

ARTICLE II  
**General Provisions**

**§ 335-2.1. Applicability.**

The following general regulations in this article apply to this chapter.

- A. Owner/lessee. The regulations pertaining to an owner of property also pertain to a lessee.
- B. Person. The regulations pertaining to a person apply also to a partnership, corporation, or any other legal entity.

**§ 335-2.2. Accessory dwelling unit. [Amended 11-17-2014; 4-23-2018 by Ord. No. 2018-44; 12-4-2023 by Ord. No. 2023-127]**

- A. Purpose. The City of Westbrook provides these accessory dwelling unit (ADU) regulations to increase the supply of affordable housing, encourage provision of housing that meets the needs of a variety of household types, encourage infill development that is compatible in scale and character with existing residential uses, and to encourage infill development that makes better use of existing public investment in streets and utilities.
- B. Applicability. An accessory dwelling unit (ADU) is permitted as an accessory use to a new or existing single-family dwelling unit.
- C. Authority. Permitting and enforcement is conducted through the Code Enforcement Office.
- D. Permit required. A building permit and a certificate of occupancy are required for the construction or formation of an ADU.
- E. Standards.
  - (1) An ADU can be constructed:
    - (a) Within a principal structure on the lot; or
    - (b) Attached to or sharing a wall with principal structure; or
      - [1] For the purpose of ADUs, "attached" means either connected by a shared wall to the principal structure or an enclosed habitable (as defined by the building codes) space.
    - (c) As a new detached structure on the lot for the primary purpose of creating an ADU; or in an existing accessory structure, that is compliant with all building codes for human habitation and meets the district setback standards.
  - (2) For an ADU within or attached to the principal structure, the ADU and the principal structure may be served by a common utility meter.
  - (3) A detached ADU shall share the access drive of the principal structure.
  - (4) No more than one ADU is permitted on a lot.

- (5) The owner of the principal structure must reside in either the principal dwelling unit or the ADU. This restriction shall be included in the certificate of occupancy. The ADU shall not be intended for sale and shall remain in common ownership with the principal dwelling unit (single-family dwelling).
- (6) No additional off-street parking is required for the ADU beyond the requirement of the single-family dwelling unit.
  - (a) Prior to the issuance of a building permit or certificate of occupancy for the ADU, the lot must demonstrate adequate off-street parking is provided for the single-family dwelling unit as required in § 335-13.6B.
- (7) The ADU shall contain a maximum of 800 square feet of habitable (as defined by the building codes) floor area. The floor-to-ceiling height of all habitable floor area shall be a minimum of seven feet. Minimum size of an ADU is 190 square feet.
- (8) Any new construction for an ADU must meet all applicable setbacks, lot coverage, and building height requirements.
- (9) All ADUs shall be constructed on permanent foundations that meet applicable building codes.
- (10) Utility connections. ADUs must be connected to adequate water and wastewater services.
  - (a) Owner of the ADU must provide written verification that the unit can be connected to adequate potable water and wastewater services.
  - (b) For potable water: The owner of the ADU must provide proof of access to potable water for a well or approval to connect to a public water source must be provided. For wells, testing may be required to demonstrate water supply is potable and acceptable for domestic use. If the lot is served by public water, both the single-family home and the ADU must be connected to public water.
  - (c) For wastewater:
    - [1] If on septic, the septic system on the property in question shall be functioning properly at the time of application for building permit approval.
    - [2] If on public sewer, the owner must provide proof of access into the public system, additional flow approved and fees paid, as required, by the Wastewater Department. If the lot is served by public sewer, both the single-family home and the ADU must be connected to public sewer.
- (11) If a short-term rental ordinance is adopted by the City, ADUs will be subject to that ordinance.

**§ 335-2.3. Adult-use/retail marijuana. [Added 6-4-2018 by Ord. No. 2018-72]**

- A. Definitions. For purposes of this section, adult-use/retail marijuana establishments, including but not limited to adult-use/retail marijuana stores, adult-use/retail marijuana cultivation

facilities, adult-use/retail marijuana products manufacturing facilities, and adult-use/retail marijuana testing facilities, and adult-use/retail marijuana social clubs are defined in § 335-1.8 of this chapter.

- B. Prohibition on adult-use/retail marijuana establishments and adult-use/retail marijuana social clubs.
- (1) Adult-use/retail marijuana establishments, including adult-use/retail marijuana stores, adult-use/retail marijuana cultivation facilities, adult-use/retail marijuana products manufacturing facilities, and adult-use/retail marijuana testing facilities, and adult-use/retail marijuana social clubs are expressly prohibited in the City of Westbrook as either a principal or an accessory use.
  - (2) No person or organization shall develop or operate a business in the City of Westbrook that engages in retail or wholesale sales of an adult-use/retail marijuana product, as defined by this chapter, as either a principal or an accessory use.
  - (3) Nothing in this section is intended to prohibit any lawful use, possession or conduct pursuant to the Maine Medical Use of Marijuana Act, 22 M.R.S.A. Chapter 558-C.
- C. Effective date; duration. This section shall take effect immediately upon enactment by the municipal legislative body unless otherwise provided and shall remain in effect until it is amended or repealed.

**§ 335-2.4. Artisan food and beverage. [Added 3-18-2019 by Ord. No. 2019-40]**

- A. Only products produced at the facility or products that are incidental to those produced at the facility may be sold for on-site consumption.
- B. Life safety measures (including but not limited to sprinklers, smoke alarms, etc.) may be required at the discretion of the Fire & Rescue Department depending on size or condition of the structure containing the use.
- C. Parking will be held to the following standards:
- (1) City Center District: No off-street parking is required.
  - (2) All other zones will comply with the following off-street parking standards as stated in § 335-13.6B, Parking and loading design and site circulation:
    - (a) Businesses with no customer seating provided: general retail.
    - (b) Businesses with customer seating provided: restaurant.

