APPENDIX A – ZONING AND LAND USE CODE
ARTICLE XVII. AMENDMENT AND OTHER LEGAL PROVISIONS

Sec. 1. Application.

This Code is not intended and shall not be interpreted to interfere with, abrogate, annul or repeal any ordinance, rule, regulation or permit previously enacted, adopted or issued pursuant to law.

Sec. 2. Interpretation.

(a) In interpreting and applying the provisions of this Code, they shall be held to be the minimum requirements for the promotion of the health, safety and general welfare of the residents of the City of Lewiston.
(b) Interpretation of what may not be clear in the Code shall be according to the intent of the Code and the comprehensive plan.

Sec. 3. Conflict with other ordinances.

Whenever the regulations of this Code conflict with those of another ordinance, the stricter shall apply.

Sec. 4. Severability.

(a) If any provision of this Code is declared invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to that provision of this Code directly involved in the controversy which gave rise to the judgment and shall not affect or impair the validity of any other provision of this Code.
(b) Nothing in this Code shall be construed to affect any suit or proceeding now pending in any court or any rights arising prior to its enactment pursuant to provisions of law then in effect.

Sec. 5. Amendments.

(a) *Power to amend*. The power to amend this Code rests in the city council of the city.
(b) *Proposed amendments.*
- (1) A proposal to amend this Code may be initiated by:
  - a. Reference from the city council; or
  - b. Petition signed by not less than ten (10) residents of the City of Lewiston, eighteen (18) years of age and older; or
  - c. The planning board at its own initiative.
- (2) Any proposal to amend or repeal this Code shall be in writing and shall include the following:
  - a. The setting out in full of the ordinance section or subsection to be repealed or amended, indicating matter to be omitted by enclosing it in brackets or by striking out type and indicating new matter by underscoring or italics;
  - b. The enacting clause shall be "The City of Lewiston hereby ordains . . . ";
  - c. A statement indicating the reasons for the proposed amendment;
  - d. A statement indicating how the proposed amendment is in conformance with the comprehensive plan.
  - e. In the case of a petition for rezoning, a black line print of a diagram reflecting the verbal description of the proposed change and the relation of the proposed change to the presently existing district boundaries involved.

(3) Rezoning in accordance with architect's plan. When a person petitions for rezoning of an area for the purpose of development in accordance with an architect's plan, the area shall not be rezoned unless the petitioner posts a performance bond equal to at least twenty-five (25) percent of the estimated cost of the development. Said bond shall become payable to the city if the petitioner fails to begin construction in a substantial manner and in accordance with the plan within one (1) year of the effective date of the rezoning.

(4) Conditional or contract zoning. Proposals to rezone may include those for conditional or contract zoning pursuant to 30-A M.R.S.A. section 4352(8) as amended. Such a rezoning should be limited in its application and only be authorized where for reasons such as the unusual nature or unique location of the development proposed, the city council finds it necessary and appropriate to impose, by agreement with the property owner or otherwise, certain conditions or restrictions in order to ensure that the rezoning is consistent with the city's comprehensive plan. Nothing in this section shall authorize either an agreement to change or retain a zone or a rezoning which is inconsistent with the city's comprehensive plan. A proposal for conditional zoning shall contain, in addition to the requirements imposed hereby for other amendments, a written statement of the conditions regarding the use of the subject property which the proponent requests be imposed which are not generally applicable to other properties similarly zoned. A proposal for contract zoning shall contain, in addition to the requirements imposed hereby for other amendments, a proposed written contract which the proponent requests that the city enter into with the owner of the property affected by which, in consideration of the rezoning of said property, certain conditions or restrictions not imposed on other similarly zoned properties would be imposed.

(c) *Amendment procedure.*

(1) The planning board shall hold a public hearing on any proposal to amend this Code. Public hearings on proposals initiated by reference from the city council or by petition shall be held within thirty (30) days after the proposal has been submitted to the planning board, unless a greater number of days is authorized by the city council.

(2) The planning board shall make its report and recommendation on the proposal to the city council not more than fifteen (15) days after the public hearing has been closed. The failure of the board to issue its report constitutes approval of the proposal.

