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CHAPTER I - GENERAL PROVISIONS

Article 1. - General

Sec. 1-1. Designation and citation of code.

The ordinances embraced in this and the following chapters and sections shall constitute and be designated the Town of Berlin Code Book and may be so cited.

State law reference—Authority to codify, state statute § 7-148a.

Sec. 1-2. Definitions and rules of construction.

In the construction of this code and of all local laws, the following definitions and rules of construction shall be observed, unless such construction would be inconsistent with the manifest intent of the town council:

Charter. The term "charter" shall mean the Charter of the Town of Berlin, Connecticut as printed in Part One of this code book.

Citation to state statutes. A reference to the Connecticut state law shall mean and refer to the latest edition or supplement of such law.

Code. The term "code" means the Town of Berlin Code Book.

Computation of time. A number of days specified as a period from a certain day within which or after or before which an act is authorized or required to be done means such number of calendar days exclusive of the calendar day from which the reckoning is made. If such period is a period of two (2) days, Saturday, Sunday or a public holiday must be excluded from the reckoning if it is in an intervening day between the day from which the reckoning is made and the last day of the period. In computing any specified period of time from a specified event, the day upon which the event happens is deemed the day from which the reckoning is made. The day from which any specified period of time is reckoned shall be excluded in making the reckoning.

Councilmember. The term "councilmember" means a member of the town council of the Town of Berlin in the County of Hartford and State of Connecticut.

County. The term "county" means the County of Hartford in the State of Connecticut.

Delegation of authority. Whenever a provision or section appears requiring the head of a department or some other town official, officer or employee to do some act or perform some duty, it shall be construed to authorize the head of the department or other officer or employee to designate, delegate and authorize subordinates to perform the required act or perform the duty, unless the terms of the provision or section specify otherwise.

Fee schedule. In lieu of specific fees and citation amounts to be included the town should have a fee that should be a resolution passed by the town council. No public hearing will be held and the resolution is not considered an ordinance.

Gender. A term importing the masculine gender only shall also be construed to include females, corporations, partnerships, associations, joint stock companies, societies and all other entities.

State law reference—Similar provisions, state statute § 1-1(g).

Joint authority. Whenever authority is given to two (2) or more persons, it shall be construed as giving authority to a majority of them.

State law reference—Similar provisions, state statute § 1-1(h).

Justice of the peace. The term "justice of the peace" means a town justice of the Town of Berlin in the County of Hartford and State of Connecticut.

Number. The singular number includes the plural.

State law reference—Similar provisions, state statute § 1-1(f).

Officer, department, employee, board, committee, commission, etc. Whenever reference is made to an officer, department, employee, board, committee, commission, etc., it shall be deemed to refer to an officer, department, board, committee, commission, etc., of the Town of Berlin, Connecticut.

Owner. The term "owner" means a person who has the legal title, alone or with others, or exercises dominion or control over property, both real and personal.

Person. The term "person" means one (1) or more persons of either sex, natural person, corporations, partnerships, associations, joint stock companies, societies and all other legal entities.

State law reference—Similar provisions, state statute § 1-1(k).

State. The term "state" means the State of Connecticut.

State statute. Whenever "state statute" is used in referencing it means the Connecticut General State Statutes.

Tense. Terms used in the present tense include the future tense.

Town and Town of Berlin. The terms "town" and "Town of Berlin" mean the Town of Berlin in the County of Hartford and State of Connecticut.

Town clerk and clerk. The terms "town clerk" and "clerk" mean the town clerk of the Town of Berlin in the County of Hartford and State of Connecticut.

Town council. The term "town council" means the town council of the Town of Berlin in the County of Hartford and State of Connecticut.

State law reference—Meaning of terms, state statute § 1-1.

Cross reference—Definitions generally, chapter I § 1-2 of this code book.

Sec. 1-3. Catchlines of sections.

The catchlines of the sections of this code printed in boldface type are intended as mere catchwords to indicate the contents of the sections and shall not be deemed or taken to be titles of such sections nor as any part of any section nor, unless expressly so provided, shall they be so deemed when any section, including its catchline, is amended or reenacted.

Sec. 1-4. References to chapters or sections.

All references to chapters or sections are to the chapters and sections of this code, unless otherwise specified.

Sec. 1-5. History notes.

The history notes appearing in parentheses after sections of this code are not intended to have any legal effect but are merely intended to indicate the source of matter contained in the section.

Sec. 1-6. References and editor's notes.

References and editor's notes following certain sections are inserted as an aid and guide to the reader and are not controlling or meant to have any legal effect.

Sec. 1-7. Provisions considered as continuation of existing ordinances.

