

**APPENDIX A – ZONING AND LAND USE CODE**  
**ARTICLE XIII. DEVELOPMENT REVIEW AND STANDARDS**

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**Sec. 1. Purpose.**

The purpose of development review is to provide for the review and approval of development plans for nonresidential and residential developments including, but not limited to, subdivisions and mobile home parks to ensure that the development of both private and public land occurs in a manner which minimizes the adverse impact on public facilities, the natural environment and neighboring uses, and to otherwise protect the health, safety and general welfare of the people. (Ord. No. 99-11, 5-20-99; Ord. No. 99-15, 8-12-99; Ord. No. 20-10j, 11-05-20)

**Sec. 2. Applicability.**

- (a) The requirements of this article shall apply to the following:
- (1) The creation of a subdivision as defined under 30-A M.R.S.A., § 4401, as amended;
  - (2) The construction of any new, nonresidential building or structure;
  - (3) The expansion of an existing nonresidential building or structure provided such expansion involves at least 1,000 square feet of total floor area. However, expansions of buildings or structures reviewed and approved under development review, may be determined by the planning director or designee to be of a de minimis nature and can be processed in accordance with the procedures under subsection 3(k) below;
  - (4) The conversion of an existing building from residential to nonresidential uses unless the planning director or designee determines the conversion does not constitute an intensification and/or will have minimal impacts on adjacent residential properties;
  - (5) The construction of any new residential structure, conversion of an existing building into a residential use, the creation of a bed and breakfast establishment with five or six rooms, or the modification of an existing residential structure that results in the net creation of three or more dwelling units;
  - (6) Earth moving, removal, grading, or filling activities which involve more than 5,000 cubic yards of material which is not associated with a building construction project and for which no permit is required pursuant to chapter 66 or 74 of the Code of Ordinances;
  - (7) The development or expansion of a mobile home park;
  - (8) The change of an existing nonresidential building or structure from one use to another use where the proposed use is more intensive than the existing use; or the intensification of any use;
  - (9) The establishment of a new nonresidential use even if no buildings or structures are proposed;
  - (10) The amendment or reconfiguration of an approved subdivision as defined by 30-A M.R.S.A. § 4401, as amended or the amendment of any other development, as defined herein, for which development approval was previously obtained under this article or the amendment to any plan approved by the planning board under the Code of Ordinances in effect prior to January 9, 1988, unless determined by the planning director or designee to be a de minimis change and therefore can be processed in accordance with the procedures under subsection 3(k) below;
  - (11) The creation of a right-of-way for the purpose of allowing a residential lot to gain required frontage pursuant to Article XII, section 10; or
  - (12) The modernization modifications of existing gasoline service stations that involve existing nonconforming pump island replacement.

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- (13) The City of Lewiston has also been granted the authority to substitute their review and approval for the following kinds of projects that require a permit from the Maine Department of Environmental Protection (DEP):
- a. Subdivisions as described in 38 M.R.S.A. Section 482, subsection 5, as amended, of more than 20 acres but less than 100 acres;
  - b. Structures as described in 38 M.R.S.A. Section 482, subsection 6, Paragraph B, as amended, in excess of three acres, but less than seven acres of nonrevegetated ground area;
  - c. Projects requiring a permit under the State Stormwater Management Law, as described in 38 M.R.S.A. Section 420-D.
- (14) The City of Lewiston has also been granted the authority to substitute their review and approval for the following kinds of projects that require a permit from the Maine Department of Transportation (MDOT):
- a. A project generating 100 to 200 passenger car equivalents at peak hour as described in 23 M.R.S.A., Section 704-A subsection 2 and 4. [For the purposes of this article, passenger car equivalents at peak hour means the number of passenger cars, or, in the case of nonpassenger vehicles, the number of passenger cars that would be displaced by nonpassenger vehicles, that pass through an intersection or on a roadway under prevailing roadway and traffic conditions at that hour of the day during which the traffic volume generated by the development is higher than the volume during any other hour of the day. A one tractor-trailer combination is the equivalent of two passenger cars. (See 23 M.R.S.A. Section 704-A subsection 1-B.)]
  - b. A project generating 200 or more passenger car equivalents at peak hour (provided there is no impact in any other municipality other than Lewiston as described in 23 M.R.S.A., Section 704, subsections A(2) and (4)).
- (15) Minor or major development of properties located within the Design District Overlay shall meet the requirements for Article XI, Sec. 24 Additional Overlay District Regulation Requirements, (5) Design district overlay district.
- (b) This section does not apply to the construction of single-family homes or two-family homes, the placement of manufactured housing or mobile homes on individual lots, agricultural buildings or structures, agriculture and forest management and timber harvesting activities.
  - (c) No building permit, plumbing permit or certificate of occupancy shall be issued for a development within the scope of this article unless and until a final plan of the development has been approved in accordance with the procedures set forth in Article XIII, section 3.
  - (d) The city council may from time to time establish reasonable application fees to defray the costs of reviewing major and minor site plans.  
(Ord. No. 89-3, 4-7-89; Ord. No. 90-4, 5-17-90; Ord. No. 91-1, 3-19-91; Ord. No. 99-15, 8-12-99; Ord. No. 03-09, 7-17-03; Ord. No. 06-04, 4-20-06; Ord. No. 06-17, 2-8-07; Ord. No. 07-01, 3-8-07; Ord. No. 08-08, 10-2-08; Ord. No. 20-10j, 11-05-20)

**Sec. 3. Procedure.**

- (a) Classification of project. Projects subject to development review shall be divided into two classes, minor developments and major developments:
  - (1) *Minor development.*
    - a. A minor development shall be those projects involving:

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- i. The construction or addition of less than 5,000 square feet of nonresidential floor area,
  - ii. The conversion of a residential structure with less than 5,000 square feet of total floor area to a nonresidential use,
  - iii. The change of use of an existing nonresidential building or structure, the separate conveyance of attached and detached principal residential structures,
  - iv. The construction or alteration of a multifamily residential structure, or a conversion of a nonresidential building which involves the creation of 12 or less additional dwelling units, (unless required to be reviewed under state subdivision law),
  - v. Earth moving, removal, filling or grading activities involving greater than 5,000 cubic yards of material, the creation of a right-of-way for the purpose of allowing a residential lot to gain required frontage,
  - vi. The establishment of a new nonresidential use when no buildings or structures are proposed; and
  - vii. The modernization modifications of existing gasoline service stations that involve existing nonconforming pump island replacement.
- b. Projects otherwise meeting the minor development classification, but requiring issuance of a conditional use permit, shall be classified as a major project.
  - c. The planning director or designee may also determine that projects otherwise meeting the minor development classification be classified as major projects due to such issues as expected significant public input, impacts to neighborhoods, natural resources or government services, or other significant potential effects to public health, welfare or safety.
- (2) *Major development.* Major developments include the following:
- a. Projects requiring development review and not classified as minor developments including those projects that are determined to be applicable under subsections 3(a)(1)(b) and (c) above;
  - b. Projects which generate 100 or more passenger car equivalents at peak hour; or
  - c. Projects that require a permit under the State Site Location of Development Act and/or Stormwater Management Laws.
- (b) *Review authority.* The responsibility for reviewing and approving developments shall rest with the planning board or the staff review committee depending on the classification of the project.
- (1) *Planning board authority.* The planning board is authorized to review and act on all development plans for major developments.
  - (2) *Staff review committee authority.* The staff review committee is authorized to review and act on all development plans for minor developments.
- (c) *Planning board actions.* In considering development plans under this section, the planning board may act to approve, approve with conditions, or disapprove development applications based on the applicable criteria set forth in this article.

The board shall hear and decide requests for the reduction of the provisions under article XI, sections 1 through 14, district regulations, with respect to space and bulk standards for setbacks, yards, maximum lot coverage ratios, maximum impervious surface ratios, minimum open space ratios, and maximum building height, where the development is a

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major development as defined in article XIII, subsection 3(a)(2) of this Code. In order for the board to grant the aforementioned relief, it must find that the standards contained in article IX, sections (3) (9),(10) and (11), as applicable, are met.

(d) *Staff review committee actions.* In considering development plans under this section, the staff review committee may act to approve, approve with conditions, or deny site plan applications based on the applicable criteria set forth in this article.

The staff review committee shall consist of the planning director, or designee, who shall serve as chairman and a representative from the following departments; public services, planning and code enforcement, police and fire.

Actions by the staff review committee to approve an application or approve an application with conditions shall require the unanimous consent of the members of the committee. The disapproval of two or more members of the committee shall constitute denial of the application.

The staff review committee shall hear and decide requests for the separate conveyance of attached and detached principal residential structures. In order for the committee to grant such requests, it must find that the standards contained in Article V (3)(w) are met.

(e) *Pre-application procedures.* The applicant for any development approval shall meet with the planning director or designee prior to the submission of a development review application to generally discuss the proposal and to obtain guidance in the development of the plan.

The planning director or designee, shall review materials in terms of the requirements of this Code and shall provide direction to the applicant on the plan concept, overall suitability of the proposal, questions or issues to be addressed in the development plan and act on any modifications or waivers requested by the applicant pursuant to subsection 3(h)(5) of this article. Modifications or waivers will be granted when the size of the project or circumstances of the site are such that the requirements would not be applicable or would be an unnecessary burden upon the applicant and that such modification or waiver would not adversely affect the abutting landowners or the general health, safety and welfare of the city, and must be confirmed by the reviewing authority at the meeting.

(f) *Application procedures.* Applications for development review shall be submitted on application forms provided by the city. The completed application form, appropriate fee and the required copies of a complete site plan for the proposed development and any related information shall be submitted to the office of the planning director.

