wall facing abutting properties must be downshielded so that no light directly spills onto adjacent parcels.

(c) Noise: The buffer or screening system must limit the decibel level of all sounds or noise that reach the property line abutting residentially zoned occupied property to the following levels, and at the following times:

- (i) During daytime hours (6 am – 6 pm) – 60 dB(A)
- (ii) During nighttime hours (6 pm – 6 am) – 50 dB(A)
- (iii) Weekend hours Saturday – Sunday (9 am – 6 pm) daytime hours – 60 dB(A)
- (iv) Weekend hours Sat. – Sun. nighttime hours(6 pm – 9 am) – 50 dB(A)

(c.1) Exceptions: The following sources of noise shall be excluded from meeting these standards:

- (i) Natural phenomena.
- (ii) Any siren, whistle, or bell lawfully used on the premises in an emergency situation, provided that burglar alarms are terminated within thirty (30) minutes of activation.
- (iii) Snow removal equipment, except that equipment used on any side that abuts residentially zoned occupied property shall be used during daytime hours only.
- (iv) Noise generated by refuse and solid waste collection, except that equipment used in this manner shall be used during daytime hours only.
- (v) Noise generated from power equipment such as, but not limited to, power saws, sanders, lawn and garden tools, lawn mowers, snow blowers, or similar devices operated during daytime hours.

(vi) Emergency or extraordinary situations.

(c.2) Measurement Procedures: For the purpose of determining noise levels as set forth in this Ordinance, the following guidelines shall be applicable.

- (i) After an initial inspection to determine that noise is being emitted from a property under the jurisdiction of this ordinance, the Code Enforcement Officer reserves the right to hire a consultant or expert in the field of sound measurement. All costs billed by the consultant or expert must be paid for by the owner of the property from which the sound is being emitted.
- (ii) All personnel conducting sound measurements shall be trained in the current techniques and principles of sound measuring equipment and instrumentation.
- (iii) Instruments used to determine sound level measurement must conform to the current Standards of A.N.S.I. Type I or Type II meters.
- (iv) The general steps listed below must be followed when preparing to take sound level measurements:
 - (1) The instrument manufacturer's specific instructions for the preparation and use of the instrument must be followed.
 - (2) The sound level meter must be calibrated before and after each set of measurements. The calibrator itself shall be recalibrated at least once every year.
 - (3) The sound level meter must be placed as specified by the manufacturer's instructions and at least four (4) feet above the ground. It shall be placed so as not to be interfered with by individuals conducting the measurements.

(c.3) Sound Barrier Walls: If sound barrier walls are used, their technical specifications must be submitted to demonstrate that:

- (i) Noise levels at the property line(s) are limited to the regulations set in subsection (2)(c)(i)-(iv) and (2)(c)(c.1)(i)-(vi).
- (ii) The walls shall be placed in the most effective location within the 150 foot buffer.
- (iii) Landscaping is placed between the wall and residentially zoned occupied property. The required photo simulations must demonstrate that the landscaping provides at least 25% screening of the wall surface at the time of installation, and 75% screening when the vegetation has reached full maturity.

B. Hours of Operation

(1) Delivery Hours: Delivery by vehicles with more than two axles and refrigeration units shall not be made between the hours of 11:00 p.m. and 7:00 a.m. The Planning Board may grant exceptions to this requirement provided that its review and approval finds that,

(a) Noise barriers: A fully enclosed, noise-proof barrier, is used to block release of

any noise or light in excess of the standards provided in subsections (2)(c)(i)-(iv), (2)(c)(c.1)(i)-(vi) and (2)(b)(i)-(iv) , and

- (b) Delivery Area Lighting: On-site lighting is limited only to that reasonably necessary to accommodate such after-hours deliveries and shall not exceed the standards set forth in subsection (2)(b)(i)-(iv).
 - (c) Truck Idling: Delivery trucks shall not idle for longer periods than necessary to perform delivery functions.
- (2) Retail Hours of Operation: Retail hours of operation shall not commence earlier than 7:00 a.m. nor end later than 11:00 p.m.
- (3) Non-Retail Hours of Operation: Non-retail activities, such as outside loading or moving of pallets or stock in trade or stacking of delivery vehicles, shall not be allowed outdoors if they exceed the noise or lighting restrictions in (2)(c)(i)-(iv), (2)(c)(c.1)(i)-(vi) and (2)(b)(i)-(iv) . Non-retail activities within the building are permitted between 11:00 p.m. – 7:00 a.m.