**§ 335-2.5. Automobile dealership. [Amended 1-5-2015]**

Automobile dealerships are a permitted use in the Gateway Commercial District north of the Westbrook arterial.

**§ 335-2.6. Boarding kennel. [Added 3-18-2019 by Ord. No. 2019-41]**

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

**§ 335-2.7. Bottle club. [Amended 4-6-2015]**

- A. Bottle clubs are allowed as a permitted use in the Industrial Park District where it exists south of the Presumpscot River and along Warren Avenue. No bottle club shall be located within 300 feet of any residence, public or private school, school dormitory, or place of worship in existence at the time that the bottle club license application is submitted. For purposes of this section, the distance shall be measured from the main entrance of the residence, school, school dormitory, or place of worship by the ordinary course of travel. **[Amended 6-3-2024 by Ord. No. 2024-61]**
- B. The bottle club premises shall be closed and vacated by members and guests each day from 1:00 a.m. to 9:00 a.m. During the hours that the bottle club must remain closed, no member, guests or other persons may be on, or remain in, the premises, except for regular employees of the bottle club. The drinking of alcoholic beverages on the bottle club premises during such hours is prohibited.

**§ 335-2.8. Clustering. [Amended 4-23-2018 by Ord. No. 2018-44; 3-18-2019 by Ord. No. 2019-45]**

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

residential density factors provided for each residential zone, as well as all other performance standards, must be adhered to. All other applicable requirements of the subdivision and site plan review processes in Article XIII shall be followed.

**§ 335-2.8.1. Commercial equipment rental. [Added 12-2-2024 by Order No. 2024-144]**

A. Performance standards for commercial equipment rental:

- (1) The business office space for the commercial equipment rental shall be on the same lot where the construction equipment is located.
- (2) Equipment shall be kept in an orderly fashion and/or in compliance with approved site plan.
- (3) Equipment storage areas shall be held to the setback lines of the zoning district.
- (4) All rubber-tired equipment shall be stored on paved surfaces.
- (5) Tracked equipment shall be stored on stabilized surfaces with appropriate stormwater features to capture sedimentation from runoff. Reclaimed asphalt is an example of an appropriate stabilized surface material.

**§ 335-2.9. Congregate care facilities.**

Congregate care facilities shall meet the following requirements:

- A. Age. All facilities shall house persons of 55 years of age or older or in accordance with one of the following exceptions:
  - (1) Where at least one living mate is at least 55 years old or more.
  - (2) Where a person less than 55 years of age has a physical disability which necessitates congregate care living.
- B. Typical dwelling unit. The typical dwelling unit in a congregate care facility shall have a minimum habitable space of 500 square feet.
- C. Residential density factor. A congregate care facility shall have a density factor of at least one dwelling unit per 5,000 square feet.
- D. Shared dining services. The facility shall have a central dining facility for all residents, providing at least one meal per day per person.
- E. Personal care and housekeeping. Limited personal care and assistance as well as housekeeping services may be made available to all residents upon request.
- F. Medical services. Specialized shared services related to medical support and physical therapy shall be made available to all residents. At least one registered or licensed nurse shall be available 24 hours per day.
- G. Parking. One and one-fourth spaces shall be provided for each dwelling unit.

- H. Services and shops. Any service and retail shops shall be designed as an integral part at the building. Such facilities shall be designed for use by the residents and not to serve those living outside the facility.
- I. Recreation areas. A recreation plan, incorporating indoor and outdoor activities, shall be included as part of the congregate care facility. Such a plan shall include both passive and active recreation and may be incorporated into any open space or landscape factor.

### **§ 335-2.10. Dwelling unit ownership.**

Nothing in this chapter precludes the subdivision of buildings into units, either attached or detached, on a single lot, provided that the performance standards of the zone are met and that the application receives subdivision and/or site plan review. An applicant must submit to the Westbrook Planning Board for approval all legal documents related to unit associations, ownership in common and appropriate bylaws, deeds and covenants. The applicant shall record all such documents, along with the subdivision and/or site plan, in the Registry of Deeds.<sup>1</sup>

#### **§ 335-2.10.1. Emergency shelters. [Added 6-3-2024 by Ord. No. 2024-61]**

- A. General requirements for all categories of emergency shelter.
  - (1) All life safety codes shall be met or implemented and shall be reviewed and approved by the Code Enforcement Officer.
  - (2) The City may inspect the facility at any time for compliance with the facility's management plan and other applicable laws and standards.
- B. Emergency shelter-accessory (ES-A).
  - (1) An ES-A shall be licensed by the City of Westbrook prior to the use or operation of the space.
  - (2) Capacity.
    - (a) No more than one bed/50 square feet in a room where sleeping occurs, or as may be required by the applicable building codes and fire codes.
  - (3) Staffing shall be provided in accordance with a shelter management plan provided as part of the licensing process.
  - (4) Parking. One space for each staffer/volunteer and either one space per 10 beds or 0.5 spaces per bedroom designated for use by a single family.
    - (a) The parking requirement may be waived by the appropriate reviewing authority with a parking management plan that demonstrates adequate parking is provided to meet the needs of the facility.
  - (5) ES-A requirements.

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1. Editor's Note: Original § 202.4, which immediately followed this section, was repealed 11-17-2014.

