

Land Use Ordinances

Odor in Atmosphere" or the "Dilution Method," as developed by the American Society for Testing and Materials. The Board shall act as the observer in this assessment.

- 505.8 **Noise.** Adequate provision must be made to control unnecessary noise from and at the site in accordance with the standards for each zoning district in this Ordinance. The Planning Board may require the applicant to establish pre and post-construction noise levels.
- 505.9 **Vibrations.** Adequate provision must be made to control vibrations in accordance with the standards for each zoning district in this Ordinance. The Planning Board may require the applicant to establish pre and post-construction vibration levels.
- 505.10 **Unique Features.** Adequate provision must be made to mitigate adverse impact on existing scenic or natural beauty, rare or irreplaceable historic sites, or other features of importance to the City.

The Westbrook City Council hereby ordains that Section 505, Site Plan Review Design and Performance Standards, of the Land Use Ordinances be, and hereby are amended, by adding a new subsection 505.11 as follows:

- 505.11 **Purpose.** The purpose of this section of the Site Plan Review Ordinance is to ensure that commercial/retail development in the Gateway District is compatible with adjacent residential neighborhoods.
- 505.11.1 **Applicability.** The additional standards in this subsection 505.11 must be met when a commercial or retail development, but not an industrial use, is proposed in the Gateway Commercial District that:
- A. Is situated on a parcel of land that is within 500 ft. of a residentially zoned occupied property at the time the development's site plan receives its first substantive review, as defined in 1 M.R.S.A. § 302, and
 - B. Is situated on a parcel or combination of parcels greater than 10 acres.
 - C. Projects in a common scheme of development within 500 ft. of a residentially zoned occupied property shall also be subject to the provisions of subsection 505.11.

If the provisions of this subsection conflict with any other provisions in this ordinance, the more restrictive provision shall govern; further, no waivers of the provisions of this subsection may be granted.

505.11.2 Definitions. Items defined in Section 201 of the Land Use Ordinances apply to all terms in Section 505.11. In the case of conflict, the definitions in this section will apply to terms in Section 505.11.

Common Scheme of Development: A plan or process of development which:

- A. Takes place on contiguous or non-contiguous parcels or lots in the same immediate vicinity; and
- B. Exhibits characteristics of a unified approach, method, or effect such as:
 - (1) unified ownership, management, or supervision;
 - (2) sharing of common equipment or labor; or
 - (3) common financing.

Decibel: The practical unit of measurement for sound pressure level, abbreviated dB. The abbreviated dB(A) shall refer to readings taken on the A-weighted scale.

Earthen Berms: A mound comprised of clean fill or rock that is at a minimum covered with loam and seed. Berms may have trees and shrubs planted on them to increase their efficiency in visual and audio screening.

Residentially zoned occupied property: A parcel or parcels of land in a Residential Growth Area 1, Residential Growth Area 2, or Residential Growth Area 3 zone of the city on which one or more residences are established.

Visual Screening: The combination of buffer materials that block the development site from view.

505.11.3 Standards

- A. Buffering: In addition to any other buffering requirements in this ordinance, uses governed by this subsection shall provide buffering and screening between the proposed use and all abutting residentially zoned occupied property. The types of screening include, but are not limited to, earthen berms, vegetation with year-round foliage, and sound barrier walls – all of which are subject to the approval of the Planning Board based on materials and design. The approved buffering system must be installed prior to the issuance of any permanent occupancy permit, and the Planning Board may require installation of some or all of the buffering prior to demolition or site preparation where reasonably necessary to protect the health and safety of surrounding residentially improved properties.

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The Planning Board shall review the buffering/screening system in accordance with the following standards:

(1) Space and Bulk Standards

- (a) Minimum height: Buffering/screening must be at least 10 feet high as measured from the existing ground level as established prior to the beginning of grading, excavation or construction, but in no case be less than 10 feet above finished grade;
- (b) Minimum width: A buffer of at least 150 feet as measured from the lot line of the proposed development must be maintained between the proposed building and any residentially zoned occupied property. If the proposed buffering utilizes plantings or earthen berms, these must be placed within the 150' buffer in a location that maximizes screening.
- (c) Minimum length: The buffer zone and all screening within it must be continuous in the area between the proposed site and any residentially zoned occupied property. A gap may be allowed in the buffering for the sole purpose of emergency vehicle access, provided that the gap shall be limited to the minimum necessary for such access.