C Building Design Standards:

The following standards are intended to ensure that retail and commercial buildings are compatible in design with the surrounding area and community character of the city. All additions to existing retail and commercial service buildings, built either before or after the adoption of this Ordinance, are required to meet these building design standards.

- (1) Internal Subdivision: The building footprint must be designed and constructed in such a way as to enable future possible internal subdivision and re-use by future, unrelated parties.
- (2) Structural & Decorative Elements: The building shall employ building setbacks, height, roof treatments, door and window openings, and other structural and decorative elements to reduce apparent size and scale.
- (3) Building Scale: The apparent mass and scale of large buildings shall be reduced through the use of materials and architectural elements that provide a pedestrian scale and visual interest.
 - (a) Building facades visible from public streets and public spaces shall be stepped back or projected forward at intervals to provide a minimum of forty percent (40%) facade modulation. The minimum depth of modulation should be one foot and the minimum width shall be five feet. Ground floor facades that face public streets shall have arcades, display windows, entry areas, awnings or other such features along no less than fifty percent (50%) of their horizontal length.
 - (b) Articulation. Buildings shall be articulated to reduce the apparent scale of buildings. Architectural detail options may include reveals, battens, and other three dimensional details that create shadow lines and break up the flat surfaces of the facade. The following are recommended methods to achieve this:

- (i) Tripartite articulation that establishes a building top, middle, and base to provide pedestrian-scale and architectural interest.
 - (ii) Windows should be articulated with mullions, recesses, etc., as well as applying complementary articulation around doorways and balconies.
 - (iii) Arcades, balconies, bay windows, dormers, and/or columns may be used.
 - (iv) A distinctive roofline to reduce perceived building height and mass, increase compatibility with smaller scale and/or residential development, and add interest to the overall design of the building. Roofs with particular slopes may be required by the Planning Board to complement existing buildings or otherwise establish a particular aesthetic objective consistent with buildings nearby. This compatibility may be accomplished by:
 - (a) The use of alternating dormers, stepped roofs, gables, or other roof elements to reinforce the modulation or articulation interval.
 - (b) Flat-roofed designs alone are prohibited. Cornices and decorative facings shall be used to eliminate the view of the flat roof from ground level.
 - (c) In retail areas, small-scale additions may be used to reduce the apparent bulk. Clustering smaller uses and activities around entrances on street-facing facades also allows for small retail or display spaces that are inviting and add activity to the streetscape.
- (c) Building Materials: Building materials shall be unified throughout the building, and shall complement other buildings in the vicinity.
- (i) Predominant exterior building materials may not include the following: smooth-faced concrete block, tilt-up concrete panels; pre-fabricated steel panels, vinyl siding (ground floor applications). Wood-textured cementitious fiber board products may be considered in lieu of wood siding.
 - (d) Building Color. Façade colors shall be non-reflective, using neutral or earth tones. The use of high intensity colors, metallic color, black, or fluorescent colors on facades is prohibited. Building trim or architectural accent elements may feature brighter colors, but they shall not be high intensity, metallic, black, or fluorescent in nature.
- (4) Delivery and service areas must be located on areas of the building or site that are not within 500 feet of residentially zoned occupied property.

D. Additional Requirements

(1) Access Management:

- (a) No egress from or ingress to a site subject to this section shall be permitted over residentially zoned property, except for emergency vehicles.

(2) Traffic Study:

- (a) As part of any site plan development application subject to this section, a developer must commission an independent traffic study to ascertain the traffic flow on streets that may be impacted as a result of development on the proposed site. The Planning Board shall determine the streets to be studied.

If a site plan development application is granted final approval by the Planning Board and development is permitted, then nine (9) months following the initiation of the intended use of the site, the developer must commission a second independent traffic study to ascertain the post-occupation flow of traffic on streets. The Planning Board shall determine the streets to be studied.

If, in the judgment of the Planning Board, the results of the second traffic study evidence a measurable increase of traffic flow on the streets designated by the Planning Board, the developer shall work with the City

Administration and take steps to moderate the increased traffic flow by the use of such measures as, for example, stop sign installation and construction of speed slowing devices.