(3) The planning board's recommendation to the city council shall address the proposal's conformance with the comprehensive plan.

(d) *Notice of public hearing.*

(1) Notice to petitioners. The planning board shall give notice of the public hearing to the petitioners by mail. Failure of any petitioner to receive such notice shall not necessitate another hearing, shall not constitute grounds for objections by such petitioner, shall not invalidate any recommendation by the planning board on such zoning matter, nor any final action taken by the city council thereon.

(2) Public notice. On all proposals notice shall consist of a legal advertisement published in a newspaper of general circulation in the city at least two (2) times, the first at least seven (7) days prior to the hearing, and posting in the city building at least fourteen (14) days prior to the date of the hearing. On all

rezoning proposals, notice shall also consist of a copy of the public hearing notice mailed to the owners of all property within or abutting the area proposed to be rezoned, together with, in the case of a proposal for conditional or contract rezoning, a copy of the proposed conditions and restrictions.

(3) Manner of giving mailed notice. Mailed notice shall be given by first class mail at least seven (7) days prior to the hearing. Notices shall be mailed to the addresses shown on the property tax records of the city. Notices shall be deemed given when mailed.

(e) *Vote requirements.*

(1) If the planning board approves a proposal, either by way of an official report to the city council or by way of default by failing to issue its report to the city council, the city council may, by affirmative vote of at least four (4) councilors at a regular or special meeting, duly called, amend this Code.

(2) If the planning board disapproves the proposal by way of an official report to the city council, the city council may amend this Code only by the affirmative vote of at least five (5) councilors at a regular or special meeting, duly called.

(f) *Amendments affecting the resource conservation district.* The development department shall notify the state planning office by certified mail of all proposed amendments to this Code that would affect the resource conservation district. Such notice shall be given on or before the deadline imposed by section 5(c)(2) of this article.

(g) *Conditional or contract zoning.* The city council may, pursuant to 30-A M.R.S.A. section 4352(8) as amended, approve a rezoning conditionally or by contract. Such a rezoning shall only be approved if:

(1) The change is consistent with the comprehensive plan.

(2) The change establishes rezoned areas which are consistent with the existing and permitted uses within the original district.

(3) All conditions and restrictions imposed relate only to the physical development or operation of the property and may include, by way of example:

a. Limitations on the number and types of uses permitted;

b. Restrictions on the scale and density of development;

c. Specifications for the design and layout of the buildings and other improvements;

d. Schedules for commencement and completion of construction;

e. Performance guarantees securing completion and maintenance of improvements, and guarantees against defects;

f. Preservation of open space and buffers, and protection of natural areas and historic sites;

g. Contributions toward the provision of municipal services required by the development; and

h. Provisions for enforcement and remedies for breach of any condition or restriction, which may include, by way of example;

1. Provisions that violation of any of the conditions shall constitute a violation of the zoning and land use code.

2. Statements that the conditions shall bind the owner, its successors, assigns and any person in possession or occupancy of the premises or any portion thereof and shall inure to the benefit of and be enforceable by the city.

3. Provisions requiring the owner at his expense to record in the Androscoggin County Registry of Deeds a copy of the conditions and any required site plans within thirty (30) days following final approval of the petition by the city and that the form of the recording be in a form satisfactory to the city.
4. Statement indicating that the conditions shall run with the land.
5. Provisions that state in addition to all other remedies to which the city may be entitled under applicable provisions of statute ordinance, that if any party in possession or use of the premises fails or refuses to comply with any of the conditions imposed that any rezoning approved by the city in accordance with the conditions shall be of no force or effect and, in that event, any use of the premises and any buildings structures developed pursuant to the rezoning shall be immediately abated and brought into compliance with all applicable provisions of the zoning and land use code with the same effect as if the rezoning had never occurred.
6. Statements indicating that if any of the conditions are found by a court of competent jurisdiction to be invalid, such a determination shall not invalidate any of the other conditions.
7. The site plans should be attached and incorporated by reference.

(4) The owner of the property rezoned has agreed in writing to the conditions imposed or has executed a contract in a form acceptable to the city council. Any rezoning approved by the city council conditionally or by contract shall be of no force or effect if the owner of the property fails or refuses to comply with the conditions imposed or the terms of the contract. In that event, any use of the property and any buildings and structures developed pursuant to the rezoning shall be abated and the property brought into compliance with all applicable provisions of this Code.