(2) Performance

(a) Visual Screening: The buffering must provide complete visual screening of the proposed development, including, but not limited to, any buildings, roof-top equipment, loading areas, parking areas, light poles and other light fixtures. The measurement of the visual screening will be taken from the property line of all abutting residentially zoned occupied property at an elevation at least 5 feet above ground level.

(i) As part of the site plan application submission, the applicant must provide photo-simulations. The simulations must show the view from at least one (1) vantage point along each property line of the development site that abuts residentially zoned occupied property.

(ii) After the visual screen has been installed, the Code Enforcement Officer must make a positive determination that complete visual screening has been achieved at all points along the property line(s) where residentially zoned occupied property abuts. A gap may be allowed in the visual screening for the sole

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purpose of emergency vehicle access, provided that the gap shall be limited to the minimum necessary width for such access.

- (b) Lighting: The buffering system must limit the spill of artificial light onto abutting residentially zoned occupied property based on the standards of this subsection:
 - (i) A study, submitted by a recognized lighting specialist or engineer, must demonstrate that the buffer and screening will minimize the spill of lighting off-site to no more than [0.2 foot-candles] in any location, and that no artificial light will spill onto any adjacent residentially zoned occupied property,
 - (ii) Lighting must minimize “night glow” by using the lowest wattage possible and have an amber hue,
 - (iii) Fixtures must be 90 degree cutoffs and no portion of the bulb or its glass shield shall extend below the bottom of the lighting case,
 - (iv) Lighting affixed to any exterior wall facing abutting properties must be downshielded so that no light directly spills onto adjacent parcels.

- (c) Noise: The buffer or screening system must limit the decibel level of all sounds or noise that reach the property line abutting residentially zoned occupied property to the following levels, and at the following times:
 - (i) During daytime hours (6 am – 6 pm) – 60 dB(A)
 - (ii) During nighttime hours (6 pm – 6 am) – 50 dB(A)
 - (iii) Weekend hours Saturday – Sunday (9 am – 6 pm) daytime hours – 60 dB(A)
 - (iv) Weekend hours Sat. – Sun. nighttime hours(6 pm – 9 am) – 50 dB(A)

- (c.1) Exceptions: The following sources of noise shall be excluded from meeting these standards:
 - (i) Natural phenomena.
 - (ii) Any siren, whistle, or bell lawfully used on the premises in an emergency situation, provided that burglar alarms are terminated within thirty (30) minutes of activation.
 - (iii) Snow removal equipment, except that equipment used on any side that abuts residentially zoned occupied property shall be used during daytime hours only.
 - (iv) Noise generated by refuse and solid waste collection, except that equipment used in this manner shall be used during daytime hours only.

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- (v) Noise generated from power equipment such as, but not limited to, power saws, sanders, lawn and garden tools, lawn mowers, snow blowers, or similar devices operated during daytime hours.
- (vi) Emergency or extraordinary situations.

(c.2) Measurement Procedures: For the purpose of determining noise levels as set forth in this Ordinance, the following guidelines shall be applicable.

- (i) After an initial inspection to determine that noise is being emitted from a property under the jurisdiction of this ordinance, the Code Enforcement Officer reserves the right to hire a consultant or expert in the field of sound measurement. All costs billed by the consultant or expert must be paid for by the owner of the property from which the sound is being emitted.
- (ii) All personnel conducting sound measurements shall be trained in the current techniques and principles of sound measuring equipment and instrumentation.
- (iii) Instruments used to determine sound level measurement must conform to the current Standards of A.N.S.I. Type I or Type II meters.
- (iv) The general steps listed below must be followed when preparing to take sound level measurements:
 - (1) The instrument manufacturer's specific instructions for the preparation and use of the instrument must be followed.
 - (2) The sound level meter must be calibrated before and after each set of measurements. The calibrator itself shall be recalibrated at least once every year.
 - (3) The sound level meter must be placed as specified by the manufacturer's instructions and at least four (4) feet above the ground. It shall be placed so as not to be interfered with by individuals conducting the measurements.

(c.3) Sound Barrier Walls: If sound barrier walls are used, their technical specifications must be submitted to demonstrate that:

- (i) Noise levels at the property line(s) are limited to the regulations set in subsection (2)(c)(i)-(iv) and (2)(c)(c.1)(i)-(vi).
- (ii) The walls shall be placed in the most effective location within the 150 foot buffer.
- (iii) Landscaping is placed between the wall and residentially zoned occupied property. The required photo simulations must demonstrate that the landscaping provides at least 25%

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screening of the wall surface at the time of installation, and 75% screening when the vegetation has reached full maturity.