- (3) Impact Analysis. The Planning Board will require an impact analysis to be conducted by a qualified consultant retained by the City at the applicant's expense. In addition to the standards found in section 507 of the Site Plan Review Ordinance, the study shall assess and provide data on the following:

- (a) Data Description: The same data must be provided by the analysis as that stated in Section 507(A) of the Site Plan Review Ordinance.
- (b) Impact Analysis: The consultant also must conduct an analysis of and provide data on the following:
- (i) Estimated economic impact on the City of Westbrook including,
- Employment,
 - Businesses,
 - Municipal tax revenues,
 - Project generated revenue retained and redirected into Westbrook's economy,
 - General assistance resources, and
 - Social services.
- (ii) A proposed project's impact on residentially zoned occupied property within 500 feet of the proposed development.

Once the Study has been completed, the consultant in conjunction with the Department of Planning, Engineering and Code Enforcement shall present it to the Planning Board for review and comment. The Planning Board may ask for additional information or comments from other community agencies. The consultant shall use

the information, data, and conclusions of the Study to make recommendations on the applicant's participation in municipal infrastructure improvements based on Section 508 of the Site Plan Review Ordinance.

In deciding whether to approve a project, the Planning Board must make a specific finding as to a project's impact on the city, basing that finding on the analysis described in this subsection.

- (4) In deciding whether to approve a project, the Planning Board must make specific findings as to a proposed development's compliance with the city's comprehensive plan. (Ord. of 11/17/14)

505.13.5 Applicability Date: Notwithstanding any other provision of law and to the maximum extent permitted by law, this ordinance amendment, if and when adopted, shall relate back in time, and be applicable to, any project, development or land use application that has not had substantive review of such application, within the meaning of 1 M.R.S.A. § 302, as of August 2, 2004. (Ord. of 08-15-05)

505.14 Findings of Fact. Prior to granting approval, the Planning Board shall make its findings of fact based on the information provided by the applicant. The findings shall address the standards set forth in Section 505:

505.15 CONCLUSIONS

In addition to the findings of fact set forth above, the Planning Board decision shall include the following conclusions.

1. The proposed site plan **will/will not** result in undue water or air pollution.
2. The proposed site plan **has/has not** sufficient water available for the reasonably foreseeable needs of the site plan.
3. The proposed site plan **will/will not** cause an unreasonable burden on an existing water supply.
4. The proposed site plan **will/will not** cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.
5. The proposed site plan **will/will not** cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed.
6. The proposed site plan **will/will not** provide for adequate sewage waste disposal.
7. The proposed site plan **will/will not** cause an unreasonable burden on the municipality's ability to dispose of solid waste.
8. The proposed site plan **will/will not** have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.
9. The proposed site plan **conforms/does not conform** with a duly adopted site plan regulation or ordinance, comprehensive plan, development plan, or land use plan.

10. The developer **has/does not have** adequate financial and technical capacity to meet standards of this section.
11. The proposed site plan **is/is not** situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38, Chapter 3, subchapter I, article 2-B M.R.S.A.
12. The proposed site plan **will/will not** alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.
13. The proposed site **is/is not** situated entirely or partially within a floodplain.
14. All freshwater wetlands **have/have not** been shown on the site plan.
15. Any river, stream, or brook within or abutting the site plan **has/has not** been identified on any maps submitted as part of the application.
16. The proposed site plan **will/will not** provide for adequate storm water management.
17. The proposed plan **will/will not** negatively impact the ability of the City to provide public safety services.
18. Any other finding made by the Board not found above, but particular to the unique qualities of a given application.

Chapter VI Enforcement

601 General Statement.

General Statement. The purpose of this chapter is to ensure that construction, whether new or renovated, and general development throughout the city is of a quality that protects the health, safety, and welfare of the public.

602 Permits.

Permit. The following permits are required in the City of Westbrook:

- A. **Building Permits.** A person who desires to construct, reconstruct, structurally alter, add to, relocate, or demolish a building, construct a pool, build a shed, install a fence, must first obtain a building permit. A building permit is required for the following activities:

Construction of a building,
Reconstruction of a building,
Structurally altering of a building,
Addition to a building,
Relocation of a building,
Demolition,
Installation of a pool,
Installation of a fence,
Construct and/or placement of a shed.