(g) *Application requirements.* The application for development review, the site plan and related submissions shall contain at least the following exhibits and information:

- (1) A fully executed and signed copy of the application for development review.
- (2) Initial Review Materials – Five copies (for both minor and major developments) of written application materials plus five sets (for both minor and major developments) of maps or drawings containing the information listed below. The written materials shall be contained in a

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bound report. The maps or drawings shall be at a scale sufficient to allow review of the items listed under approval criteria, but in no case shall be more than 50 feet to the inch for that portion of the tract of land being proposed for development.

(3) Digital files for all written materials and plans (PDF files are acceptable).

(4) Final Development Review Application - After the application has been reviewed by staff and revisions made, and the application is deemed complete by Staff, a meeting date shall be established for consideration by the Staff Review Board or Planning Board. The applicant shall be notified of the meeting date.

(5) Final Development Review Materials - A complete application for the Planning Board shall consist of twelve copies of the complete application, nine 11" x 17" and three 24" x 36" copies of maps and drawings and PDF files of all application materials shall be submitted to the Planning Office no later than 5 days before the scheduled meeting.

a. *General application information.*

1. Record owner's name and address and applicant's name and address if different.
2. The name of the proposed development.
3. Sketch map showing general location of the site within the city.
4. Boundaries of all contiguous property under the control of the owner or applicant regardless of whether all or part is being developed at this time.
5. The tax map number and street or parcel number of the parcel or parcels.
6. A copy of the deed to the property, option to purchase the property or other documentation to demonstrate right, title or interest in the property on the part of the applicant.
7. The name, registration number and seal of the land surveyor, architect, engineer and/or similar professional who prepared the plan.

b. *Existing conditions.*

1. Zoning classification(s) of the property and the location of zoning district boundaries if the property is located in two or more zoning districts or abuts a different district.
2. The bearings and distances of all property lines of the property to be developed and the source of this information.
3. Location and size of any existing sewer and water mains, culverts and drains on the property to be developed and of any that will serve the development from abutting streets or land.
4. Location, names, and present widths of existing streets and rights-of-way within or adjacent to the proposed development.
5. The location, dimensions and ground floor elevations of all existing buildings on the site.
6. The location and dimensions of existing driveways, streets, parking and loading areas and walkways on the site.
7. Location of intersecting roads or driveways within 200 feet of the site.
8. The location of open drainage courses, wetlands, stands of trees and other important natural features, with a description of such features to be retained.

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9. The direction of existing surface water drainage across the site.
10. The location, front view and dimensions of existing signs.
11. Location and dimensions of any existing easements and copies of existing covenants or deed restrictions.

c. *Proposed development activity.*

1. The location of all building setbacks, yards and buffers required by this Code.
2. The location, dimensions, and ground floor elevations of all proposed buildings on the site.
3. The location and dimensions of proposed driveways, parking and loading areas, and walkways.
4. The location and dimensions of all provisions for water supply and wastewater disposal.
5. The direction of proposed surface water drainage across the site.
6. Location of all proposed signs.
7. Location and type of exterior lighting.
8. Proposed landscaping and buffering.
9. Copies of applicable state approvals and permits, provided, however, that the board or staff review committee may approve development plans subject to the issuance of specified state approvals and permits where it determines that it is not feasible for the applicant to obtain them at the time of development review.
10. A schedule of construction, including anticipated beginning and completion dates.

Space shall be provided on the plan for the signature of the chair of the reviewing body and dates of the meeting and the signature together with the following words, "Approved: City of Lewiston".

(6) Additional information that may be required due to the nature of the project. The applicant shall consult with Staff to determine if the following is required:

- a. Existing and proposed topography of the site at two-foot contour intervals.
- b. A stormwater drainage and erosion control plan showing:
  1. The existing and proposed method of handling stormwater runoff.
  2. The direction of flow of the runoff through the use of arrows.
  3. The location, elevation, and size of all catch basins, dry wells, drainage ditches, swales, retention basins and storm sewers, and all other stormwater management structures.
  4. Engineering calculations used to determine drainage requirements as specified by subsection 4(f) of this article.
  5. Methods of controlling erosion and sedimentation during and after construction.
- c. A groundwater impact analysis prepared by a groundwater hydrologist for projects involving common on-site water supply or sewage disposal facilities with a capacity of 2,000 gallons per day or greater or for projects located within the groundwater conservation overlay district.

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- d. A utility plan showing, in addition to provisions for water supply and wastewater disposal, the location and nature of electrical, telephone and any other utility services to be installed on the site.
- e. A planting schedule keyed to the site plan and indicating the general varieties and sizes of trees, shrubs and other plants to be planted on the site.
- f. A traffic impact analysis demonstrating the impact of the proposed project on the capacity, level of service and safety of adjacent streets.
- g. A written statement as to the adequacy of the water supply in terms of quantity and pressure for both domestic and fire flows.
- h. The location, width, typical cross-section, grades and profiles of all proposed streets and sidewalks.
- i. Construction drawings for streets, sanitary sewers, water and storm drainage and management systems, designed and prepared by a professional engineer registered in the State of Maine.
- j. Proposed lot lines with their dimensions and the location of required setbacks. If the development involves a subdivision consisting of principal buildings on the same lot, the locations, building outlines, and dimensions of all buildings, with setback dimensions, shall be shown.
- k. Lots and blocks within a subdivision numbered in accordance with local practice.
- l. The location of any pedestrian ways, lots, easements, open spaces and other areas to be reserved for or dedicated to public use and/or ownership. For any proposed easement, the developer shall submit the proposed easement language with a signed statement certifying that the easement will be executed upon approval of the development. In the case of any streets or other ways dedicated to public ownership, the developer shall submit a signed statement that he will maintain such streets or ways year-round until they are accepted by the city.
- m. Sufficient data acceptable to the city engineer to determine readily the location, bearing, and length of every street line, lot line, easement, and boundary line and to reproduce such lines upon the ground. Where practical, these should be tied to reference points previously established and the data transferred in an appropriate electronic file format.
- n. A copy of such covenants or deed restrictions, if any, as are intended to cover all or part of the tract. Such covenants or deed restrictions shall be referenced on the plan.
- o. Written offers of dedication or conveyance to the municipality, in a form satisfactory to the city attorney, of all land included in the streets, highways, easements, parks, or other open space dedicated for public use, and copies of agreements or other documents showing the manner in which spaces, title to which is reserved by the developer, are to be maintained.
- p. If the development is a condominium or a clustered development, evidence that all requirements relative to establishment of a homeowners' association or condominium owners' association have been met. If the development is a clustered development, evidence shall be presented that all other requirements of this Code pertaining to clustered development have been met. The submission shall include copies of the by-laws of any homeowners' or condominium association charged with maintaining common spaces and lands. Homeowners' association or condominium documents shall clearly state that the association or condominium shall properly maintain private roadways and stormwater



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management systems serving the development after the developer has legally relinquished that responsibility and until such time as the city may accept them as public ways.

- q. A performance guarantee in a form and amount meeting the requirements of Article XIII, section 12 to secure the completion of all public improvements required by the planning board in a form acceptable to the city. The guarantee need not be submitted as part of the application, but must be submitted before the plan is signed. The plan shall not be deemed approved until the performance guarantee has been filed. Cost estimates of the proposed public improvements obtained by the applicant from a licensed professional engineer who, in the planning board's judgment, is qualified to make such estimates, shall be submitted as part of the final plan application. If a conditional agreement is to be filed in lieu of the performance guarantee, it must be endorsed by the planning board on the plan and meet the requirements under Article XIII, section 12.
- r. Cost of the proposed development and evidence of financial capacity to complete it. This evidence should be in the form of a commitment letter from a bank or other source of financing indicating the name of the project and amount of financing proposed.

(7) The planning board or staff review committee shall confirm the modification or waiver of any of the submission requirements in Article XIII, subsection 3(g) recommended by the planning director or designee, when it determines that because of the size of the project or circumstances of the site such requirements would not be applicable or would be an unnecessary burden upon the applicant and that such modification or waiver would not adversely affect the abutting landowners or the general health, safety and welfare of the city.

(h) *Review procedures.* The following procedures shall be used for the review of development applications:

(1) *Minor developments.*

- a. Upon receipt of an application for a minor development, the planning director shall, within five working days, determine substantial completeness of the application and, if so determined, notify the applicant in writing that the application is substantially complete, additional information necessary to complete the application the date, time and place on which the staff review committee will consider the application.
- b. Staff shall notify all abutting property owners and the appropriate municipality when a development review project abuts or is in close proximity to an adjacent municipality's border, by mail sent no less than seven days prior to the meeting, of: the pending application, the opportunity to submit written comments on the application to the office of the planning director, and the date, time and place of the staff review committee meeting at which the application will be considered.
- c. If the application is not substantially complete, the planning director shall notify the applicant of the additional information necessary to complete the application.
- d. Upon determination of substantial completeness, the planning director shall also transmit copies of the plans and related information to the following departments; public services, planning and code enforcement, police and fire.