B. Hours of Operation

(1) Delivery Hours: Delivery by vehicles with more than two axles and refrigeration units shall not be made between the hours of 11:00 p.m. and 7:00 a.m. The Planning Board may grant exceptions to this requirement provided that its review and approval finds that,

- (a) Noise barriers: A fully enclosed, noise-proof barrier, is used to block release of any noise or light in excess of the standards provided in subsections (2)(c)(i)-(iv), (2)(c)(c.1)(i)-(vi) and (2)(b)(i)-(iv) , and
- (b) Delivery Area Lighting: On-site lighting is limited only to that reasonably necessary to accommodate such after-hours deliveries and shall not exceed the standards set forth in subsection (2)(b)(i)-(iv).
- (c) Truck Idling: Delivery trucks shall not idle for longer periods than necessary to perform delivery functions.

(2) Retail Hours of Operation: Retail hours of operation shall not commence earlier than 7:00 a.m. nor end later than 11:00 p.m.

(3) Non-Retail Hours of Operation: Non-retail activities, such as outside loading or moving of pallets or stock in trade or stacking of delivery vehicles, shall not be allowed outdoors if they exceed the noise or lighting restrictions in (2)(c)(i)-(iv), (2)(c)(c.1)(i)-(vi) and (2)(b)(i)-(iv) . Non-retail activities within the building are permitted between 11:00 p.m. – 7:00 a.m.

C. Building Design Standards:

The following standards are intended to ensure that retail and commercial buildings are compatible in design with the surrounding area and community character of the city. All additions to existing retail and commercial service buildings, built either before or after the adoption of this Ordinance, are required to meet these building design standards.

(1) Internal Subdivision: The building footprint must be designed and constructed in such a way as to enable future possible internal subdivision and re-use by future, unrelated parties.

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- (2) Structural & Decorative Elements: The building shall employ building setbacks, height, roof treatments, door and window openings, and other structural and decorative elements to reduce apparent size and scale.
- (3) Building Scale: The apparent mass and scale of large buildings shall be reduced through the use of materials and architectural elements that provide a pedestrian scale and visual interest.
- (a) Building facades visible from public streets and public spaces shall be stepped back or projected forward at intervals to provide a minimum of forty percent (40%) facade modulation. The minimum depth of modulation should be one foot and the minimum width shall be five feet. Ground floor facades that face public streets shall have arcades, display windows, entry areas, awnings or other such features along no less than fifty percent (50%) of their horizontal length.
- (b) Articulation. Buildings shall be articulated to reduce the apparent scale of buildings. Architectural detail options may include reveals, battens, and other three dimensional details that create shadow lines and break up the flat surfaces of the facade. The following are recommended methods to achieve this:
- (i) Tripartite articulation that establishes a building top, middle, and base to provide pedestrian-scale and architectural interest.
- (ii) Windows should be articulated with mullions, recesses, etc., as well as applying complementary articulation around doorways and balconies.
- (iii) Arcades, balconies, bay windows, dormers, and/or columns may be used.
- (iv) A distinctive roofline to reduce perceived building height and mass, increase compatibility with smaller scale and/or residential development, and add interest to the overall design of the building. Roofs with particular slopes may be required by the Planning Board to complement existing buildings or otherwise establish a particular aesthetic objective consistent with buildings nearby. This compatibility may be accomplished by:
- (a) The use of alternating dormers, stepped roofs, gables, or other roof elements to reinforce the modulation or articulation interval.
- (b) Flat-roofed designs alone are prohibited. Cornices and decorative facings shall be used to eliminate the view of the flat roof from ground level.

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- (c) In retail areas, small-scale additions may be used to reduce the apparent bulk. Clustering smaller uses and activities around entrances on street-facing facades also allows for small retail or display spaces that are inviting and add activity to the streetscape.
- (c) Building Materials: Building materials shall be unified throughout the building, and shall complement other buildings in the vicinity.
 - (i) *Predominant exterior building materials may not include the following: smooth-faced concrete block, tilt-up concrete panels; pre-fabricated steel panels, vinyl siding (ground floor applications). Wood-textured cementitious fiber board products may be considered in lieu of wood siding.*
- (d) Building Color. Façade colors shall be non-reflective, using neutral or earth tones. The use of high intensity colors, metallic color, black, or fluorescent colors on facades is prohibited. Building trim or architectural accent elements may feature brighter colors, but they shall not be high intensity, metallic, black, or fluorescent in nature.
- (4) Delivery and service areas must be located on areas of the building or site that are not within 500 feet of residentially zoned occupied property.