- (a) Restroom facilities shall be provided in accordance with Plumbing Code; and
  - (b) An ES-A shall be served by public sewer and public water; and
  - (c) An ES-A shall be within one-half-mile straight line distance of a bus line.
- (6) An ES-A use shall not be located closer than 250 linear feet as measured in a straight line from the structure in which the ES-A is located to the nearest boundary line of any lot which is occupied by any of the following uses:
- (a) A licensed home day-care provider, day-care center, or child-care center; or
  - (b) A public or private school; or
  - (c) An athletic field, park, playground, or recreational facility.
- C. Emergency shelter-family (ES-F)
- (1) An ES-F shall be licensed by the City of Westbrook prior to the use or operation of the dwelling unit(s).
  - (2) Capacity.
    - (a) Limit to eight minors or two separate families per dwelling unit, provided that no more than a total of eight minors reside in an ES-F at any given time.
  - (3) Management of ES-F shall be in accordance with a shelter management plan provided as part of the licensing process.
  - (4) Parking. Consistent with parking requirements for dwelling units.
  - (5) An ES-F is only permitted:
    - (a) Within a single-family dwelling or a two-family dwelling; and
    - (b) On a conforming lot that meets the density standards for the district that the residential unit(s) are located; and
    - (c) Within one-fourth mile straight line distance of a bus line.
- D. Emergency shelter-transitional housing (ES-TH).
- (1) An ES-TH shall be licensed by the City of Westbrook prior to the use or operation of the space.
  - (2) Capacity.
    - (a) One adult/80 square feet of habitable licensed premise and one child per 50 square feet of habitable licensed premise; or as may be required by the Building Inspector.
    - (b) A child must be accompanied by a legal guardian.
  - (3) Staffing shall be provided in accordance with a shelter management plan provided as part of the licensing process.

- (4) Parking. One space for each staffer/volunteer, one space for van transportation and either one space per 10 beds, or 0.5 spaces per bedroom designated for use by a single family.
  - (a) The parking requirement may be waived by the appropriate reviewing authority with a parking management plan that demonstrates adequate parking is provided to meet the needs of the facility.
- (5) ES-TH requirements.
  - (a) An ES-TH must provide restrooms, cooking, shower, and laundry facilities;
    - [1] Number of plumbing fixtures shall be determined by Plumbing Code.
    - [2] Laundry facilities must be provided at the ratio of one washer and one dryer for every 20 guests or fractional number thereof.
  - (b) An ES-TH must be served by public sewer and public water;
  - (c) An ES-TH must be located within one-half-mile straight line distance of a bus line.
- (6) An ES-TH shall not be located closer than 100 linear feet as measured in a straight line from the structure in which the ES-TH is located to the nearest boundary line of any lot which is occupied by any of the following uses:
  - (a) A licensed home day-care provider, day-care, center, or child-care center; or
  - (b) A public or private school.
- (7) An ES-TH shall provide sleeping arrangements in the community room for those residing in the facility that are secured (locked) and are separated from any other use of the structure in which it is located within.

E. Emergency shelter - reserved.

### **§ 335-2.11. Exceptions to height limitations.**

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

### **§ 335-2.12. Extractive industry.**

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

- A. Topsoil, rock, sand, gravel and similar earth materials may be removed from locations where permitted under the terms of this chapter only after a special permit for such operations has been issued by the Building Inspector upon approval by the Planning Board and review of plans by the Planning Board in accordance with the provisions of this chapter, and provided that:



- (1) Specific plans are established to avoid hazards from excessive slopes or standing water. Where an embankment must be left upon the completion of operations, it shall be at a slope of not steeper than one foot vertical to two feet horizontal.
  - (2) The operation is shielded from surrounding property with adequate screening and creates no disturbance of a water source, and when terminated shall not detract from the appearance or value of nearby property.
  - (3) No excavation shall be extended below the grade of adjacent streets unless 100 feet from the street line or unless provision has been made for reconstruction of the street at a different level, and the edge of all workings shall be set back from the property line a minimum of 100 feet.
  - (4) Sufficient topsoil or loam shall be retained to cover all areas, so that they may be seeded and restored to natural conditions.
  - (5) A surety bond is posted with the Treasurer of the City by the applicant in an amount recommended by the City Engineer and approved by the Planning Board as sufficient to guarantee conformity with the provisions of the grant of approval.
- B. The plan review by the Planning Board shall take into consideration the following items. The Board may impose such conditions as necessary to safeguard the health, safety and welfare of the community.
- (1) Fencing, landscaped buffer strips, public safety.
  - (2) Advertising signs, lighting.
  - (3) Parking space, loading and unloading areas.
  - (4) Entrances and exits.
  - (5) Time period for operation.
  - (6) Hours of operation.
  - (7) Methods of operation.
  - (8) Weight and loading limit of trucks.
  - (9) Sand and gravel spillage upon public streets.
  - (10) Rehabilitation proposals.
  - (11) Ecological and other natural considerations.
- C. Blasting must be conducted in compliance with the requirements of 38 M.R.S.A. § 490-Z(14).