- B. **Use Permit.** The owner of a building which has been constructed, reconstructed, structurally altered, added to, or relocated, must obtain a use permit before the building or part of it requiring a building permit may be occupied. The purpose of this permit is to ensure that the use is permitted.

- C. **Change-of-Use Permit.** The owner of real estate who desires to change its use without making any change for which a building permit is required must first obtain a Change of Use Permit.

- D. **Permit for Expansion of Non-Conforming Use or Conditional Use.**

- (1) The owner of real estate who desires to expand its non-conforming use must follow the requirements of section 203 and obtain a building permit from the Code Enforcement Officer.

The owner of real estate who desires to expand its use which was permitted by conditional permit, must obtain an amended approval from the Planning Board before proceeding and obtain a building permit from the Code Enforcement Officer.

E. Excavation and Fill Permit. An excavation or fill that is not covered by any other permit in this Ordinance is required to obtain a permit from the Code Enforcement Officer if:

- (1) Excavation. More than thirty (30) cubic yards is proposed to be excavated from the property . The applicant shall describe the reasons for the excavation, disposition of the soil, identification of any potentially contaminated soil, erosion and sedimentation control, and impact on surrounding properties.
- (2) fill.. The applicant must demonstrate the purpose of the fill, if, and how much wetlands on the site are proposed to be filled, that no drainage course is changed, and that proper soil and erosion practices are put in place.

The Code Enforcement Officer in consultation with other city staff, will approve or deny the permit to fill based on the environmental issues noted above.

F. Driveway Permit. The Code Enforcement Officer shall approve or deny, in consultation with the City Engineer, driveway permits. In applying for such a permit, the applicant shall provide information on the elevation of the driveway, its slope into the street (no slope greater than 3% is allowed). The Code Enforcement Officer shall insure that no drainage way is obstructed, that improvements are made to handle flow capacity, and that the design does not create an erosion and sedimentation problem.

The standards of this section replace those in Chapter 29, Article V, of the City of Westbrook Code of Ordinances.

603 Permit Procedures.

Permit Procedure. An applicant for a permit of any type must submit a written application to the Code Enforcement Officer. The Code Enforcement Officer shall review the application and shall make any necessary inspection within a responsible time. If the application is for a permit which can be issued by the Code Enforcement Officer and the requirements of this Ordinance and any other pertinent ordinance or State statute are met, the Code Enforcement Officer shall issue the permit to the applicant. If the application is for a permit which requires approval of the Zoning Board of Appeals or the Planning Board, the Code Enforcement Officer shall refuse to issue the permit and shall advise the applicant of the necessary procedures to be taken.

A. Application for Building Permit. An application for a building permit must state the intended use to be made of the land and buildings. It must be accompanied by a plot plan drawn approximately to scale showing the dimensions of the lot, the location and size of a building proposed to be constructed or relocated, and the location of any public or private way on or adjacent to the lot. All designs must be

in accordance with appropriate building and life safety codes, adopted by reference by the City, as from time to time amended. The drawing must be of adequate quality to determine impact on setbacks and compliance with building codes.

- B. **Application Retained.** An application for any type of permit, any accompanying data, and a copy of each permit issued must be kept on file in the office of the Code Enforcement Officer.
- C. **Inspection of Premises.** The Code Enforcement Officer may inspect all necessary parts of any premise regulated by this Ordinance during reasonable hours.
- D. **Fees.** Fees for permits shall be determined by the City Council.

604 Duties of the Code Enforcement Officer.

Enforcement. The Code Enforcement Officer (CEO) shall enforce this Ordinance. The CEO shall make determinations under and interpretations for this Ordinance, subject to the right of appeal of any aggrieved person under Chapter 7 of this ordinance. The Code Enforcement Officer's interpretations of the ordinance shall create precedent and will be recorded for future determinations.

Periodic Inspection. The Code Enforcement Officer shall travel each public way in the City of Westbrook, from time to time, to insure that there are no violations of this ordinance.

Annual Report. The Code Enforcement Officer shall file a report with the Municipal Officers on a quarterly basis, and an additional summary of the year's activity on an annual basis. The report shall contain a list of violations of this Ordinance and his/her actions with respect to them. The report shall also include the building permits issues, and actions taken by the Zoning Board of Appeals.