(Ord. No. 91-6, 6-6-91)

Sec. 6. Transitional rules.

Notwithstanding any other provisions to the contrary contained in this Code:

(1) *Major subdivisions.* All approved lots on a major subdivision which was approved after October 31, 1972, and before the date of enactment of this Code shall be deemed to be conforming lots under this Code if, on or before the date of enactment of this Code, all public improvements provided for in said approved subdivision plan were substantially complete.

(2) *Major subdivisions--Phase development.* All approved lots contained in the phase of a major subdivision which was approved after October 31, 1972, and before the date of enactment of this Code shall be deemed to be conforming lots under this Code if, on or before the date of enactment of this Code, all public improvements provided for in said phase of the approved subdivision plan were substantially complete.

(3) *Same--Public improvements.* All major subdivisions for which complete applications were filed after October 31, 1972, and before the date of enactment of this Code which are finally approved by the planning board but for which complete applications for all

required permits for the construction and completion of the public improvements required by said approved plan were not filed prior to the enactment of this Code may have said public improvements developed and constructed in accordance with said approved plan. All permits, licenses and certificates necessary for the development and construction of said public improvements in accordance with said approved plan may be applied for and issued in accordance with said approved plan so long as complete applications for all said required permits are filed within two (2) years from the date of enactment of this Code or two (2) years from the date of final approval of said subdivision, whichever is later.

(4) *Cluster development.*

a. So long as subsection (2) hereof is complied with, any plan for a new town, planned unit development or cluster development which received final planning board approval after October 31, 1972, and on or before October 22, 1987, may be developed, constructed and used in accordance with the plans approved by the planning board and all permits, licenses and certificates necessary for the development, construction or use of said cluster development in accordance with said plan may be applied for and issued in accordance with those ordinances in effect on the date said plan was finally approved by the planning board and which were repealed on the enactment of this Code.

b. In order to be entitled to the relief provided for in subsection (1) hereof, complete applications for all permits required for the development, construction and use of said cluster development must be filed within two (2) years of the date on which the planning board granted final approval of said cluster development; or, in the event of a development approved in phases, all said applications for permits required for the initial phase of said development shall be filed within two (2) years of said approval and filed thereafter in accordance with the phasing which was approved by the planning board.

c. Any plan for a new town, planned unit development or cluster development which received preliminary planning board approval after October 31, 1972, and on or before October 22, 1987, may, if finally approved by the planning board, be developed, constructed and used in accordance with the following requirements:

1. Said development, construction and use shall be, except as otherwise herein required, in accordance with said plan as finally approved.
2. Said development, construction and use shall comply with those provisions of this Code which relate to permitted uses, minimum net lot area per dwelling unit and maximum number of dwelling units per building which are applicable in the district in which said development is located.
3. Except as otherwise herein provided, all permits, licenses and certificates necessary for the development, construction or use of said cluster development in accordance with said plan may be applied for and issued in accordance with those ordinances in effect on the day before the enactment of this Code and which were repealed on its enactment.

d. Any plan for a new town, planned unit development or cluster development for which a complete application for preliminary approval was filed after October 31, 1972, and on or before October 22, 1987, may, if finally approved by the planning board, be developed, constructed and used in accordance with the following requirements:

1. Said development, construction and use shall be, except as otherwise herein required, in accordance with said plan as finally approved.
2. Said development, construction and use shall comply with those provisions of this Code which relate to permitted uses, minimum net lot area per dwelling unit, maximum number of dwelling units per building, buffers and open space.
3. Except as otherwise herein provided, all permits, licenses and certificates necessary for the development, construction or use of said cluster development in accordance with said plan may be applied for and issued in accordance with those ordinances in effect on the day before the enactment of this Code and which were repealed on its enactment.

(5) *Development review.* Article XIII of this Code shall not apply to a development for which a building permit was issued prior to the date of enactment of this Code or to a development for which site location approval was obtained under former section 21-2 of the Revised Code of Ordinances.