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- e. The staff review committee shall meet to review the application and the committee shall approve, approve with conditions or deny the application. A written record of the staff review committee's meeting shall be maintained and shall be available for public inspection. The committee shall act on each application within 30 days of the date on which said application was determined by the planning director to be complete so long as the required notice to abutters has been given, or at its next regularly scheduled meeting after said required notice has been given, whichever occurs later.
  - f. Within five working days of the date of the committee's action, the office of the planning director shall notify the applicant in writing thereof.
- (2) *Major developments.*
- a. Upon receipt of an application for a major development, the planning director shall review said application for substantial completeness and if so determined, schedule a review of said application before the planning board and notify the applicant and all abutting property owners, by mail, sent no less than seven days prior to the meeting, of the pending application, the opportunity to submit written comments on the application to the planning board on or before the date of said review and the date, time and place of the planning board meeting at which the application will be considered.
  - b. All reviews of applications for development review shall be public hearings, and shall be held within 30 days of the date the planning director determined the application to be substantially complete and shall advertise said public hearing in a newspaper of general circulation in the city at least two times, the date of the first publication to be at least six days prior to the date of the hearing.
  - c. The planning board shall take final action on said application within 30 days of the public hearing.
  - d. Except for developments which involve the creation of a subdivision as defined by 30-A M.R.S.A. Section 4401 as amended, the limits provided for in this subsection may be extended by mutual agreement between the planning director and the applicant. For those developments which involve the creation of a subdivision as defined by 30-A M.R.S.A. Section 4401 as amended, the limits provided in this subsection may be extended only by mutual agreement between the planning board and the applicant.
- (i) *Building permit.* One copy of the notice of approval of the application shall be included in the application for a building permit and shall become part of the permit.
- (j) *Appeals of staff decisions.* The applicant or any participating abutter may appeal the action of the staff review committee to the board of appeals within 15 days of the committee action.
- (k) *De minimis changes to development plans.* The planning director or designee may determine amendments to a development plan are "de minimis," that is of a minor nature, and do not require a formal review process. Accordingly, the amended plan can be signed directly by the planning director or designee. However, amendments to developments which involve the creation of a subdivision as defined by 30-A M.R.S.A. Section 4401, as amended, will require signature of the amended plan by the planning board chair, who may request that the de minimis change be brought before the board for their review and approval prior to the signing of the

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permanent copy of the plan (mylar.) A report of all approved de minimis changes will be submitted to the planning board or staff review committee as appropriate at their next available meeting.

(Ord. No. 89-3, 4-7-89; Ord. No. 90-4, 5-17-90; Ord. No. 94-18, 12-1-94; Ord. No. 95-10, 9-14-95; Ord. No. 98-6, 7-2-98; Ord. No. 98-12, 11-19-98; Ord. No. 99-15, 8-12-99; Ord. No. 03-09, 7-17-03; Ord. No. 03-17, 1-1-04; Ord. No. 06-17, 2-8-07; Ord. No. 20-10j, 11-05-20)

**Sec. 4. Approval criteria.**

The following criteria are to be used by the staff review committee and the planning board in judging applications for development review and shall serve as minimum requirements for approval of the application. The application shall be approved unless the staff review committee or the planning board determines that the applicant has failed to meet one or more of these standards. In all instances, the burden of proof shall be on the applicant and such burden of proof shall include the production of evidence sufficient to warrant a finding that all applicable criteria have been met.

(a) *Utilization of the site.* The plan for the development will reflect the natural capabilities of the site to support development. Buildings, lots and support facilities will be clustered in those portions of the site that have the most suitable conditions for development. Environmentally sensitive areas such as wetlands, steep slopes, floodplains and unique natural features will be maintained and preserved to the maximum extent. Natural drainage areas will be preserved to the maximum extent.

(b) *Traffic movement into and out of the development area.* The developer has made adequate provision for traffic movement of all types into and out of the development area. Vehicular access to the site will be on roads which have adequate capacity to accommodate the additional traffic generated by the development. Intersections on major access routes to the site within one-half mile of any entrance road which are functioning at a level of service of C or better prior to the development will function at a minimum at level of service C after development. If any intersection is functioning at a level of service D or lower prior to the development, the project will not reduce the current level of service. If a development is located in the highway business (HB), community business (CB), centreville (CV), mill (M), riverfront (RF), urban enterprise (UE), office service (OS), office residential (OR), and industrial (I) districts, which are designated as growth areas within the comprehensive plan, and the plan has been found by the state to be consistent with the growth management program under Title 30-A, Chapter 187, the planning board or staff review committee shall require improvements to the level of traffic service only if the level of service adjacent to or in the vicinity of the development is or would be level of service E or F, as determined by the City of Lewiston's Engineering Department and/or LACTS. In these cases, improvements shall be required so as to bring the traffic service to, at minimum, level of service D. All level of service determinations shall be made in accordance with the "Highway Capacity Manual" (3rd Ed. 1994), and as described in the site plan review and design guidelines.

Before granting approval for any development, the planning board or staff review committee shall determine that any traffic increase attributable to the proposed development will not result in unreasonable congestions or unsafe conditions on a road in the vicinity of the proposed development. The applicant shall provide to the City of Lewiston with an analysis of traffic movement of all types into and out of the development area and with a statement of recommended findings on traffic issues, after consulting, as necessary, with the Maine

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Department of Transportation (MDOT), the City of Lewiston Engineering Department, and the Lewiston-Auburn Comprehensive Traffic Study (LACTS). The reviewing body may require this analysis to be done by a registered professional engineer. In all cases where the passenger car equivalents at peak hour is 100 or greater, the project must be reviewed by the planning board and a registered professional engineer shall prepare the analysis and recommendations. In all instances, the city shall discuss with the applicant and their representatives the scope of impact evaluation required for the proposed development to be studied, what other agencies need to be consulted, and what other information is required. In making its determination under this subsection, the planning board or staff review committee shall consider the analysis and recommendations provided by the applicant as well as those submitted by the Maine Department of Transportation (MDOT), the City of Lewiston Engineering Department, and the Lewiston-Auburn Comprehensive Traffic Study (LACTS), as applicable. Where required by state law, the applicant shall provide notice to affected abutting municipalities.

The planning board or staff review committee may approve a development not meeting this requirement if the applicant demonstrates that:

- (1) A public agency has committed funds to construct the improvements necessary to bring the level of access to this standard; or
  - (2) The applicant will assume financial responsibility for the improvements necessary to bring the level of service to this standard and will guarantee the completion of the improvements within one year of approval of the project.
- (c) *Access into the site.* Vehicular access into the development will provide for safe and convenient access.
- (1) Grades, intersections, access and sight distances shall be in accordance with the City of Lewiston's Policy for the Design and Construction of Streets and Sidewalks.
- (d) *Internal vehicular circulation.* The layout of the site will provide for the safe movement of passenger, service and emergency vehicles through the site.
- (1) Projects with delivery needs shall provide a clear route for delivery vehicles with appropriate geometric design to allow turning and backing for WB-40 vehicles.
  - (2) Clear routes of access will be provided and maintained for emergency vehicles to all portions of the site and will be posted with appropriate signage.
  - (3) The layout and design of parking areas will provide for safe and convenient circulation of vehicles throughout the lot and will prohibit vehicles from backing out onto a street.
  - (4) All streets will be designed to harmonize with the topographic and natural features of the site. The road network will provide for vehicular and pedestrian safety, all season emergency access, snow storage and delivery and collection services.
    - a. Residential streets will be curved whenever practicable to the extent necessary to avoid conformity of lot appearance.
    - b. Similarly, to the extent practicable, driveway access to collector or arterial streets will be minimized to facilitate the free flow of traffic and avoid traffic hazards.
    - c. Streets will be designed to provide for proper continuation of streets from adjacent development and for projection of streets into adjacent unsubdivided and open land. Where the developer owns substantial contiguous land that is not part

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of the proposed development, the planning board may require a conceptual layout of streets to serve the contiguous land. This layout will not be binding, but shall provide an indication of how the contiguous area can be served in relation to the proposed development.

- d. Wherever existing or planned streets, topographical features, and public safety permit, streets will run in east-west directions, and lots on a north-south axis, to maximize access to direct sunlight for solar energy systems. The character, extent, width, and grade of all streets will be considered in their relation to existing or planned streets.
- (5) Where a development borders an existing narrow road (below standards set in this Code for public streets) or when the comprehensive plan indicates plans for realignment or widening of a road that would require use of some of the land in the development, the applicant shall be required to show areas for widening or realigning such roads on the plan, marked "Reserved for Road Realignment (or Widening) Purposes." It shall be mandatory to indicate such reservation on the plan when a proposed widening or realignment is shown on the official map. Land reserved for such purposes may not be counted in satisfying setback or yard or area requirements of the zoning districts.
- (6) Where a development abuts or contains an existing or proposed arterial street, the board may require marginal access streets (street parallel to arterial street providing access to adjacent lots), reverse frontage lots (that is, frontage on a street other than the existing or proposed arterial street) with screen planting contained in a nonaccess reservation along the rear property line, or such other treatment(s) as may be necessary for adequate protection of residential properties and to afford separation of through and local traffic.
- (e) *Pedestrian circulation.* The development plan will provide for a system of pedestrian circulation within the development. This system will connect with existing sidewalks if they exist in the vicinity of the project. The pedestrian network may be located either in the street right-of-way or outside of the right-of-way in open space or recreation areas. The system will be designed to link residential units with recreational and commercial facilities, other common facilities, school bus stops and existing sidewalks in the neighborhood. Sidewalks shall meet the standards identified in the City of Lewiston's Policy for the Design and Construction of Streets and Sidewalks and the Complete Streets Policy.
- (f) *Stormwater management.* Adequate provisions shall be made for the disposal of all stormwater collected on streets, parking areas, roofs or other impervious surfaces through a stormwater drainage system which will not have adverse impacts on abutting or downstream properties. All projects disturbing less than one acre shall be designed to meet the requirements of this subsection 4(f). All projects including one acre or more of disturbed land shall meet the requirements of this subsection 4(f) and the requirements of the Site Location of Development Law, 38 MRSA, 481--490, the Maine Stormwater Management Law, 38 M.R.S.A. Section 420-D, and regulations promulgated there under, specifically Rules 500, 501, and 502, as amended on August 12, 2015. At the discretion of the director of public works or his/her designee he/she may waive the above requirements, based on a finding that a particular site will have no significant runoff.
- (1) The plan will demonstrate the disposal of stormwater on the land at the site of development, and do so through the wise use of the natural features of the site. Stormwater runoff systems will infiltrate, detain or retain water falling on the site such

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that the rate of flow from the site does not exceed that which would occur in the predevelopment state for a storm of intensity equal to at least a 2-, 10-, and 25-year storm, with a duration equal to the time of concentration. The stormwater quantity calculations must be in accordance with acceptable engineering practice. Acceptable stormwater methodologies and models include but are not limited to TR-20-Computer Program for Project Formulation--Hydrology, Second Edition, U.S. Department of Agriculture, Soil Conservation Service (May 1983); TR-55-Urban Hydrology for Small Watersheds, Second Edition, U.S. Department of Agriculture, Soil Conservation Service (June 1986); TR-55 Microcomputer Program, Version 2.0, (January 15, 1990); and HEC-1 Flood Hydrology Package, U.S. Army Corps of Engineers. Any methodology other than those listed must have prior approval from the director of public works or his/her designee. Use of the 25-year, 24-hour storm as a design standard in this chapter is not intended to prohibit appropriate use of the rational method. The outlet structures of each detention basin must be designed to control 24-hour storms of 2-, 10-, and 25-year frequencies. Each detention basin must be constructed with an emergency spillway designed to independently convey the unrouted runoff from a 25-year, 24-hour storm event.