**§ 335-2.13. Flag lots. [Added 4-5-2010; amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**

The construction of no more than one principal building on a flag lot, as defined herein, is

permitted, subject to the following:

- A. Such lot, exclusive of the minimum fifty-foot-wide access strip, shall have at least the minimum lot area required for the zoning district in which it is located.
- B. A building shall not be so located on the property as to preclude future dedication and/or construction of a street according to City specifications as set forth in the Code of the City of Westbrook to service the subject flag lot, abutting parcels and other nearby inaccessible parcels.
- C. No additional development shall be allowed on the subject flag lot until a street or public way is constructed to specifications as provided in the Westbrook Land Use Ordinances to meet the street frontage requirements of that zoning district.
- D. Any construction shall meet the performance standards of the underlying zoning district. Setbacks shall be measured from the edge of the buildable area of the lot.
- E. All flag lots must have a minimum width of 50 feet on a public street. The fifty-foot-wide-minimum access strip must be maintained the entire depth of the lot and no structure may be constructed within the access strip. No variance shall be granted from this requirement.
- F. The Code Enforcement Officer may approve a shared driveway with an abutting lot with frontage on the same public street as the flag lot. Lots with shared driveways must separately meet the fifty-foot width requirement established in Subsection E of this section, and approval of a shared driveway shall not constitute a waiver of this requirement. An applicant for a flag lot who seeks approval of a shared driveway shall show evidence of a permanent easement creating the shared driveway.
- G. If the creation of the flag lot creates a subdivision as defined in § 335-1.8 of this chapter, the application must receive subdivision approval from the Planning Board in accordance with Article XIII of this chapter.

**§ 335-2.14. Home day-care provider, day-care center and child-care center. [Amended 1-8-2007; 4-5-2010; 11-17-2014; 9-14-2015]**

For zoning districts in which a conditional use review is not required, the Code Enforcement Officer must approve all applications for home day care providers and day-care centers, as defined in this chapter. Code Enforcement Officer approval is also required whenever a home day-care provider, day-care center or child-care center expands its enrollment beyond the enrollment number for which it was approved. In addition to the zoning district, conditional use and/or site plan review criteria, the following additional criteria shall be used:

- A. A minimum of 50 square feet of dedicated outdoor play area shall be required for each child, and such play area shall not be located in the front yard facing a public right-of-way;
- B. All play areas shall be enclosed by a minimum of four-foot fencing;
- C. When a facility is located in a two-family dwelling, then at least an equal amount of outdoor play area shall be maintained for the second unit, also not located in the front yard facing a public right-of-way;

- D. One off-street parking space shall be provided for each employee or volunteer, and one off-street parking space for every six children shall be provided;
- E. The parking area shall be in a safe location, shall include an area for snow storage, and shall permit the parent to move directly to the entrance for the loading and unloading of children without affecting the movement of other vehicles;
- F. The proposed facility shall not burden on-site septic or off-site waste disposal;
- G. There shall be toilet facilities on every floor of the facility. Where the facility is a home day-care provider separate toilet facilities shall be provided for the residential and facility uses;
- H. All facilities shall demonstrate that they meet the requirements for licensing by the state and shall provide proof of state licensure prior to issuance of a certificate of occupancy and shall meet all sanitary, plumbing code, fire code, and building code requirements, as identified by the Code Enforcement Officer;
- I. Based on location, area traffic, and neighboring uses, the Code Enforcement Officer or Planning Board may set the hours of operation; and
- J. If the operator of the facility is not the owner of the property on which the facility will be located, the operator shall provide evidence of the property owner's consent to the facility. The operator shall also provide proof of interest in the property, such as a deed or lease.

**§ 335-2.15. (Reserved)<sup>2</sup>**

**§ 335-2.16. Land partially in other municipalities.**

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

**§ 335-2.17. Land surveyors.**

Where this chapter requires a land surveyor, he/she must be licensed in accordance with Maine law.

**§ 335-2.18. Lot partially in two districts. [Amended 9-12-2022 by Ord. No. 2022-105]**

When a lot is bisected by a Zoning District boundary, the following regulations apply:

- A. The performance standards of the zoning district in which the larger portion of the lot lies, to be known as the "primary district," shall apply.
- B. Land in both zones may be used in determining the maximum footprint factor, maximum gross density factor, and landscape factor.
- C. Land uses permitted only in the primary district may not extend more than 30 feet into the

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2. **Editor's Note: The definition of "home occupation" which originally appeared in this section has been moved to § 335-1.8, Definitions.**

adjacent zoning district.

**§ 335-2.19. Manufactured housing on individual lots.**

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

**§ 335-2.20. Medical marijuana. [Added 2-5-2018 by Ord. No. 2018-07]**

- A. State authorization required. Before submission of a conditional use application for a medical marijuana dispensary or a medical marijuana caregiver cultivation facility, the applicant must demonstrate his or her authorization to cultivate, process and store medical marijuana pursuant to the Maine Medical Use of Marijuana Program.
- B. Location criteria/buffer zones.
- (1) No medical marijuana dispensary or medical marijuana caregiver cultivation facility shall be closer than 500 linear feet, measured in a straight line from the dispensary or facility building entrance, to the nearest point on the boundary of any property which is occupied by any of the following sensitive uses:
- (a) A licensed child day-care facility.
  - (b) A place of worship. [Amended 6-3-2024 by Ord. No. 2024-61]
  - (c) A public or private school; public library.
  - (d) A lot zoned residential or used as a residence.
  - (e) An athletic field, park, playground or recreational facility.
  - (f) Any juvenile or adult halfway house, correctional facility, or substance abuse rehabilitation or treatment center.
- (2) The City will only verify distance of the proposed premises from existing uses listed in Subsection B(1)(a) through (f) above. A medical marijuana dispensary or medical marijuana caregiver cultivation facility may continue to operate in its present location as a preexisting use if a sensitive use listed in Subsection B(1)(a) through (f) above later locates within the applicable buffer zone; however, the medical marijuana dispensary or medical marijuana caregiver cultivation facility does so at its own risk, and City-issued licenses, permits or approvals provide no protection or indemnification against enforcement of federal or other applicable laws that may prohibit operation of a medical marijuana dispensary or medical marijuana caregiver cultivation facility near a sensitive use listed in Subsection B(1)(a) through (f) above.
- C. Signage. No signs containing the word "marijuana," or a graphic/image of any portion of a marijuana plant or otherwise identifying medical marijuana shall be erected, posted or in any way displayed on the outside of a medical marijuana dispensary or a medical marijuana

caregiver cultivation facility. This regulation shall not apply to:

- (1) Any advertisement contained within a newspaper, magazine or other periodical of general circulation within the City or on the internet; and
  - (2) Advertising which is purely incidental to sponsorship of a charitable event not geared to or for the benefit of children or youth.
- D. Hours of operation. A medical marijuana dispensary or medical marijuana caregiver cultivation facility may be open to the public for business only between the hours of 8:00 a.m. and 8:00 p.m., locally prevailing time. If other hours of operation apply in state law or local ordinance, the more restrictive hours shall control.
- E. Security requirements.
- (1) All security recordings shall be preserved for at least 30 days by the medical marijuana dispensary or medical marijuana caregiver cultivation facility. The medical marijuana dispensary or medical marijuana caregiver cultivation facility shall provide the Police Chief or their designee with the name and functioning telephone number of a twenty-four-hour on-call staff person to whom the City may provide notice of any operating problems associated with the medical marijuana dispensary or medical marijuana caregiver cultivation facility.
  - (2) No approval for a medical marijuana dispensary shall be granted by the Planning Board until the Police Chief or their designee has made a positive recommendation on the applicant's proposed security measures, which must be in compliance with state requirements. Security measures at a medical marijuana dispensary shall include, at a minimum, the following:
    - (a) Security surveillance cameras installed and operating 24 hours a day, seven days a week, to monitor all entrances, along with the interior and exterior of the premises, to discourage and facilitate the reporting of criminal acts and nuisance activities occurring at the premises;
    - (b) Door and window intrusion robbery and burglary alarm systems with audible and Police Department notification components that are professionally monitored and maintained in good working condition;
    - (c) A locking safe permanently affixed to the premises that is suitable for storage of any cash stored overnight on the licensed premises;
    - (d) Exterior lighting that illuminates the exterior walls of the licensed premises and complies with applicable provisions of the Code of the City of Westbrook; and
    - (e) Deadbolt locks on all exterior doors and locks or bars on any other access points (e.g., windows).
- F. Performance standards for medical marijuana dispensary and medical marijuana caregiver cultivation facility.
- (1) Visibility of activities.

- (a) All activities, including, without limitation, cultivating, growing, processing, displaying, selling and storage, shall be conducted indoors. A medical marijuana dispensary or medical marijuana caregiver cultivation facility is not permitted to have outdoor sales or services of any kind.
  - (b) Under no circumstances shall activities related to the cultivation, production, processing, distribution, storage, display, or sales of marijuana and marijuana-infused products be visible from the exterior of the business.
- (2) Odor/emissions management.
  - (a) The odor of marijuana must not be perceptible at the exterior of the building at the premises or at any adjoining boundary to the property.
  - (b) The use must implement appropriate ventilation and filtration systems to satisfy the odor standard contained herein. This can be achieved through technologies such as but not limited to air scrubbers and charcoal filtration systems.
  - (c) Sufficient measures and means of preventing smoke, debris, dust, fluids and other substances from exiting a medical marijuana dispensary or caregiver cultivation facility must be provided at all times.
- (3) Disposal plan.
  - (a) The use shall have in place an operational plan for proper disposal of marijuana and related by-products in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations.
  - (b) Dumpsters and trash containers must not be overflowing, and the surrounding area must be kept free of litter and trash.
  - (c) All dumpsters and containers shall be screened from public view.
  - (d) All trash receptacles on the premises used to discard marijuana products must have a metal cover or lid that is locked at all times when the receptacle is unattended, and security cameras must be installed to record activities in the area of such trash receptacles.
- (4) Life safety. Life safety measures (including but not limited to sprinklers, smoke alarms, etc.) may be required at the discretion of the Fire & Rescue Department depending on size or condition of the structure containing the use, and if there are mixed uses within the structure.
- (5) Power needs. An ability to serve (or authorization from the electric power company providing service to the use) needs to be provided in the application packet which states that the power needed for the use can be delivered to the property by the electric power company, which may involve a review of the power delivery system.
- (6) Parking.
  - (a) For a medical marijuana dispensary, the parking requirement will be one space per

250 square feet of space that patients have access to.

- (b) For a medical marijuana caregiver cultivation facility, the parking requirements would be one space per employee on the largest shift.
- (7) Enclosed, locked facility. Any cultivation, manufacturing or testing of marijuana shall take place in an enclosed, locked facility. "Enclosed, locked facility" means a closet, room, building, greenhouse or other enclosed area that is equipped with locks or other security devices that permit access only by the individual authorized to cultivate, manufacture or test the marijuana.
- G. Performance standards for marijuana caregiver cultivation facility.
  - (1) Size limitation. A facility shall not exceed 3,000 square feet in area.
  - (2) A facility owner cannot be permitted more than one location in the City of Westbrook.
- H. Limitation on number of medical marijuana dispensaries. Only one medical marijuana dispensary shall be allowed in the City of Westbrook.
- I. Pesticides. If a medical marijuana caregiver cultivator plans to use any pesticides (including all conventional, organic, or "natural" insecticides, rodenticides, weed killers, fungicides, rooting hormones or other plant hormones), evidence of a pesticide applicator's license from the Maine Board of Pesticides Control must be provided to the Code Enforcement Officer.
- J. Other laws remain applicable. A medical marijuana dispensary or caregiver cultivation facility shall meet all operating and other requirements of state and local law and regulation. To the extent the State of Maine has adopted or adopts in the future any stricter law or regulation governing a medical marijuana dispensary or caregiver cultivation facility, the stricter law or regulation shall control.