Complaints. When any person files a complaint with the Code Enforcement Officer that this Ordinance is being violated, the Code Enforcement Officer shall immediately examine the subject of the complaint and take appropriate action. The Code Enforcement Officer shall keep a record of these complaints, the action on them, and report to the complainer, upon request.

Violation Procedure. When any violation of this Ordinance comes to the attention of the Code Enforcement Officer, a written notice of the violation to the owner of the premises shall be delivered. The notice may be served by having a copy of it delivered by certified mail, by handing a copy to the owner, or by leaving it at the owner's place of residence or usual place of business. If the owner cannot be found after a reasonably diligent search, the notice may be served by posting it in a conspicuous place on the

premises in violation. The notice must state a specific, reasonable time within which the violation must cease. If the owner of the premises does not comply with the order within the specified time, the Code Enforcement Officer shall take appropriate legal action, consistent with Chapter 8 of this ordinance and state statute.

Chapter VII Zoning Board of Appeals

701 General Statement.

The following provisions are consistent with 30-A M.R.S.A. Sec. 4963. As such, the Zoning Board of Appeals serves as a quasi-judicial body, providing for appeals made under this Ordinance.

702 Appointments, Memberships and Terms of Office; Powers and Duties.

Appointments, Memberships, and Terms of Office. In accordance with 30-A M.R.S.A. Sec. 4963, the Zoning Board of Appeals consists of five (5) members selected citywide and two (2) alternate members. The term of office of a member or alternate member is three (3) years. The alternate will attend all meetings and will vote in the absence of a member. The alternate may be appointed to a full membership when a vacancy occurs.

Limitations on Membership. A member of the City Council or spouse may not be a member or alternate member of the Zoning Board of Appeals.

Officers. Annually on or about January 1, the Board of Appeals shall elect a chairman and vice chairman. The chairman shall preside at all hearings and the vice chairman shall preside in his absence. A record shall be kept of the meetings, including any actions taken by the Board.

Appointments. Appointments are nominated by the Mayor and approved by the municipal officers.

Absence or Disability. When a member of the Board of Appeals is unable to act because of interest, physical incapacity, or absence, the chairman shall appoint an associate member to act in his stead.

Powers and Duties. The Zoning Board of Appeals shall have the authority to hear the following matters:

- A. Appeals under section 703.1 of this Ordinance
- B. Variance appeals under section 704 of this Ordinance
- C. Flaglot applications under section 705.5 of this Ordinance

703 Appeal to Board of Appeals.

703.1 Appeal to Board of Appeals. A person aggrieved by a decision of the Code Enforcement Officer, as provided by this ordinance, may appeal to the Zoning Board of Appeals. The person must file a notice of appeal with the Code Enforcement Officer within 30 days of the action taken. The notice must cite the decision appealed from, identity of the property involved, and state the specific grounds for the appeal. It must

be signed by the appellant or legal representative. The appellant shall pay a filing fee to cover the cost of advertising the appeal, as required by Section 703.3.

- 703.2 **Filing Date Record.** The Code Enforcement Officer shall stamp the filing date on the notice of appeal, give a copy to the appellant, send a copy to the Zoning Board of Appeals, and keep a file a copy in the appropriate tax map and lot file.
- 703.3 **Appeal Advertised.** On receipt of the notice of appeal, city staff shall determine a hearing date and have the notice of appeal and the time and place of the hearing published on the City's Website and in a newspaper having general circulation in the City at least seven (7) days before the hearing.
- 703.4 **Abutters Notified.** The Code Enforcement Officer shall mail a copy of the notice of appeal and the time and place of the hearing to the property owners within 500' of the project at least fourteen (14) days prior to the day of the hearing at their last known places of address as shown on the municipal tax record. Public and private rights-of-way do not limit the 500 foot distance measurement. Failure of the Code Enforcement Officer to send or of a property owner to receive a copy of this notice does not invalidate the hearing.
- 703.5 **Hearing Procedure.** The Zoning Board of Appeals shall determine the hearing procedure.