Additionally, a waiver from these standards may be granted by the director of public works or his/her designee in the cases specifically identified below:

- a. *Discharge to the Androscoggin River.* A project conveys stormwater exclusively in a manmade piped or open drainage system directly into the Androscoggin River. Areas of the project or adjoining properties to be flooded during the 2-, 10-, and 25-year, 24-hour storms must be identified and easements secured, if necessary. A project that changes the flow-type (example: sheet to shallow concentrated), changes the flow channel, or increases the stormwater discharge must secure easements on the intervening property that meet the easement and covenant requirements following in this section. The discharge may not result in erosion of any upland or freshwater wetlands. The director of public works or his/her designee may allow a waiver if it is determined that the increase in peak flow from the site will not significantly affect the peak flow of the receiving waters or result in unreasonable adverse impact on the river.
  - b. Public stormwater system. A project discharges its stormwater flow into the City of Lewiston Stormwater System, when the applicant has adequately demonstrated to the director of public works or his/her designee that it has the capacity to accommodate increases in flow. The director of public works or his/her designee may allow an insignificant increase in the peak flow from the site or in the peak flow of the receiving waters, if it is determined that the increase cannot be avoided by reasonable changes in project design or density and does not significantly impact abutters or city property.
- (2) If the outflow volume is greater than that for the undeveloped site, the developer will demonstrate that downstream channel or system capacity is sufficient to carry the flow without adverse effects, or will be responsible for the improvements to provide the required increase in capacity.
  - (3) All natural drainage ways will be preserved at their natural gradients and will not be filled or converted to a closed system except as approved by the director of public works or his/her designee and appropriate state agencies.

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- (4) The design of stormwater drainage systems will insure the acceptance and disposal of stormwater runoff based on quantities calculated per subsection 4(f)(1) above, without damage to streets, adjacent properties or downstream properties.
  - (5) The design of the storm drainage systems will be fully cognizant of upstream runoff which must pass over or through the site to be developed. The system will be designed to pass upstream flows, based on quantities calculated per subsection 4(f)(1) above, from the land, as fully developed, without surcharging the system.
  - (6) The maximum length for carrying open stormwater in a street gutter prior to intake at a catch basin will be three hundred feet. No stormwater will be permitted to drain on the surface across a street or across an intersection.
  - (7) The storm drainage system to serve a proposed development will be designed and installed in accordance with the plans and specifications prepared by a professional engineer, unless waived at the discretion of the director of public works or his/her designee.
  - (8) The developer will maintain and inspect all components of the stormwater runoff system unless the system is formally accepted by the city, or is placed under the jurisdiction of a legally created property owners association whose charter and powers require maintenance of the system, with adequate financing to carry out this responsibility. Any approved plans must include a statement as to who will be responsible for said maintenance and inspections. The components of the stormwater run-off system shall include, but not be limited to, detention ponds, level spreaders, inlet and outlet protection and structures, swales, etc., and the piping unless the piping is under an accepted city street. For piping under accepted city streets, at the time of street acceptance, the piping shall become the property and maintenance responsibility of the city. An easement shall be provided to the city for the maintenance of this piping. In addition, a separate access easement for all other stormwater runoff components shall be provided to the city for emergency purposes.
  - (9) The biological and chemical properties of the receiving waters will not be degraded by the stormwater runoff from the development site. The use of oil and grease traps in manholes, the use of on-site vegetated waterways, and the reduction in use of deicing salts and fertilizers may be required, especially where the development stormwater discharges into a gravel aquifer area or other water supply source.
  - (10) The filling of wetlands on-site will be conducted only in accordance with applicable federal and state law and regulations, including the Natural Resources Protection Act.
- (g) *Erosion control.* For all projects, building and site designs and street layouts will fit and utilize existing topography and desirable natural surroundings to the fullest extent possible. Filling, excavation and earth moving activity will be kept to a minimum. Parking lots on sloped areas will be terraced to avoid undue cuts and fills, and the need for retaining walls. Natural vegetation will be preserved and protected wherever possible. Erosion and sedimentation control measures shall comply with the Maine Erosion and Sedimentation Law, 38 M.R.S.A. § 420-C, and regulations promulgated thereunder, as amended, both during construction and continuously after construction is complete. In addition, erosion and sedimentation measures consistent with the Maine Erosion and Sedimentation Control BMPs, Manual for Designers and Engineers, October 2016 as amended shall be implemented.
- (1) Storage of fill materials within 50 feet of the banks of any stream, intermittent or perennial or water body will not be allowed.

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- (2) The top of a cut or the bottom of a fill will not be closer than ten feet from a property line.
- (3) Removal of topsoil from any lot will not be allowed, except for that removed from areas to be occupied by buildings, paving or other surfaces that will not be revegetated, or unless in conformance with the performance standards for earth material removal set forth in article XII of this Code.

(h) *Water supply.* The development will be provided with a system of water supply that provides each use with an adequate supply of water meeting the standards of the State of Maine for drinking water. A water system shall be designed and constructed in accordance with the City of Lewiston's Policy for the Design and Construction of Streets and Sidewalks. Developments and projects that will be provided by private water supplies shall demonstrate sufficient water is available for the reasonably foreseeable needs of the development or project.

(i) *Sewage disposal.* A sanitary sewer system will be installed at the expense of the developer, or, if in the opinion of the planning board, service by a sanitary sewer system is not feasible, the board may allow individual underground waste disposal systems to be used. A sewer system shall be designed and constructed in accordance with the City of Lewiston's Policy for the Design and Construction of Streets and Sidewalks.

(j) *Utilities.* The development will be provided with electrical and telephone service adequate to meet the anticipated use of the project.

- (1) Each utility system has adequate capacity to service the proposed development.
- (2) All overhead utility poles and lines will be located to minimize potential safety hazards and visual impact to the public. Similarly, transformer boxes, meters, pumping stations and other components of the utility system located above ground will be located so as not to be unsightly or hazardous to the public and will be landscaped or otherwise buffered so as to screen the components from public view.

(k) *Natural features.* The landscape will be preserved in its natural state insofar as practical by minimizing tree removal, disturbance and compaction of soil and by retaining existing vegetation insofar as practical during construction. A grading plan for the project shall be included in the application and communicate the following:

- (1) Extensive grading and filling will be avoided as far as possible.
- (2) The planning board or staff review committee may require a shadow study if it believes the proposed development may interfere with the solar access of adjacent properties.
- (3) If there has been excessive natural vegetation removal from the site since the adoption of the current zoning and land use code prior to the submittal of an application for development review, the planning board or staff review committee may require a regeneration plan to be submitted by a registered forester and to be implemented to revegetate that portion of the site not directly impacted by the proposed development. For the purposes of this section, excessive is defined as the removal of more than 60 percent of trees from a property, either in number of stems or area of tree cover, in any ten-year period.



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- (l) *Groundwater protection.* The proposed site development and use will not adversely impact either the quality or quantity of groundwater available to abutting properties or public water supply systems. Projects involving common on-site water supply or sewage disposal systems with a capacity of 2,000 gallons per day or greater have demonstrated that the groundwater at the property line will comply, following development, with the standards for safe drinking water as established by the State of Maine.
- (m) *Water and air pollution.* The proposed development will not result in undue water or air pollution.
- (n) *Exterior lighting.* The proposed development will provide for adequate exterior lighting to provide for the safe use of the development in nighttime hours.
- (1) All exterior lighting will be designed and shielded to avoid undue adverse impact on neighboring properties and rights-of-way.
  - (2) Pole lighting shall be a maximum of 25' tall to the greatest extent possible.
  - (3) Lighting will be provided, at a minimum, in the following areas:
    - a. Entrances to facilities and recreation areas;
    - b. Street intersections;
    - c. Pedestrian crossings; and
    - d. Entrance roads.
- (o) *Waste disposal.* The proposed development will provide for adequate disposal of solid wastes and hazardous wastes.
- (1) All solid waste will be disposed of at a licensed disposal facility having adequate capacity to accept the project's wastes.
  - (2) All hazardous wastes will be disposed of at a licensed hazardous waste disposal facility and evidence of a contractual arrangement with the facility has been submitted.
- (p) *Lot layout.* Lot layout shall conform to Article II, Definitions, *Net Lot Area* and Article V, Administration and Enforcement, section 3.
- (q) *Landscaping.* The development plan will provide for landscaping to define street edges, break up parking areas, soften the appearance of the development and protect abutting properties from adverse impacts of the development.
- (1) A landscaping plan will be provided and comply with the guidelines contained in the City of Lewiston's Site Plan Review and Design Guidelines as amended. The landscape plan shall list the location, spacing, species and size of the plant materials.
  - (2) Where required - New major or minor developments in non-residential districts shall provide a landscape plan along street edges, parking areas adjacent to a street frontage, and for commercial development from adjacent residential properties.