### **§ 335-2.21. Multiple-family structures and conditional uses.**

In addition to the performance standards of Article IV, the following standards are required to be met in granting a conditional use for a multiple-family structure:

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

**§ 335-2.22. Odor threshold.**

When addressing odor impact relative to zoning district restrictions, odor measurement will be described as the "odor threshold." "Odor threshold" may be described as the concentration in air of a gas or vapor which will evoke a response in the human olfactory system.

**§ 335-2.23. (Reserved)<sup>3</sup>****§ 335-2.24. Only permitted uses allowed.**

A structure may not be constructed or used, and land may not be used or divided, except in accordance with this chapter. All other construction, use or division of land or buildings is expressly prohibited except that which is already lawfully existing at the time this chapter is enacted.

**§ 335-2.25. Order of precedence for conditional use or variance.**

- A. Where permission to exercise a use requires a conditional use as well as site plan or subdivision review, the applicant may receive review from the Planning Board for the conditional use at the same time as the application is reviewed for subdivision or site plan approval, unless specifically stated otherwise in this chapter.
- B. Where permission to exercise a use requires a variance as well as site plan or subdivision review, the applicant must receive approval from the Zoning Board of Appeals for the variance before application is made for subdivision or site plan approval, unless specifically stated otherwise in this chapter.

**§ 335-2.26. Prohibited uses. [Amended 9-11-2017 by Ord. No. 2017-110]**

In all zoning districts in the City of Westbrook, if a use is not expressly enumerated herein as either a permitted use or a conditional use, said use is prohibited.

**§ 335-2.27. Provisions applicable to all zones.**

The following provisions apply in all districts:

- A. Road construction standards. Street construction as required by this chapter must meet the standards stated in § 335-13.3G.
- B. Parking and loading. Unless otherwise specified for a particular district, the parking and loading standards required by this chapter must meet the standards set forth in § 335-13.6B.
- C. Recreation or open space. The requirements for recreation and open space for new housing construction must meet the standards set forth in § 335-13.3H of this chapter.

**§ 335-2.28. Public records.**

All documents and records required by this chapter are public records, according to state statute.

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3. Editor's Note: Former § 335-2.23, One unit, one household, was repealed 9-12-2022 by Ord. No. 2022-105.



**§ 335-2.28.1. Residential care facilities. [Added 2-5-2024 by Ord. No. 2024-04<sup>4</sup>]**

- A. Off-street parking requirement: one space per staff plus 1.5 spaces per bedroom. The parking requirement may be waived by the appropriate reviewing authority with a parking management plan to demonstrate adequate parking is provided to meet the needs of the facility.
- B. A residential care facility shall provide proof of state licensure prior to the issuance of a certificate of occupancy.

**§ 335-2.28.2. Restaurant Class 3. [Added 3-6-2023 by Ord. No. 2023-27]**

- A. Parking shall meet the requirements of § 335-13.6B.
- B. A Restaurant Class 3 use shall not be permitted within 300 feet of any RGA 1 district line or a public school in existence at the time that the Restaurant Class 3 license application is submitted. For purposes of this section, the distance shall be measured from any portion of the Restaurant Class 3 use, inclusive of all indoor/outdoor areas where alcohol is either sold or consumed, to the parcel line where an above named use exists or the RGA 1 district line.
- C. The Restaurant Class 3 premises shall be closed to operations each day from 1:00 a.m. to 9:00 a.m. The drinking of alcoholic beverages on the Restaurant Class 3 premises during such hours is prohibited.

**§ 335-2.29. Structures. [Amended 12-13-2005; 11-17-2014; 11-4-2019 by Ord. No. 2019-172]**

The regulations pertaining to buildings apply also to all other structures except where the application would be unreasonable, as determined by the Code Enforcement Officer. However, a structure of 140 square feet or less must be set back at least five feet from the nearest lot line. All structures require a building permit.

**§ 335-2.29.1. Solar Energy Systems (SES). [Added 8-2-2021 by Order No. 2021-73]**

- A. Purpose.
  - (1) Solar energy is a renewable and nonpolluting energy resource that can prevent fossil fuel emissions and reduce energy load.
  - (2) The use of solar energy equipment for the purpose of providing electricity and energy for heating and/or cooling is a priority and is a necessary component of the City's current and long-term sustainability agenda.
  - (3) Energy generated from a solar energy system can be used to offset energy demand on the grid where excess solar power is generated.
  - (4) The standards that follow enable the accommodation of a solar energy system and equipment in a safe manner with minimal impacts on the quiet enjoyment of property.
- B. Applicability.

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4. Editor's Note: This order also renumbered former § 335-2.28.1, Restaurant Class 3, as § 335-2.28.2.

- (1) A commercial or residential solar energy system shall be required to obtain all applicable permits, including, but not limited to, site plan approval, building and electrical permits.
- (2) A solar energy system shall be reviewed and approved in accordance with the standards of § 335-13.5, Site plan review. In determining applicability of site plan review:
  - (a) The perimeter of a ground-mounted solar energy system shall be utilized in determining the size of a new structure.
  - (b) A roof mounted solar energy system shall not be considered an expansion or alteration of an existing structure.
- (3) Routine maintenance or like kind replacement that do not materially alter the solar energy system do not require a permit.