704 Variances.

- 704.1 **Variance.** Except as provided in Sections 704.2, and 704.3, the Zoning Board of Appeals may grant a variance only when strict application of the ordinance to the petitioner and the petitioner's property would cause undue hardship. The term "undue hardship" as used in this subsection means:
- A. The land in question can not yield a reasonable return unless a variance is granted,
 - B. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood,
 - C. The granting of a variance will not alter the essential character of the locality; and,
 - D. The hardship is not the result of action taken by the applicant or a prior owner,
 - E. No other alternative to a variance is available to the applicant,
 - F. The granting of the variance will not unreasonably adversely affect the natural environment,
 - G. The property is not located in a Resource Protection zone.
- (Ord. of 03-07-05)

A copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the Zoning Board of Appeals. Any comments received from the Commissioner prior to the action by the Zoning Board of Appeals shall be made part of the record and shall be taken into consideration by the Zoning Board of Appeals.

(Ord. of 11-2-09)

704.2 **Disability Variance.** For the purposes of this section, “disability” has the same meaning as a physical or mental handicap under 5 MRSA Section 4553-A.

Disability Structures. The Code Enforcement Officer may issue a permit to an owner of a dwelling for the purpose of making a dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. If the permit requires a variance, the permit is deemed to include that variance solely for the installation of equipment or the construction of structures necessary for access to or egress from the dwelling for the person with a disability. The Code Enforcement Office may impose conditions on the permit, including limiting the permit to the duration of the disability or to the time that the person with a disability lives in the dwelling.

Vehicle Storage. A disability variance may be granted pursuant to this subsection (MRSA Section 4353.4-A).

The Zoning Board of Appeals may grant a variance to an owner of a dwelling who resides in the dwelling and who is a person with a permanent disability for the construction of a place of storage and parking for a noncommercial vehicle owned by that person and no other purpose. The width and length of the structure may not be larger than 2 times the width and length of the noncommercial vehicle. The owner shall submit proposed plans of the structure with the request for the variance pursuant to this paragraph to the Zoning Board of Appeals.

The person with the permanent disability shall prove by a preponderance of the evidence that the person’s disability is permanent.

For the purposes of this paragraph, “noncommercial vehicle” means a motor vehicle as defined in 29-A MRSA Section 101, Subsection 42 with a gross vehicle weight of no more than 6,000 pounds, bearing a disability registration plate issued pursuant to 29-A MRSA Section 521 and owned by the person with the permanent disability.

The board may impose conditions on the variance granted pursuant to this subsection.

(Amended per Ord. of 11/17/14)

704.3 **Practical Difficulty Variance.** The Zoning Board of Appeals may grant a variance from the dimensional standards of the zoning ordinance when strict application of the ordinance to the petitioner and the petitioner's property would cause a practical difficulty and when the following conditions exist:

- A. The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood;
- B. The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties;

- C. The practical difficulty is not the result of action taken by the petitioner or a prior owner;
- D. No other feasible alternative to a variance is available to the petitioner;
- E. The granting of a variance will not unreasonably adversely affect the natural environment; and
- F. The property is not located in whole or in part within shoreland areas as described in Title 38, section 435.

As used in this section, "dimensional standards" means and is limited to ordinance provisions relating to lot area, lot coverage, frontage and setback requirements.

As used in this section, "practical difficulty" means that the strict application of the ordinance to the property precludes the ability of the petitioner to pursue a use permitted in the zoning district in which the property is located and results in significant economic injury to the petitioner.

(Ord. of 03-07-05)

705 Flaglots. (Section repealed. Ord. of 4-5-10)

706 Special Conditions.

In granting a variance, the Zoning Board of Appeals may impose special conditions consistent with the purposes of this Ordinance and with the Comprehensive Plan, with which the appellant must comply. The conditions shall be stated specifically in the copy of the decision that is mailed to the appellant as provided in Sec. 703. The appellant may appeal the imposed conditions to the Superior Court as provided by statute. If the imposed conditions are temporary, they shall expire automatically on the date set by the Board of Appeals. If permanent, they must be stated on the certificate of approval over the signature of the Code Enforcement Officer and be recorded in the Registry of Deeds.

- A. **Suspense File.** The Code Enforcement Officer shall maintain a suspense file containing records of all conditions granted by the Zoning Board of Appeals. He/She shall review each extension annually, and shall make an on-site inspection to see whether the condition is being observed.
- B. **Violation.** If the Code Enforcement Officer finds that any condition is being violated, he/she shall make a record of the violation and follow the violation procedure set forth in Section 802 of this Ordinance.