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- (3) Landscaping requirements - Required frontage landscaping shall consist of one canopy tree for every 25-50 linear feet of frontage and shrubs planted between the street trees every 5 feet on center. Trees shall be a minimum of 8 feet in height and 2.5” caliper at the time of planting. Shrubs shall be a minimum of 24’ in height at the time of planting. Perennial or annual flower beds may comprise 25% of the frontage landscaping. The spacing of trees and shrubs may altered to better fit the conditions of the site.
  
- (4) Maintenance: Property owners are responsible for maintaining the landscaping on the property as approved in Development Review. Canopy trees may have the lower 1/3 branches pruned to allow visibility into the site and shrubs must be maintained at a minimum height of 36”.
  
- (r) *Shoreland relationship.* The development will not adversely affect the water quality or shoreline of any adjacent water body. The development plan will provide for access to abutting navigable water bodies for the use of residents of the development.
  
- (s) *Open space.* The development plan will provide for recreation areas and open space to meet the needs of residents and users of the development.
  
- (1) For projects involving the construction of ten or more new residential dwelling units in a subdivision, a portion of the site shall be set aside as permanent open space or recreational land.
- (2) Required Open Space -  
The size of the area to be set aside for open space shall be based upon the following:
  - a. Dwelling units exclusively for occupancy by persons 55 years or older--Two hundred and fifty square feet per dwelling unit.
  - b. Dwelling units with less than two rooms designed or used for sleeping--Three hundred fifty square feet per dwelling unit.
  - c. Dwelling units with two rooms designed or used for sleeping--Seven hundred square feet per dwelling unit.
  - d. Dwelling units with three or more rooms designed or used for sleeping--One thousand square feet per dwelling unit.
  - e. For mobile home parks, the size of the area to be set aside shall be no less than ten percent of the combined area of the individual lots within the mobile home park.
- (3) No portion of the site used to meet the minimum lot size or minimum lot area per dwelling unit requirements shall be used toward meeting this requirement. This shall include the required open space in a clustered residential development.
- (4) The area to be set aside for open space shall be shown on the development plan and marked "Reserved for Recreation and/or Conservation Purposes".
- (5) The open space provided to meet this requirement shall be owned and managed by one of the following methods:
  - a. Continued ownership by the project owner for developments involving rental housing, mobile home parks and similar situations where the development remains under single ownership; or
  - b. Ownership by a condominium or lot owners association for developments involving the creation of separate lots, condominiums or other situations where the development is owned by a number of entities; or

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- c. Dedication of the land to the City of Lewiston as public park land; or
  - d. Transfer, with permanent restrictions, to a land trust or other recognized conservation organization.
- (6) The planning board shall approve the arrangements for the ownership, control and maintenance of the open space as part of the approval of the final plan. No changes in the ownership or management of the open space shall be made without planning board approval. The arrangements for the ownership and management, if the open space is not to be dedicated to the city, shall provide for at least the following:
- a. That the area shall be permanently maintained as open space.
  - b. That there shall be no transfer of the open space separately from the remainder of the development without approval of the planning board.
  - c. That there shall be no division of the property.
  - d. That no structures or buildings other than those shown on the approved plan shall be erected in the open space.
  - e. That any agricultural or forestry activity be carried out in accordance with an approved plan of action.
- (7) The land designated as open space shall meet the following requirements:
- a. The site shall have pedestrian access from a public street or private road and shall be of such size, shape, and topography as to be usable for open space or recreation purposes, with at least 50 percent of the land to be suitable to be used for active recreation, including, but not limited to, softball fields, swimming pools, tennis courts, bicycle paths, tot lots and hard surface court games.
  - b. Parcels that can be combined with existing city-owned property, dedicated open space on adjacent parcels, or with possible future land dedications shall be given priority.
  - c. The land will be maintained in a usable condition and retained in a natural state to the maximum extent practicable. All clearing, grading and material placement or removal shall be carried out in accordance with the approved landscape plan and under the supervision of the city engineer and code enforcement officials.
- (t) *Technical and financial capacity.* The applicant has demonstrated that he has the financial and technical capacity to carry out the project in accordance with this Code and the approved plan.
- (1) The applicant has submitted evidence from a financial institution or other source of project funding that demonstrates that adequate resources are available to complete the project in accordance with the approved plans.
- (u) *Buffering.* The development shall comply with the guidelines contained in the City of Lewiston's Site Plan Review and Design Guidelines as amended and provide for the buffering of adjacent uses where there is a transition from one type of commercial use to a residential use and to screen service and storage areas.
- (v) *Compliance with district regulations.* The applicant has established that the development will be consistent with the district regulations of Article XI.
- (w) *Design consistent with performance standards.* The applicant has so designed the development as to make it probable that the development and its use will comply with performance standards of Article XII, insofar as they maybe applicable.

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(Ord. No. 89-3, 4-7-89; Ord. No. 90-10, 10-4-90; Ord. No. 92-12, 6-4-92; Ord. No. 92-18, 9-10-92; Ord. No. 99-11, 5-20-99; Ord. No. 99-15, 8-12-99; Ord. No. 00-5, 5-4-00; Ord. No. 01-23, 2-7-02; Ord. No. 05-21, 1-19-06; Ord. No. 06-17, 2-8-07; Ord. No. 07-02, 3-22-07; Ord. No. 08-08, 10-2-08; Ord. No. 16-12, 12-15-16; Ord. No. 20-10j, 11-05-20)

**Sec. 5. Coordination with state subdivision law.**

To the extent that the following standards are not contained in article XIII, section 4, said standards shall be applicable to the review and approval of subdivisions:

- (1) Will not result in undue water or air pollution. In making this determination, it shall at least consider: the elevation of land above sea level and its relation to the floodplains; the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for disposal of effluents; and the applicable state and local health and water resources regulations.
- (2) Has sufficient water available for the reasonably foreseeable needs of the subdivision.
- (3) Will not cause an unreasonable burden on an existing water supply, if one is to be utilized.
- (4) Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.
- (5) Will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highways or public roads, existing or proposed.
- (6) Will provide for adequate sewage waste disposal.
- (7) Will not cause an unreasonable burden on the ability of a municipality to dispose of solid waste and sewage, if municipal services are to be utilized.
- (8) Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.
- (9) Is in conformance with this Code and the city's comprehensive plan.
- (10) The subdivider has adequate financial and technical capacity to meet the above stated standards.
- (11) Whenever situated, in whole or in part, within 250 feet of any pond, lake, river or tidal waters, will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.
- (12) Will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.
- (13) The subdivider will determine, based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area the subdivider will determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision plan shall include a condition of plat approval requiring that principal structures on lots in the subdivision shall be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation.
- (14) Will not interfere unreasonably with the solar access of existing buildings or adjacent parcels.

**Sec. 6. Site plan review and design guidelines.**

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The planning board shall adopt, on the recommendation of the planning director, site plan review and design guidelines. The Site Plan Review and Design Guidelines contains two distinct components; 1) City-wide Design Guidelines which shall be advisory in nature, unless specifically stated otherwise and 2) Design District Standards which are required, unless specifically stated otherwise. Applicants for all development review projects shall consider and incorporate said guidelines in the preparation of applications. The planning board and staff review committee shall consider said guidelines in evaluating appropriate design solutions to specific situations. (Ord. No. 20-10j, 11-05-20)

**Sec. 7. Additional standards for single-family cluster developments.**

(a) Single-family clustered development is a form of housing development which allows a developer to create smaller lots than would otherwise be required by the applicable zoning district regulations in return for setting aside the balance of the tract as permanent open space. The density of the development shall remain the same as if the site were developed as a conventional subdivision in full compliance with the zoning district standard which would otherwise be applicable.

(b) Notwithstanding other provisions of this Code, the planning board may approve development proposals that do not meet the Space and Bulk requirements of Article XI in order to promote cluster development. The purpose of this section shall be to encourage housing development that will result in:

- (1) Open space and recreation areas;
- (2) Variety and choice of housing;
- (3) A pattern of development in harmony with the natural features of the land;
- (4) Efficient use of the land, with small networks of utilities and streets.

(c) In addition to the criteria set forth in Article XIII, section 4, applications for single-family clustered developments shall meet the following standards:

- (1) Each lot will be an element of an overall creative plan for site development. The road and lot layout shall discourage through traffic and provide for pedestrian access to the common open space.
- (2) No single-family clustered development will exceed the allowable residential density (minimum net lot area per dwelling unit) otherwise permitted in the district in which it is located.
- (3) The development will contain a minimum of five lots.
- (4) Individual lot sizes may be reduced to 50 percent of that required by the district requirements, but no lot may be reduced below 5,000 square feet.
- (5) Each individual lot will have at least 50 feet of frontage on a road approved by the planning board.
- (6) Front yard and front setbacks for individual lots will not be reduced to less than 50 percent; parking for not more than one vehicle may take place in the area between the front wall of the building or structure closest to the street, and running the full width of the building, and the reduced front yard area.