The provisions appearing in this code, so far as they are the same as those of the ordinances existing at the time of the adoption of this code, shall be considered as a continuation thereof and not as new enactments.

Sec. 1-8. Code does not affect prior offenses, penalties, contracts and rights.

- a) Nothing in this code or the ordinance adopting this code shall affect any offense or act committed or done or any penalty or forfeiture incurred or any contract or right established or accruing before the effective date of this code.
- b) The adoption of this code shall not be interpreted as authorizing or permitting any use or the continuance of any use of a structure or premises in violation of any ordinance of the town in effect on the date of adoption of this code.

Sec. 1-9. Effect of repeal of ordinances.

- a) The repeal of an ordinance shall not revive any ordinance in force before or at the time the ordinance repealed took effect.
- b) The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of the repeal, for any offense committed under the ordinance repealed.

State law reference—Similar provisions with respect to repeal of a statute, state statute § 1-1(s), (u).

IVSec. 1-10. Certain ordinances not affected by code.

Nothing in this code or the ordinance adopting this code shall be construed to repeal or otherwise affect the validity of any of the following when inconsistent with this code:

- 1) Any offense or act committed or done or any penalty or forfeiture incurred or any contract or right established or accruing before the effective date of this code.
- 2) Any ordinance promising or guaranteeing the payment of money for the town, or authorizing the issuance of any bonds of the town or any evidence of the town's indebtedness.
- 3) Any contract or obligation assumed by the town.
- 4) Any right or franchise granted by the town.
- 5) Any appropriation ordinance providing for the levy of taxes or for adopting an annual budget.
- 6) Any ordinance relating to local improvements and assessments therefor.
- 7) Any ordinance prescribing the number, classification, benefits, retirement plan or compensation of any town officers or employees, not inconsistent herewith.
- 8) Any ordinance prescribing traffic regulations for specific streets, such as establishing speed limits or designating one-way streets, no parking areas, truck routes, stop intersections, intersections where traffic to be controlled by signals, etc.
- 9) Any ordinance prescribing any fee or payment of money to the town.
- 10) Any ordinance which is temporary although general in effect.
- 11) Any ordinance which is special although permanent in effect.
- 12) Any ordinance containing any administrative provisions.

All such ordinances shall remain in effect and are on file in the town clerk's office.

Sec. 1-11. Amendments to code.

- a) All ordinances passed subsequent to this code which amend, repeal or in any way affect this code may be numbered in accordance with the numbering system of this code and printed for inclusion therein, or in the case of repealed chapters, sections and subsections or any part thereof, by subsequent ordinances such repealed portions may be excluded from the code by omission from reprinted pages affected thereby and the subsequent ordinances as numbered and printed or omitted, in the case of repeal, shall be prima facie evidence of such subsequent ordinances until such time that this code and subsequent ordinances numbered or omitted are readopted as a new code by the town council.
- b) Amendments to any of the provisions of this code should be made by amending such provisions by specific reference to the section of this code in substantially the following language: "That section _____ of the Town of Berlin Code Book is hereby amended to read as follows:" (set out new provisions in full).
- c) When the town council desires to enact ordinances of a general and permanent nature on a subject not heretofore existing in the code, which the town council desires to incorporate into the code, a section in substantially the following language shall be made a part of the ordinance:

"Section _____. It is the intention of the town council, and it is hereby ordained, that the provisions of this ordinance shall become and be made a part of

the Town of Berlin Code Book and the sections of this ordinance may be renumbered to accomplish such intention.ö

- d) All sections, articles, chapters or provisions of this code desired to be repealed should be specifically repealed by section number or chapter number, as the case may be.

Sec. 1-12. Supplementation of code.

- a) By contract or by town personnel, supplements to this code shall be prepared and printed. A supplement to the code shall include all substantive permanent and general parts of ordinances adopted during the period covered by the supplement and all changes made thereby in the code. The pages of a supplement shall be so numbered that they will fit properly into the code and will, where necessary, replace pages that have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the code will be current through the date of the adoption of the latest ordinance included in the supplement.
- b) In preparing a supplement to this code, all portions of the code which have been repealed shall be excluded from the code by the omission thereof from reprinted pages.
- c) When preparing a supplement to this code, the codifier (meaning the person authorized to prepare the supplement) may make formal, nonsubstantive changes in ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:
 - 1) Organize the ordinance material into appropriate subdivisions.
 - 2) Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this part," etc., as the case may be, or to "sections _____ to _____," inserting section numbers to indicate the sections of the code which embody the substantive sections of the ordinance incorporated into the code.
 - 3) Assign appropriate numbers to sections and other subdivisions to be inserted in the code and, where necessary to accommodate new material, change existing section or other subdivision numbers.
 - 4) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the code printed in the supplement and make changes in such catchlines, headings and titles.
 - 5) Make other nonsubstantive changes necessary to preserve the original meaning of ordinance sections inserted into the code, but in no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the code.