C. General provisions.

- (1) All utility connections shall be underground from the property line.
- (2) If a solar energy system ceases to perform the originally intended function for more than 12 consecutive months, the property owner shall remove the collectors, mounts, and associated equipment by no later than 90 days after the end of the twelve-month period. Removal includes stabilization or revegetation of the site necessary to prevent erosion.
- (3) A solar energy system shall be situated to eliminate concentrate glare onto nearby structures or roadways.
- (4) Applications for a commercial SES shall include authorization from Central Maine Power to accept the energy produced into their distribution system.

D. Building-mounted solar energy system.

- (1) Building-mounted SES shall be subject to the setbacks specified within the underlying zoning district, except that structures that are nonconforming, as to setbacks, must comply with Subsection D(2).
- (2) Solar panels shall not extend beyond any portion of the roof edge.
- (3) Building-mounted SES shall not be considered part of the roof surface, but rather an appendage similar to an antenna or chimney, and shall follow the height limitations established in § 335-2.11.
- (4) The property owner shall provide evidence certified by an appropriately licensed professional that the roof is capable of holding the load of the SES.

E. Ground-mounted solar energy system.

- (1) Solar energy system, residential (RSES).
  - (a) The solar energy system shall comply with all setbacks of the underlying zoning district.

- (b) Lot coverage. Final ground treatment and site layout shall be taken into consideration in determining lot coverage.
  - (c) An RSES may not cause an adverse impact on an abutting property which may result from drainage, erosion, glare, or other physical features of the RSES. Final ground treatment and erosion/sedimentation control shall be demonstrated on a drainage plan required as part of the application submission.
- (2) Solar energy system, commercial (CSES).
- (a) General provisions.
    - [1] CSES is prohibited in deer wintering yards as identified by Maine IF&W.
    - [2] In the Rural District, wetland impacts cannot exceed the maximum amounts allowed by a Maine Department of Environmental Protection permit by rule.
    - [3] In the Rural District, a CSES shall create a pollinator friendly habitat with meadow native grasses, where feasible, within the solar complex.
    - [4] The applicant must provide a letter from Maine Inland Fisheries and Wildlife as to whether any significant wildlife habitats are located on the site.
    - [5] The applicant must provide a letter from Maine Natural Areas Program as to whether any high-value plant habitat is located on the site.
  - (b) Dimensional standards.
    - [1] Setbacks.
      - [a] Front: in addition to the setbacks of the underlying zoning district, ground-mounted CSES shall be set back a minimum of 60 feet from the following rights-of-way: Brook Street, Bridge Street, Bridgton Road, Cumberland Street, Duck Pond Road, East Bridge Street, Landing Road, Methodist Road, Pride Street, Saco Street, Spring Street and Stroudwater Street.
      - [b] Side and rear: as required in the underlying zoning district.
    - [2] Maximum height: 20 feet above ground as measured from the base of the support.
    - [3] Lot coverage. Final ground treatment and site layout shall be taken into consideration in determining lot coverage.
    - [4] A CSES may not cause an adverse impact on an abutting property. Final ground treatment and erosion/sedimentation control (best management practices) shall be shown on a drainage plan required as part of the application submission.
  - (c) Screening and security.

- [1] Ground-mounted CSES shall be adequately screened from adjacent properties, as determined by the reviewing authority.
  - [2] Ground-mounted CSES shall be completely enclosed by fencing with a locking gate with access provided to Public Safety.
  - [3] A sign shall be placed on ground-mounted CSES to identify the owner and provide a twenty-four-hour emergency contact phone number. Such sign shall be attached to the security fence, be no larger than four square feet and shall not count toward the operation's total signage allotment.
- (3) Solar energy system, accessory commercial (ACSES).
- (a) Ground-mounted ACSES shall be placed behind the principal structure.
  - (b) The solar energy system shall comply with all setbacks of the underlying zoning district.
  - (c) Maximum height: 20 feet above ground as measured from the base of the support.
  - (d) Lot coverage. Final ground treatment and site layout shall be taken into consideration in determining lot coverage.
  - (e) An ACSES may not cause an adverse impact on an abutting property. Final ground treatment and erosion/sedimentation control shall be demonstrated on a drainage plan required as part of the application submission.

**§ 335-2.30. Telecommunications. [Added 3-3-2014]**

- A. Telecommunications facilities. Telecommunications facilities shall meet the following requirements:
- (1) General review requirements. All proposals for the addition of telecommunications facilities to existing towers, or alternative structures, shall seek building permit approval from the Code Enforcement Officer upon satisfactory completion of the requirements of this section.
  - (2) Height. No part of the telecommunications facility shall be more than 10 feet above the height of the existing structure to which it is attached, and in no case shall it exceed the maximum height for the applicable zoning district. For telecommunications facilities co-locating on existing telecommunications towers, standards in Subsection B(15) shall apply.
  - (3) Aesthetics. Unless otherwise required by the FAA, FCC, or other federal or state authority, telecommunications facilities shall be placed and designed in such a way as to minimize visual impact from public rights-of-way and abutting residential uses. Telecommunications facilities may not be ground-mounted. Telecommunications facilities may be flush-mounted to an exterior building wall or located on top of buildings and must be set back from the roofline at least the height of the telecommunications facility.