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- (7) Side yard and side setbacks on one side of an individual lot may be reduced to five feet provided that the minimum fire separation distance required by the International Building Code, as amended, is maintained between adjacent structures;
- (8) The common open space will meet the following requirements:
  - a. To the extent that any proposed lots in a cluster development have a lot area less than would otherwise be required for other than a cluster development, the difference between the aggregate lot area of said proposed lots and the aggregate required lot area of said lots for other than a cluster development shall be added to the minimum size requirements otherwise imposed for common open space and the total shall constitute the minimum area required for common open space in a single-family cluster development. Said common open space shall be used to preserve natural features, protect wildlife cover and to provide outdoor recreation areas. The open space shall be located to be easily accessible to all lots in the development and the shape and location of the open space will be such that it is readily usable for its intended purpose and enhances the overall quality of the development.
  - b. The common open space will be accessible to the residents of the development, and will be used to preserve natural features, protect wildlife cover, outdoor recreation and for outdoor living purposes.
  - c. The formation and incorporation by the developer of a homeowner's association will be a condition of the approval, with evidence of its accomplishment submitted to the planning board prior to final plan approval. Covenants for mandatory membership in the association will be included in the deed for each lot or unit. The association will have the responsibility of maintaining private roads and utilities, the common open space and other private facilities dedicated to the use in common by the development's residents. Cluster developments utilizing side and front setback reduction provisions must incorporate into their covenants the areas where reductions may take place.
  - d. The open space will be distributed to be easily accessible to all lots in the development.
  - e. The shape and location of the open space will be such that it is easily used for its intended purpose and enhances the overall quality of the development.
- (9) Where possible, building sites will be oriented with consideration for scenic vistas, natural landscape features, topography and potential solar access.
- (10) Development proposals will include a landscape plan encompassing the treatment of roads, paths, service and parking areas, open space, buffers from surrounding uses, areas where side and front setback reductions may take place, and shall detail the way in which important natural features are to be preserved and any alterations to, or improvements to be located in, the common open space.
- (11) Lots within cluster developments that gain their frontage along extensions of existing streets may only have their frontage, front setbacks and individual lot size reduced by a maximum of 25 percent of that required by the district, and only if the planning board finds that the proposed street extension utilizes appropriate design techniques, as set forth in the city's site plan review and design guidelines, that provide an orderly transition from established single-family neighborhoods into the cluster development. Lots proposed

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along existing, accepted city streets cannot utilize cluster provisions to modify space and bulk standards required by the district.

- (12) Roads that are to remain private within the development must meet the standards contained in the City of Lewiston's Policy for the Design and Construction of Streets and Sidewalks.

(Ord. No. 90-10, 10-4-90; Ord. No. 06-17, 2-8-07; Ord. No. 07-02, 3-22-07; Ord. No. 20-10j, 11-05-20)

**Sec. 8. Additional standards for multi-unit residential development.**

In addition to the criteria set forth in Article XIII, section 4, applications for:

- (1) Mixed single-family residential developments;
- (2) Mixed residential developments;
- (3) Planned residential developments; or
- (4) Developments in which two or more principal residential structures are placed on one lot.

shall meet the following additional standards:

- (1) *Relationship of residences and open spaces.* The dwelling units and other improvements will be located so that each unit has access to the open space and/or recreational facilities. The open space should be located to enhance the living environment of each unit in the development.
- (2) *Buffering.* The plan for development will provide for the buffering of adjacent properties. To this end, no building, structure or other facility shall be located within any required yard area. Within this yard area, a combination of landscaping, natural vegetation, fencing and grading shall be used to minimize the impact on abutting property owners. No parking, roads or service facilities will be located in this buffer strip.
- (3) *Recreation facilities.* An area equal to 500 square feet per dwelling unit will be set aside as recreation areas and will be developed with recreational facilities suitable for the anticipated occupants of the development.
- (4) *Private outdoor space.* The design of the development will provide each dwelling unit with a private, outdoor space immediately adjacent to the unit where the architectural style of the buildings makes this possible.
- (5) *Storage.* Each dwelling unit will have access to and use of a minimum of 400 cubic feet of private, lockable storage space either within the individual dwelling unit or in common storage facilities.  
The development plan will also make provisions for the safe storage of such items as recreational vehicles and boats for dwellings other than detached single-family homes. These storage areas will be screened and landscaped.
- (6) *Open space.* At least 25 percent of the total lot area will be set aside as open space. Areas of the site with significant development constraints or outstanding natural features will be included in the open space. If the site contains soils which are identified as prime farmland soils, consideration should be given to including these areas in the open space. This land, in whole or in part, may be controlled by one or more of the following methods:

- a. Ownership by the owner of the development;

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- b. Joint ownership by the owners of units within the project;
- c. Joint ownership by the owners of the units within the project with a conservation easement granted to the city or recognized conservation organization;
- d. Dedication to the city as public open space land;
- e. Transfer, with permanent restrictions, to a land trust or other recognized conservation organization;
- f. Transfer, with permanent restrictions, to a farmer for use as agricultural land.

The planning board shall approve the arrangements for the ownership, control and maintenance of the open space as part of the approval of the final plan. No changes in the management of the open space shall be made without planning board approval.

The arrangements for the ownership and management of the open space will provide for, at least the following:

- a. That the area shall be permanently maintained as open space.
- b. That there shall be no transfer of the open space separately from the remainder of the development without approval of the planning board.
- c. That there shall be no division of the property.
- d. That no structures or buildings other than those shown on the approved plan shall be erected in the open space.
- e. That any agricultural or forestry activity be carried out in accordance with an approved plan of action.

**Sec. 9. Additional standards for mobile home parks.**

In addition to the standards set forth in article XIII, section 4, applications for mobile home parks shall meet the following additional standards.

- (1) *Road and lot layout.*
  - a. The mobile home park will be designed so that each mobile home is placed on a defined lot having access from a road within the mobile home park. The roads and lots will be laid out to provide safe and convenient access to every mobile home lot. The lot layout will be designed so that the vehicular access to each lot is from the internal road system of the mobile home park and not from existing public streets.
  - b. Roads within a park shall be designed and constructed in accordance with the City of Lewiston's Policy for the Design and Construction of Streets and Sidewalks.
- (2) *Mobile home lot standards.* Each mobile home lot will have a minimum lot size of 5,000 square feet which will be arranged so that any unit placed on the lot shall be able to be located so that it is at least 15 feet from the front lot line and at least ten feet from each side or rear lot line. Each lot will have a minimum of 45 feet of frontage on the roadway.
- (3) *Trash facilities.* If house-to-house trash pickup is not provided within the park, suitable trash disposal facilities will be provided. These facilities shall be completely fenced and landscaped.
- (4) *Mobile home park cluster developments.*
  - a. Notwithstanding other provisions of the Code, the planning board may approve development proposals that do not meet the Space and Bulk standards of Article XI in



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order to promote cluster development that will permit innovative approaches to park design which are sensitive to the natural opportunities and constraints of the site, and that will result in:

1. Open space and recreation areas;
  2. A pattern of development in harmony with the natural features of the land;
  3. Efficient use of the land, with small network of utilities and streets;
  4. Siting of units on lots to avoid monotony and sameness.
- b. In addition to the criteria set forth in article XIII, section 4 of this Code, applications for mobile home park cluster developments shall meet the following standards:
1. Each lot will be an element of an overall creative plan for site development. The road and lot layout shall discourage through traffic and provide for pedestrian access to the common open space;
  2. No mobile home park development will exceed the allowable residential density based on a net lot area of 6,500 square feet per unit;
  3. Individual lot sizes will not be reduced to less than 4,000 square feet;
  4. Each lot will have at least 25 feet of frontage on a road approved by the planning board;
  5. Individual lot front setbacks will not be reduced to less than ten feet; parking in the front yard is permitted; carports of noncombustible materials are not subject to side setback requirements;
  6. Individual lot side setbacks on one side of the lot may be reduced to five feet provided that the minimum fire separation distance required by the International Residential Code, as amended, is maintained between adjacent structures; rear setbacks may be reduced to zero along rear lot lines adjacent to required buffers;
  7. To the extent that any proposed lots in a cluster development have a lot area less than would otherwise be required for other than a cluster development, the difference between the aggregate lot area of said proposed lots and the aggregate required lot area of said lots for other than a cluster development shall be added to the minimum size requirements otherwise imposed for common open space and the total shall constitute the minimum area required for common open space in a mobile home park cluster development. Said common open space shall be used to preserve natural features, protect wildlife cover and to provide outdoor recreation areas. The open space shall be located to be easily accessible to all lots in the development and the shape and location of the open space will be such that it is readily usable for its intended purpose and enhances the overall quality of the development;
  8. Where practicable, building sites will be oriented with consideration for scenic vistas, natural landscape features, topography and potential solar access;
  9. Development proposals will include a landscape plan encompassing the treatment of roads, paths, service and parking areas, open space, buffers from surrounding uses, and areas where side and front setback reductions may take place, and shall detail the way in which important natural features are to be preserved and any alterations to, or improvements to be located in, the common open space;

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10. For mobile home parks utilizing side and front setback reduction provisions, the developer must submit park rules which specify that these reductions may take place and how maintenance of structures on lots where reductions take place shall be accomplished including necessary access easements on required buffer or other areas.

(Ord. No. 90-10, 10-4-90; Ord. No. 07-02, 3-22-07; Ord. No. 20-10j, 11-05-20)

**Sec. 10. Additional standards for private commercial or industrial subdivisions.**

Lots within a private commercial or industrial development may gain their required frontage on private roads. In addition to the criteria set forth in Article XII, section 18 and Article XIII, section 4, applications for these developments shall meet the following additional standards:

- (1) The development will have a minimum lot size of five acres with a minimum of 100 feet of frontage upon an accepted public street.
- (2) Existing development patterns or existing natural features in the development area would reasonably preclude the construction of a road to public standards.
- (3) The formation and incorporation by the developer of a lot owners' association with evidence of its accomplishment submitted to the planning board prior to final plan approval. Covenants for mandatory membership in the association will be included in the deed for each lot. The association will have the responsibility of maintaining private infrastructure, including roads, sanitary and storm systems and water supply systems.
- (4) Existing and proposed buildings on proposed private roads may have their required front yard and setbacks from the private road reduced by the planning board to accommodate the private road layout and to promote uniform building setbacks from that private road within the subdivision. The reductions, however, must not interfere with the convenient and safe use of the road right-of-way for all vehicles and pedestrians, and must be noted on the plans and be incorporated into the covenants of the development. Unless a variance is obtained from the board of appeals, all other space and bulk standards required for the respective zoning district must be met by the existing structures, proposed lot and any proposed building or structure.