707 Time Limitations of Rights Granted by the Zoning Board of Appeals.

A right of appeal granted by the Zoning Board of Appeals expires unless the work necessary to accomplish the purpose for which it was requested is commenced within one (1) year and completed within two (2) years after it was granted, or is completed in accordance with a phased completion schedule proposed by the applicant and approved, or modified and approved, by the Board of Appeals and incorporated in its decision granting the variance. In determining whether work has been completed in accordance with an approved schedule, allowances may be made for delays in scheduled completions caused by inclement weather, strike, or acts of a natural nature.

708 Limitation on Subsequent Appeals.

If the Zoning Board of Appeals denies an appeal with respect to certain building or premises, a second appeal of a similar nature may not be brought to the Board within six (6) months.

709 Appeal to Superior Court.

A person aggrieved by the Board of Appeals may appeal to the Superior Court. The appeal shall be taken within forty-five (45) days after the date of the vote on decision. (30-A MRSA Section 2691). (Ord. of 11/17/14)

710 Recording.

If the Zoning Board of Appeals grants a variance under this section, then a certificate indicating the name of the current owner, identify the property by reference to the last recorded deed in its chain of title, that a variance has been granted and the date of that action. Any conditions that were granted as part of the approval shall also be listed. This certificate must be recorded with the Registry of Deeds by the applicant within ninety (90) days from the final written approval date on the certificate, or the variance is void.

Chapter VIII Penalty Provisions

801 Enforcement.

The Code Enforcement Officer shall enforce this Ordinance conducted in accordance with 30-A M. R.S.A. Section 4452, as amended.

802 Violation of Partnership or Corporation.

If this ordinance is violated by a partnership, corporation, person, members or officers who participated or are authorized in the action resulting in the violation are subject to the penalties described in 30-A M.R.S.A. Section 4452, as from time to time amended. The following penalties shall be observed:

- A. Starting construction without a permit - \$100.00,
- B. Minimum penalty for a specific violation is \$100 per day, up to a maximum of \$2,500,
- C. Any other penalties as identified in 30-A M.R.S.A. Section 4452.

803 Owners, Contractors, and Others.

Owners, contractors, subcontractors, employee, or agent of the owner of real estate for any other person who performs services without the proper permit or verifying that it has been obtained is in violation of this Ordinance.

804 Nuisance.

Any real estate or personal property in violation of this Ordinance is a nuisance.

805 Stop Work Order.

In addition to any other enforcement action authorized by this Chapter, the Code Enforcement Officer shall have the authority to issue a stop work order when the Code Enforcement Officer determines that there has been a violation of this Ordinance or any other provision of this Code of Ordinances or statute that is enforced by the Code Enforcement Officer. A stop work order will not be issued until either the owner of the property or the contractor has been issued a verbal notice and given an opportunity to correct the violation. A stop work order is subject to the appeal provisions of Section 703.1, but the stop work order will remain in effect during the appeal period unless the violation is resolved during that time.

Chapter IX Impact Fees

901- General Provisions

901.1 Authority.

This ordinance is enacted pursuant to the authority of 30-A M.R.S.A. § 4354 and 30-A M.R.S.A. § 3001.

901.2 Purpose.

The Westbrook City Council has determined that new development creates demands on municipal government to provide new public facilities and to expand or improve existing public facilities. The City Council concludes that to provide an equitable source of funding for such new, expanded, or improved facilities, it is appropriate to establish a program of development impact fees and to charge a proportionate share of the costs of new, expanded, or improved facilities to the developers and/or occupants of the developments which make the new, expanded, or improved infrastructure necessary.

901.3 Definitions.

Words and phrases shall be considered to have the same meaning as defined in the Westbrook Code of Ordinances.

901.4 Use of Impact Fees.

Impact fees collected by the City pursuant to this ordinance may be used only for financing facility improvements which the City Council has determined are made necessary by new development. The City Council has determined that fees imposed by schedules in subsequent chapters of this ordinance are reasonably related to the demands created by new development and are reasonably related to the portion or percentage of existing infrastructure used by new development. Impact fees collected pursuant to this ordinance shall be used exclusively for capital improvements, and shall not be used for operational expenses. The City of Westbrook shall expend funds collected from impact fees solely for the purposes for which they were collected.