- (4) Structural. To ensure the structural integrity of telecommunications facilities, they shall be designed, constructed, and maintained in conformance with applicable federal, state, and local building, electrical and safety codes and designed and installed in accordance with the current standards of the Electronic Industries Association (EIA) Structural Standards for Steel Antenna Towers and Antenna Supporting Structures.
- B. Telecommunications towers. Telecommunications towers shall meet the following requirements:
- (1) General review requirements. All proposals for the construction and expansion of telecommunications towers shall first receive site plan approval. In addition to the standards of site plan review, all such proposals shall be in conformance with this chapter. Proposals for co-location of a telecommunications facility on an existing telecommunications tower which do not result in the expansion of existing towers shall receive approval from the Code Enforcement Officer under the special provisions for telecommunications facilities.
  - (2) Design for co-location. Telecommunications towers and related equipment shall be designed and constructed to accommodate future co-location of at least two additional telecommunications antennas or providers.
  - (3) Height. Notwithstanding any other height limits established by this chapter, the following height limitations are applicable to telecommunications towers. No telecommunications tower shall exceed 225 feet in height, measured from the tower base to the highest point of the tower and any attached receiving or transmitting device. Towers may not exceed 100 feet if located within 500 feet of a dwelling unit.
  - (4) Setbacks. The tower shall maintain a minimum setback distance between abutting properties and the base of the tower equal to 120% of the tower's total height, including any attached transmitting or receiving devices, unless the applicant can demonstrate that the design of the tower will ensure that in a collapse, the tower will drop vertically into the ground. In no case shall the minimum setback distance from the property line to the base of the tower be less than 100% of the tower's total height, including any attached transmitting or receiving devices. Accessory structures and guy-wire anchors shall meet the minimum setback of the zoning district in which the tower is located. Any tower shall be set back from other on- and off-site towers and supporting structures so that one tower will not strike another in case of collapse.
  - (5) Structural. To ensure the structural integrity of towers, the owner shall ensure that the construction of a new tower or any alteration of a tower, including the addition of antennas or other attachment, is designed, constructed, and maintained in conformance with applicable federal, state, and local building, electrical and safety codes and designed and installed in accordance with the current standards of the Electronic Industries Association (EIA) Structural Standards for Steel Antenna Towers and Antenna Supporting Structures.
  - (6) Aesthetics. Unless otherwise required by the FAA, FCC, or other federal or state authority, telecommunications towers shall have a galvanized finish.

- (7) **Lighting.** Towers shall not be artificially lighted, unless required by the FAA, FCC, or other federal or state authority. If lighting is required, the Planning Board may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding properties and views. Light from artificial sources shall be focused down and may not trespass beyond the lot lines.
- (8) **Advertising.** No advertising or signage is permitted on telecommunications towers, except for safety or other signage required by the FCC.
- (9) **Fencing.** A security fence or wall not less than eight feet in height from the finished grade shall be provided around the tower. Access to the tower shall be through a locked gate.
- (10) **Landscape and buffering.** All existing on-site vegetation shall be preserved to the maximum extent practicable. Evergreen trees shall be maintained where a tower exceeds 100 feet in height. Landscaping shall be added so as to minimize views from public ways and abutting dwelling units.
- (11) **Vehicle access.** Circulation and vehicle access shall be provided. Road access shall be the minimum size necessary to allow safe access.
- (12) **Parking.** Two parking spaces and one additional space for each tower on-site personnel shall be provided.
- (13) **Technical assistance.** The Planning Board may obtain or require the applicant to obtain the services of professional engineers licensed in the State of Maine and other consultants to review and inspect the applicant's proposal, or any portion thereof. Such services are permitted to include, but not be limited to, engineering and technical review, planning review, environmental assessment review, soils review, mechanical and structural engineering review, and the investigation of possible alternative tower systems, designs and/or locations. The costs of said services shall be borne by the applicant.
- (14) **Approvals and permits.** Where FAA, FCC, or other agency approval is necessary for siting, all documentation shall be made a part of the application.
- (15) **Existing towers.** All telecommunications towers legally existing at the effective date of this chapter shall be considered legal nonconforming uses and will be allowed to continue their usage as they presently exist. Notwithstanding the provisions of § 335-3.4, Nonconforming structure, existing towers may exceed their current height by up to 25%, provided that any modifications shall comply with this chapter. In no case shall the tower's modified height exceed 225 feet.
- (16) **Performance guarantee.** A performance bond, or other acceptable form of guarantee, approved by the City Planner as to form and sufficiency, to pay for the costs of removing the entire facility, if it is abandoned, and reclaiming the site to a preconstruction condition, shall be provided. For purposes of this section, a tower shall be deemed abandoned when there are not telecommunications facilities in operation on the tower for a period of greater than 90 days, unless an extension is granted by the Code Enforcement Officer due to damage to the structure by fire, weather or other similar

cause. The amount of this performance guarantee shall be in an amount equal to 125% of the projected total cost of removing the entire facility and reclaiming the site to its preconstruction condition. Should the operation of the facility cease in the future, and the facility is dismantled and the site reclaimed by the owner and/or operator, the performance guarantee shall be returned to the owner and/or operator. The accepted form of surety shall be reviewed by the City Planner every five years, and renewed or increased when necessary.

(17) Discontinuance of use. In the event that the use of a telecommunications tower is discontinued, the telecommunications tower owner shall provide written notice to the City of its intent to discontinue use and the date when the use shall be discontinued and a plan, including time line, for its reuse or reclamation.

C. Exemptions. The following are exempt from the provisions of this section:

- (1) Emergency wireless telecommunication antennas solely for emergency communications by public officials.
- (2) Antennas on property owned, leased or otherwise controlled by the City of Westbrook for the sole purpose of municipal use.
- (3) Amateur ham radio stations licensed by the Federal Communications Commission.