(Ord. No. 92-12, 6-4-92; Ord. No. 20-10j, 11-05-20; Ord. No. 22-11, 6-2-22)

**Sec. 11. Expiration of approval.**

(a) Initiation of development within two years.

- (1) If development has not occurred as defined within the scope of this Code within two years, development review approval shall expire. The applicant may not begin construction or operation of the development until a new approval is granted. A statement to this effect must appear on all approved plans.
- (2) An extension of development review approval must be made within two years of the initial granting of approval. The applicant must state the reasons why the development was not begun within two years from the granting of the initial approval and the reasons why the applicant will be able to begin the activity within two years from the granting of an extension, if granted. Extensions of approval may include information submitted in the initial application by

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reference. Only one extension of the initial approval shall be allowed under these provisions.

(b) Reexamination after five years.

- (1) If the approved development is not completed within five years from the date of the granting of approval or extension of approval, said approval shall expire and the applicant shall reapply for a new approval. A statement to this effect must appear on all approved plans. The appropriate reviewing authority must reexamine its initial approval and may impose additional terms or conditions or prescribe other necessary corrective action to respond to significant changes in circumstances which may have occurred between the date of original approval and the date of expiration of that approval, including any extension thereto. Within the scope of this Code, these changes may include, but not be limited to zoning, stormwater, environment, and traffic regulations. The appropriate reviewing authority may waive requiring any additional terms or conditions or other necessary corrective actions for a particular development for which it is determined the changes to be insignificant.

(Ord. No. 90-5, 5-17-90; Ord. No. 93-3, 6-17-93; Ord. No. 10-12, 12-23-10)

**Sec. 12. Performance guarantee.**

(a) *Performance guarantee required.*

- (1) Prior to the release of the approved plan, the developer shall file a performance guarantee or conditional agreement with the director of planning covering the following improvements:
- a. The construction of any streets which are eligible to be accepted by the city as public ways; and
  - b. The construction of any water supply or sewerage system other than individual on-site facilities; and
  - c. The construction of any drainage systems; and
  - d. The construction of erosion and sedimentation control measures or landscaping required to meet the standards of this Code; and
  - e. The construction of traffic improvements on or off the site necessary to meet the criteria of this article; and
  - f. The maintenance of the improvements listed above until the street and related improvements are accepted by the city.
- (2) The performance guarantee may be tendered in one of the following terms:
- a. A certified check payable to the City of Lewiston;
  - b. A savings account passbook issued in the name of the City of Lewiston;
  - c. An irrevocable letter of credit from a financial institution acceptable to the planning board; or
  - d. A faithful performance bond running to the City of Lewiston and issued by a surety company licensed to do business in the State of Maine.
- (3) The amount of the performance guarantee shall be 125 percent of the cost of furnishing, installing, connecting and completing in good working condition all of the street grading, paving, storm drainage, utilities, and other similar improvements, including maintenance

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until accepted by the city, as specified above. All guarantees shall be conditioned upon the completion of all such improvements within two years from the date of the approval of the plan, as recorded on the plan, with extensions to this deadline only as permitted by this Code. If a performance guarantee as described in subsection (1) above has been satisfactorily filed with the city, building permits may be issued for construction within the development prior to completion of required improvements, but prior to occupancy of a building or dwelling unit, the improvements serving that building or dwelling unit shall be in place and serviceable.

For all developments as to which a performance guarantee is required, the following statements shall appear on the approved plan:

- a. Although there is a performance guarantee as to public improvements, it may be inadequate, and there is no obligation on the city to complete the improvements;
  - b. There is no performance guarantee as to private improvements.
- (4) The conditional agreement shall be endorsed by the planning board on the plan, and shall provide that no lot or parcel of land may be conveyed, and that no permit may be issued by the division of code enforcement for any building or other permanent structure within the development until the completion of the street grading, paving, storm drainage, utilities and other similar improvements as specified in the plan; and the acceptance of any public improvements by the city. The agreement shall be conditioned upon the completion of all such improvements within two years from the date of the approval of the plan, as recorded on the plan, with extensions of this deadline only as permitted below.
- (5) An extension of the deadline in a performance guarantee or conditional agreement may only be granted by the body which approved the plan for good cause shown and the extension request must be made at least 60 days prior to the time of expiration.
- (b) *Inspection of required improvements.*
- (1) Completion of required improvements shall be determined by the planning board to its satisfaction, which shall receive written and signed certifications by the city engineer that all improvements assured by the performance guarantee or conditional agreement have been constructed in accordance with the plan and all applicable codes and ordinances. Before construction of the required improvements begins, the developer shall provide the city engineer with adequate written notice and a proposed schedule of construction.
- (c) *Release of guarantee.* The performance guarantee shall be released by the planning board upon the request of the developer only after:
- (1) The board receives the certifications of completion required in subsection (b)(1) above.
  - (2) The developer has furnished the city with an accurate record plan and profile (which may be the original reproducible drawing with corrections, provided the city has been provided with a print of the unaltered original as approved by the planning board) of all streets, including drainage lines and appurtenances, sanitary sewerage lines and appurtenances, water mains and appurtenances and all other utilities as actually installed, with sufficient ties for proper identification.

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- (3) The developer has presented to the city council a petition for the laying out and acceptance as a city street, of the dedicated public streets in the development or portion thereof for which release of the performance guarantee is sought, together with a warranty deed for the street right-of-way, free and clear of all encumbrances and providing marketable title in accordance with the Maine Title Standards.

(Ord. No. 90-5, 5-17-90)

**Sec. 13. Independent professional review.**

The planning board may require the owner or his authorized agent to carry out an independent professional review of the development for a major development or any aspect thereof which, due to the size or nature of the project, the board determines is necessary to generate facts sufficient to warrant a finding that certain applicable criteria have been met.

(Ord. No. 92-12, 6-4-92)

**Sec. 14. Reserved.**

**Sec. 15. Post-construction stormwater management standards**

In addition to the criteria set forth in Article XIII, section 4, applications for new development and redevelopment as defined below, shall meet the following additional standards of this section.

(a) *Purpose.* The purpose of the Post-construction stormwater management standards is to provide for the health, safety, and general welfare of the citizens of the City of Lewiston through monitoring and enforcement of with post-construction stormwater management plans in order to comply with minimum control measure requirements of the federal Clean Water Act, of federal regulations, and of Maine’s General Permit for Small Municipal Separate Storm Sewer Systems.

(b) *Objectives.* These standards seek to ensure that post-construction stormwater management plans are followed, and stormwater management facilities are properly maintained and pose no threat to public safety.

(c) *Definitions.*

For the purposes of this section, the terms listed below are defined as follows:

- (1) *Applicant* means a Person with requisite right, title or interest or an agent for such Person who has filed an application for New Development or Redevelopment that requires a Post-Construction Stormwater Management Plan under this Ordinance.
- (2) *Best Management Practices (“BMP”)* means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.
- (3) *Clean Water Act* means the federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*, also known as the “Clean Water Act”), and any subsequent amendments thereto.

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- (4) *Construction Activity* means construction activity including one acre or more of Disturbed Area, or activity with less than one acre of total land area that is part of a subdivision, if the subdivision will ultimately disturb equal to or greater than one acre.
- (5) *Discharge* means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of Pollutants to “waters of the State.” “Direct discharge” or “point source” means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which Pollutants are or may be discharged.
- (6) *Disturbed Area* is surface area proposed for clearing, grading and excavation. Mere cutting of trees, without grubbing, stump removal, disturbance or exposure of soil is not considered “disturbed area.” “Disturbed area” does not include routine maintenance but does include redevelopment. “Routine maintenance” is maintenance performed to maintain the original line and grade, hydraulic capacity, and original purpose of land or improvements thereon.
- (7) *Enforcement Authority* means the Codes Enforcement Official, with the support of the City Engineer, who are both authorized by the Municipality to administer and enforce this Ordinance.
- (8) *Impervious Area* means the total area of the Premises that consists of buildings and associated constructed facilities or areas that will be covered with a low-permeability material, such as asphalt or concrete, and areas such as gravel roads and unpaved areas that will be compacted through design or use to reduce their permeability.
- (9) *Municipality* means the City of Lewiston.
- (10) *Municipal Permitting Authority* means the municipal official or body that has jurisdiction over the land use approval or permit required for a New Development or Redevelopment.
- (11) *Municipal Separate Storm Sewer System* or *MS4* means conveyances for storm water, including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains (other than publicly owned treatment works) owned or operated by any municipality, sewer or sewage district, fire district, State agency or Federal agency or other public entity that discharges directly to surface waters of the State.
- (12) *National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit* means a permit issued by the U.S. Environmental Protection Agency (“EPA”) or by the Maine Department of Environmental Protection (“DEP”) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.
- (13) *New Development* means any Construction Activity on unimproved Premises.
- (14) *Person* means any individual, firm, corporation, municipality, quasi-municipal corporation, State agency or Federal agency or other legal entity.
- (15) *Pollutant* means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded

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equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