Sec. 1-13. Severability of parts of code.

It is hereby declared to be the intention of the town council that the sections, paragraphs, sentences, clauses and phrases of this code are severable, and if any phrase, clause, sentence, paragraph or section of this code shall be declared unconstitutional by the valid judgment or decree of the court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this code.

Sec. 1-14. Unlawful alteration of code.

It shall be unlawful for any person to willfully misrepresent the provisions of this code by altering or changing any of the provisions herein, inserting or deleting pages, or by any other manner whatsoever.

Sec. 1-15. General penalty.

Unless otherwise specifically provided, the violation of any chapter, rule or regulation or any specific provision or provisions thereof adopted by the town council as a part of this code shall be deemed an offense against such chapter, rule, regulation or provision thereof punishable by a fine as listed in the town fee schedule.

State law reference—Penalty for violation of town legislation, state statute § 7-148(c)(10)(A).

CHAPTER II – ADMINISTRATION.

Article 1. – General

Sec. 2-1. Official seal.

- (a) *Form.* The official seal of the town shall be the following:

Seal



- (b) *Custody; certification of records.* The town clerk shall have custody of the official seal of the town, which shall not be altered, and the clerk shall affix the seal to instruments and certificates when requested or required by law. The town clerk may give certified copies of any entries in such records filed in his office, which copies shall be legal evidence.
- (c) *Use for official business; reproductions.* The official seal of the town, or an imitation thereof, whether as a reproduction, imprint or facsimile shall be made and used for the purposes related directly or indirectly to the official business of the town, provided that the town manager may in his judgment approve other reproductions of the seal of the town for memorials and for purposes he considers educational.
- (d) *Counterfeits.* It is unlawful for any person to counterfeit the seal of the town and make use of the seal, or without the approval of the town manager it is unlawful for any person to affix the true seal to any document. It is unlawful for any person to possess any such counterfeited seal, and willfully conceal the seal, knowing it to be falsely made and counterfeited, shall be fined as stated in the town fee schedule.

(Ord. No. 1-95, §§ 16 IV, 2-14-1995, updated with a clearer image of the seal by town council 4-1-2008)

Sec. 2-2. Voting districts.

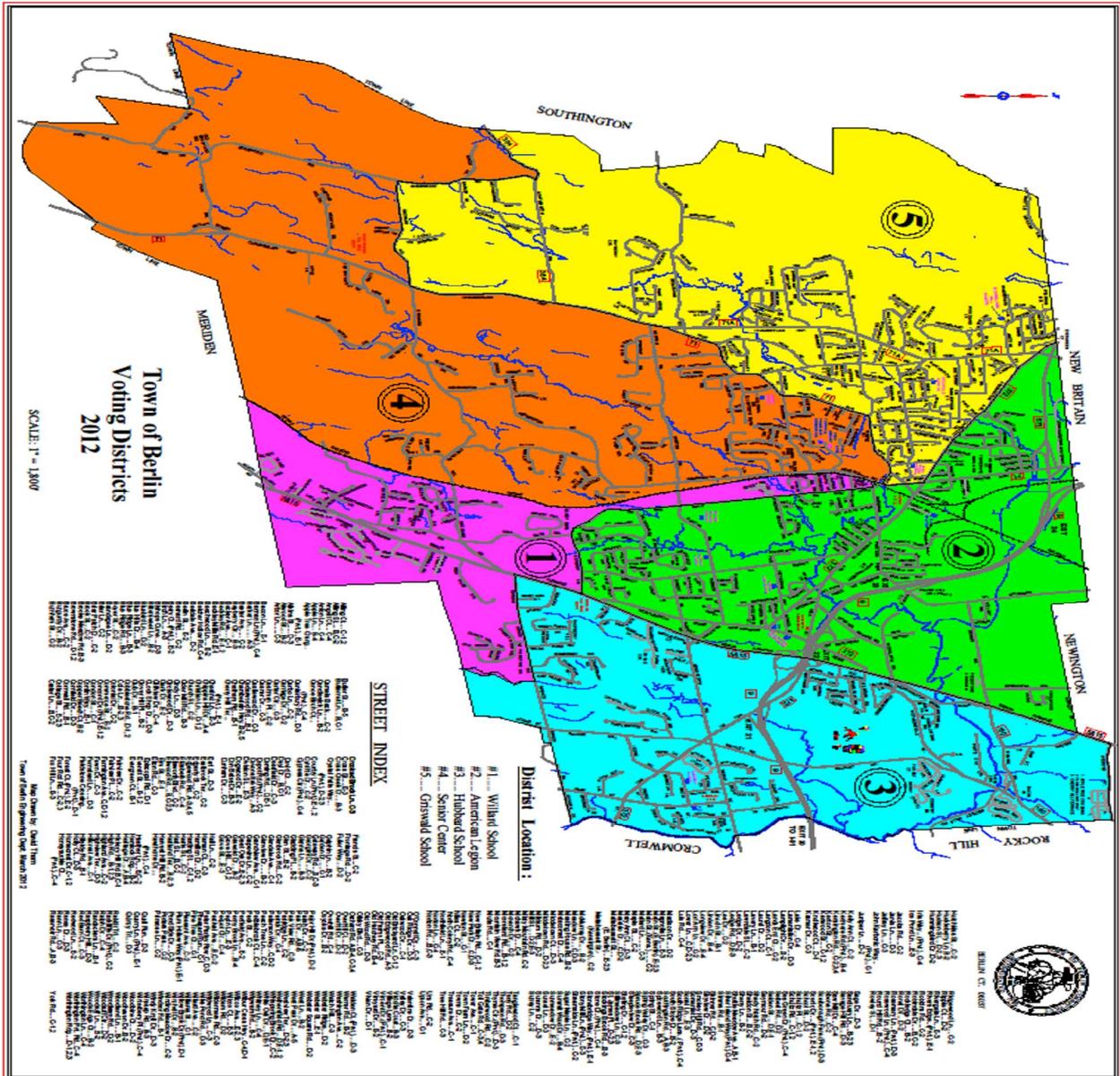
- (a) *Establishment.* There is hereby established within the town five (5) voting districts that shall be used for all elections, including primaries and referenda. The geographical boundaries of such voting districts shall be as shown on a map entitled "Voting Districts of Town of Berlin" and dated February 15, 2012 which is attached to this ordinance and is incorporated herein and made a part of this section.