The following costs may be included in the capital cost of the infrastructure improvement:

- A. Engineering, surveying, and environmental assessment services directly related to the design, construction, and oversight of the improvement,
- B. The actual construction of the improvement including, without limitation, property acquisition costs, demolition costs, clearing and grading of the land, and necessary capital equipment,
- C. Mitigation costs,
- D. Legal and administrative costs associated with construction of the improvement including any borrowing necessary to finance the project,
- E. Debt service costs including interest if the City borrows for the construction of the improvement,
- F. Relocation costs, and
- G. Similar costs that are directly related to the project.

901.5 Segregation of Impact Fees from General Revenues.

Impact fees collected pursuant to this ordinance shall be maintained by the City Finance Director in a separate impact fee account and shall be segregated from the City's general revenues. The City Finance Director shall deposit impact fees in special non-lapsing accounts dedicated for funding of the improvements for which the fee is collected.

901.6 Collection of Impact Fees.

The Code Enforcement Officer shall not issue any building permit required under the Code of Ordinances until the applicant has paid any impact fees required by this ordinance. Upon collecting such impact fee, the Code Enforcement Office shall remit the funds to the City Finance Director who shall deposit the funds as required in Section 5 above. The Code Enforcement Office shall make a record of the name and mailing address of the applicant paying the impact fee, the tax map and lot numbers of the property for which the impact fee is collected, the amount collected, and the date the impact fee is received, and shall maintain such record in the files relating to the property for which the impact fee was paid.

901.7 Exemption/Reduction from Fee for Off-site Improvements.

If a development undertakes improvements off-site from the project site which improve the system that an impact fee is contributing towards, the amount of the off-site improvements may be deducted from the calculated impact fee or may be determined to be equivalent to the impact fee, as determined by the City Planner.

901.8 Refund of Unused Impact Fees.

Impact fees collected pursuant to this ordinance shall be utilized by the City per the schedules specified in subsequent chapters of this ordinance for the completion of specific capital improvements, but in no event, later than ten years after the date upon which the impact fee was collected. Any impact fees which are not so utilized and any impact fees collected which exceed the City's actual costs of implementing the infrastructure improvements for which such fees were collected shall be refunded. Refunds shall be paid to the person who paid the impact fee, unless that person has authorized the payment to the current owner of the property or some other person.

901.9 Amendment of Fees.

The impact fees established in this ordinance are based upon the City Council's best estimates of the costs of the construction of the facilities for which the fees are collected and, where appropriate, upon estimates of state and/or federal funding contributions. The Council may, by amendments to this ordinance, change the amounts of the impact fees from time to time as warranted by new information or changed circumstances.

A. Inflation Adjustment.

The impact fees established by the City Council in this ordinance shall be adjusted annually by the City Finance Director to account for inflation. Commencing on February 1, 2018 and on each February 1st, thereafter, the Finance Director shall increase each impact fee by the dollar amount (rounded to the nearest whole-dollar increment) obtained by multiplying the amount of the fee then-in-effect by the inflation rate. As used in this paragraph, the term "inflation rate" means the percentage increase, if any, during the previous calendar year in the Consumer Price Index – All Urban Consumers, Northeast Urban Area, All Items, (1982-84 = 100 base) (not seasonally adjusted) published by the United States Department of Labor Bureau of Labor Statistics. If there has been no such increase, there shall be no adjustment under this paragraph. Each year on February 1st, the City Clerk shall publish a schedule of impact fees adjusted pursuant to this paragraph (the "adjusted impact fees") and provide a copy of such schedule to the Code Enforcement Officer. The adjusted impact fees shall apply to all building permits issued on or after February 1st of each calendar year, whether or not the applications for building permits were filed prior to such dates.

901.10 Impact Fee Not Required for Replacement Dwelling Units.

An impact fee shall not be required for the following units provided that the number of bedrooms constructed in the new structure are equal to or less than number of bedrooms in the structure being replaced:

- A. the placement or construction on a lot of a dwelling unit which replaces a dwelling unit which was located on the same lot at any time before October 3, 2016;
- B. the placement on a mobile home park site of a mobile home which replaces a mobile home which was located on the same site at any time before October 3, 2016;
- C. the placement or construction on a lot of a dwelling unit which replaces a dwelling unit which is or was located on the same lot and for which an impact fee has already been paid under this ordinance; or
- D. the placement on a mobile home park site of a mobile home which replaces an existing mobile home which is or was located on the same site and for which an impact fee has already been paid under this ordinance.

(Adopted 8/21/2017 by Ord 2017-089)