- (16) *Post-Construction Stormwater Management Plan* means BMPs and associated inspection and maintenance procedures for the Stormwater Management Facilities employed by a New Development or Redevelopment to meet the stormwater standards of the Municipality’s subdivision, site plan, or other zoning, planning or other land use ordinances, and approved by the Municipal Permitting Authority.
- (17) *Premises* means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within the Urbanized Area in Lewiston.
- (18) *Qualified Post Construction Third-Party Inspector* means a person who conducts post-construction Stormwater Management Facilities inspections and meets the following qualifications:
- a. Have a practical knowledge of stormwater hydrology and stormwater management techniques, including the maintenance requirements for Stormwater Management Facilities, and
  - b. Have the ability to determine if stormwater facilities are performing as intended.
  - c. Have had training and / or is certified in the inspection of Stormwater Management Facilities.
- (19) *Redevelopment* means Construction Activity on Premises already improved with buildings, structures or activities or uses, but does not include such activities as exterior remodeling.
- (20) *Regulated Small MS4* means any Small MS4 regulated by the State of Maine “General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems” effective July 1, 2008 (“General Permit”), including all those located partially or entirely within an Urbanized Area (UA) and those additional Small MS4s located outside a UA that as of the issuance of the General Permit have been designated by the DEP as Regulated Small MS4s.
- (21) *Small Municipal Separate Storm Sewer System, or Small MS4*, means any MS4 that is not already covered by the Phase I MS4 stormwater program including municipally owned or operated storm sewer systems, State or federally-owned systems, such as colleges, universities, prisons, Maine Department of Transportation and Maine Turnpike Authority road systems and facilities, and military bases and facilities.
- (22) *Storm Drainage System* means the Municipality’s Regulated Small MS4.
- (23) *Stormwater* means any Stormwater runoff, snowmelt runoff, and surface runoff and drainage; “Stormwater” has the same meaning as “Storm Water.”

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- (24) *Stormwater Management Facilities* means any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures that are part of the Post-Construction Stormwater Management Plan for a New Development or Redevelopment.
- (25) *Urbanized Area (“UA”)*. “Urbanized Area” or “UA” means the areas of the State of Maine so defined by the latest decennial census by the U.S. Bureau of the Census.

(d) *Applicability.*

- (1) *In General.* This Ordinance applies to all New Development and Redevelopment within the Municipality and to associated Stormwater Management Facilities located within the Urbanized Area.
- (2) *Exception.* This Ordinance does not apply to New Development or Redevelopment on a lot, tract or parcel where that lot, tract or parcel is part of a subdivision that is approved under this Ordinance; said lot, tract or parcel shall not require additional review under this Ordinance, but shall comply with the Post-Construction Stormwater Management Plan requirements for that approved subdivision.

(e) *Post-Construction Stormwater Management Plan Approval*

- (1) *General Requirement.* Notwithstanding any ordinance provision to the contrary, and except as provided in Section d(2) above, no Applicant for a building permit, subdivision approval, site plan approval or other zoning, planning or other land use approval for New Development or Redevelopment to which this Ordinance is applicable shall receive such permit or approval for that New Development or Redevelopment unless the Applicant also receives approval under the Municipality’s subdivision, site plan or other zoning, planning or other land use ordinances for its Post-Construction Stormwater Management Plan and Stormwater Management Facilities for that New Development or Redevelopment, even if the Municipality’s subdivision, site plan or other zoning, planning or other land use ordinances would not otherwise apply.
- (2) *Notice of BMP Discharge to Municipality’s MS4.* At the time of application for a building permit, subdivision approval, site plan approval or other zoning, planning or other land use approval for New Development or Redevelopment to which this Ordinance is applicable, the Applicant shall notify the Municipal Permitting Authority if its Post-Construction Stormwater Management Plan includes any BMP(s) that will discharge to the Municipality’s MS4 and shall include in this notification a listing of which BMP(s) will so discharge.
- (3) *Performance guarantee.*
  - a. No applicant for a building permit, subdivision approval, site plan approval or other zoning, planning or other land use approval for New Development or Redevelopment to which this Ordinance is applicable shall receive such permit or approval for that New Development or Redevelopment unless the Applicant provides a performance guarantee to the city’s satisfaction in accordance with one of following options:



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Option 1: Documentation submitted by the Applicant to the Municipality that shall:

1. Reference the Applicant, its successors, heirs and assigns;
2. Note their legal obligation to operate, repair, maintain, and replace the Stormwater Management Facilities;
3. Acknowledge that the City of Lewiston shall have the ability to establish a special assessment, district, or other means upon the Applicant, its successors, heirs and assigns to ensure said resources are available;
4. Clearly state that the Applicant, its successors, heirs and assigns, or other responsible party shall properly maintain, repair, or replace Stormwater Management Facilities serving the development after the developer has legally relinquished that responsibility;
5. Provide an estimated cost of repair or replacing the Stormwater Management Facilities that are part of the Post-Construction Stormwater Management Plan for a New Development or Redevelopment;
6. Be recorded in the Androscoggin Registry of Deeds and be included in the deed for each lot.

Option 2: A certified check payable to the City of Lewiston;

Option 3: A savings account passbook issued in the name of the City of Lewiston;

Option 4: An irrevocable letter of credit from a financial institution; or

Option 5: A faithful performance bond running to the City of Lewiston and issued by a surety company licensed to do business in the State of Maine.

- b. Should a guarantee be submitted in accordance with Option 2, 3, 4 or 5 as noted in subsection above, the following additional criteria must be met:
  - i. Compliance with all the criteria referenced in Option 1.
  - ii. The guarantee must be for an amount not less than the estimated cost of replacing the Stormwater Management Facilities that are part of the Post-Construction Stormwater Management Plan for a New Development or Redevelopment.
  - iii. In event a bond or irrevocable letter of credit is provided, either must be renewed annually for an amount not less than the estimated cost of repair or replacing the Stormwater Management Facilities that are part of the Post-Construction Stormwater Management Plan for a New Development or Redevelopment.
  - iv. Evidence of said bond or irrevocable letter of credit must be provided in a manner acceptable to the City by May 31 of each year.

*(f) Post-Construction Stormwater Management Plan Compliance*

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- (1) *General Requirements.* Any Person owning, operating, leasing or having control over Stormwater Management Facilities required by a Post-Construction Stormwater Management Plan approved under the Municipality's subdivision, site plan or other zoning, planning or other land use ordinances shall demonstrate compliance with that Plan as follows.
  - a. A Qualified Post Construction Third-Party Inspector shall, at least annually, inspect the Stormwater Management Facilities, including but not limited to any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures, in accordance with all municipal and state inspection, cleaning and maintenance requirements of the approved Post-Construction Stormwater Management Plan.
  - b. If the Stormwater Management Facilities require maintenance to function as intended by the approved Post-Construction Stormwater Management Plan, that Person shall take corrective action(s) to address the deficiency or deficiencies.
  - c. A Qualified Post Construction Third-Party Inspector shall provide, on or by May 31 of each year, a completed and signed certification to the Enforcement Authority in a form identical to the City of Lewiston's Annual Stormwater Management Facilities Certification form, certifying that the Stormwater Management Facilities have been inspected, and that they are adequately maintained and functioning as intended by the approved Post-Construction Stormwater Management Plan, or that they require maintenance or repair, describing any required maintenance and any deficiencies found during inspection of the Stormwater Management Facilities and, if the Stormwater Management Facilities require maintenance or repair of deficiencies in order to function as intended by the approved Post-Construction Stormwater Management Plan, the Person shall provide a record of the required maintenance or deficiency and corrective action(s) taken.
- (2) *Right of Entry.* In order to determine compliance with this Ordinance and with the Post-Construction Stormwater Management Plan, the Enforcement Authority may enter upon property at reasonable hours to inspect the Stormwater Management Facilities.
- (3) *Annual Report.* Beginning July 1, 2009 and each year thereafter, the Municipality shall include the following in its Annual Report to the Maine Department of Environmental Protection:
  - a. The cumulative number of sites that have Stormwater Management Facilities discharging into their MS4;
  - b. A summary of the number of sites that have Stormwater Management Facilities discharging into their MS4 that were reported to the Municipality;
  - c. The number of sites with documented functioning Stormwater Management Facilities; and
  - d. The number of sites that required routine maintenance or remedial action to ensure that Stormwater Management Facilities are functioning as intended.

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*(g) Enforcement.*

It shall be unlawful for any Person to violate any provision of or to fail to comply with any of the requirements of this Ordinance or of the Post-Construction Stormwater Management Plan. Whenever the Enforcement Authority believes that a Person has violated this Ordinance or the Post-Construction Stormwater Management Plan, the Enforcement Authority may enforce this Ordinance in accordance with 30-A M.R.S.A. § 4452.

(1) *Notice of Violation.* In addition to the provisions contained in Appendix A, Article V of this Code, whenever the Enforcement Authority believes that a Person has violated this Ordinance or the Post-Construction Stormwater Management Plan, the Enforcement Authority may order compliance with this Ordinance or with the Post-Construction Stormwater Management Plan by written notice of violation to that Person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:

- a. The abatement of violations, and the cessation of practices, or operations in violation of this Ordinance or of the Post-Construction Stormwater Management Plan;
- b. At the Person's expense, compliance with BMPs is required as a condition of approval of the New Development or Redevelopment, including the repair of Stormwater Management Facilities and/or the restoration of any affected property; and/or
- c. The payment of fines, of the Municipality's remediation costs and of the Municipality's reasonable administrative costs and attorneys' fees and costs.

If abatement of a violation, compliance with BMPs, repair of Stormwater Management Facilities and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement, compliance, repair and/or restoration must be completed.

*(h) Severability.*

The provisions of this Ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this Ordinance.

(Ord. No. 09-07, 12-31-09)