D. Additional Requirements

(1) Access Management:

- (a) No egress from or ingress to a site subject to this section shall be permitted over residentially zoned property, except for emergency vehicles.

(2) Traffic Study:

- (a) As part of any site plan development application subject to this section, a developer must commission an independent traffic study to ascertain the traffic flow on streets that may be impacted as a result of development on the proposed site. The Planning Board shall determine the streets to be studied.

If a site plan development application is granted final approval by the Planning Board and development is permitted, then nine (9) months following the initiation of the intended use of the site, the developer must commission a second independent traffic study to ascertain the post-occupation flow of traffic on streets. The Planning Board shall determine the streets to be studied.

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If, in the judgment of the Planning Board, the results of the second traffic study evidence a measurable increase of traffic flow on the streets designated by the Planning Board, the developer shall work with the City Administration and take steps to moderate the increased traffic flow by the use of such measures as, for example, stop sign installation and construction of speed slowing devices.

(3) Impact Analysis

The Planning Board will require an impact analysis to be conducted by a qualified consultant retained by the City at the applicant's expense. In addition to the standards found in section 507 of the Site Plan Review Ordinance, the study shall assess and provide data on the following:

- (a) Data Description: The same data must be provided by the analysis as that stated in Section 507(A) of the Site Plan Review Ordinance.
- (b) Impact Analysis: The consultant also must conduct an analysis of and provide data on the following:
 - (i) Estimated economic impact on the City of Westbrook including,
 - Employment,
 - Businesses,
 - Municipal tax revenues,
 - Project generated revenue retained and redirected into Westbrook's economy,
 - General assistance resources, and
 - Social services.
 - (ii) A proposed project's impact on residentially zoned occupied property within 500 feet of the proposed development.

Once the Study has been completed, the consultant in conjunction with the Department of Planning, Engineering and Code Enforcement shall present it to the Planning Board for review and comment. The Planning Board may ask for additional information or comments from other community agencies. The consultant shall use the information, data, and conclusions of the Study to make recommendations on the applicant's participation in municipal infrastructure improvements based on Section 508 of the Site Plan Review Ordinance.

In deciding whether to approve a project, the Planning Board must make a specific finding as to a project's impact on the city, basing that finding on the analysis described in this subsection.

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- (4) In deciding whether to approve a project, the Planning Board must make specific findings as to a proposed development's compliance with strategies 2.2.2., 3.3.2, and 8.2.3 of the city's comprehensive plan.

Applicability Date: Notwithstanding any other provision of law and to the maximum extent permitted by law, this ordinance amendment, if and when adopted, shall relate back in time, and be applicable to, any project, development or land use application that has not had substantive review of such application, within the meaning of 1 M.R.S.A. § 302, as of August 2, 2004.

(Ord. of 08-15-05)

506 Appearance Assessment.

For appearance assessments, the factors described under section 502.6, subsection G., shall apply.

507 Community Facilities Impact Analysis.

The Planning Board may require the applicant to conduct a community facilities impact analysis. In conducting analysis for residential development, the applicant is directed to use the factors outlined in the subdivision ordinance. For commercial, industrial or institutional development the applicant shall take the following factors into consideration:

- A. Data Description. The analysis must identify data associated with the project including, but not limited to, the following: (1) Number of employees, shifts, and period of operation; (2) Where retail business is concerned, anticipated trade area, trade area population description and desired customer mix; (3) Area of operating space, seating capacity, rooms, beds, or number of pumps whichever is appropriate; (4) Where waste production is involved, description of type, volume, and method of removal.
- B. Community Facilities Impact Analysis. Utilizing the above data, the applicant must conduct an analysis of the following: (1) Estimated impact on sewage disposal system, including assessment of capacity and ability to accept particular types of flowage; (2) Estimated impact on the water system, including flow estimates, impact on capacity and assessment of existing or potential water pressure; (3) Estimated impact on the traffic system including the impact of projected trips on flow characteristics and the impact of traffic on the immediate existing road structures, trip distribution and all modal choices; (4) Estimated impact on public safety providers; (5) Projected percentages of in-migration and demographic breakdown resulting from employment related to the proposed business; (6) Estimated impact on public works department, including solid waste