- (b) *Referenda.* The town council may reduce the number of voting districts for any referendum, up to and including having a single voting district in the town.

(Ord. No. 01-02, §§ 1, 2, 1-26-2002; Ord. No. 01-12 updates the geographical boundaries 03-06-2012)

Charter reference § 7-5 states that the Budget Referendum must be at the normal and usual polling places.

Sec. 2-3. Voting District Map



Charter reference § 7-5 states that the Budget Referendum must be at the normal and usual polling places.

Secs. 2-4—2-9. Reserved.

Article 2. - Boards, Committees, Commissions*

Secs. 2-10—2-19. Reserved

Part A. - Aquifer Protection Agency.

Sec. 2-20. Designation and membership.

- (a) In accordance with the provisions of state statutes § 22a-354a, et seq., the inland wetlands and water courses commission is hereby designated as the aquifer protection agency (hereinafter the "agency") of the town. The staff of the inland wetlands and water courses commission shall serve as the staff of the agency.
- (b) Members of the inland wetlands and water courses commission shall serve coexisting terms on the agency. The membership requirements of the agency shall be the same as those of the inland wetlands and water courses commission including, but not limited to the number of members, terms, method of selection and removal of members, and filling of vacancies.
- (c) At least one (1) member of the agency or staff of the agency shall complete the course in technical training formulated by the Commissioner of Environmental Protection of the State of Connecticut, pursuant to state statute § 22a-354v.

(Ord. No. 3-93, 9-14-1993; Ord. No. 06-06, 11-28-2006)

Sec. 2-21. Adoption of regulations.

The agency shall adopt regulations in accordance with state statute § 22a-354p and R.C.S.A. § 22a-354i-3. Said regulations shall provide for:

- (1) The manner in which boundaries of aquifer protection areas shall be established and amended or changed.
- (2) Procedures for the regulation of activity within the area.
- (3) The form for an application to conduct regulated activities within the area.

* **Charter references** Boards and commissions, §§ 8-10 8-5; board of assessment appeals, § 2-5 § 4-1; board of education, § 2-6, § 4-2; board of police commissioners, § 2-4, § 4-3-1 et seq.; water control commission, § 8-7-1 et seq.; planning and zoning commission, § 8-8-1 et sq.; zoning board of appeals, § 8-9-1 et seq.; economic development commission, § 8-10-1 et seq.; public building commission, § 8-11-1 et seq.; conservation commission, § 8-12-1 et seq.; parks and recreation commission, § 8-13-1 et seq.; inland wetlands and watercourses commission, § 8-14-1 et seq.; commission for the aging, § 8-16-1 et seq.

- (4) Notice and publication requirements.
- (5) Criteria and procedures for the review of applications.
- (6) Administration and enforcement.

(Ord. No. 3-93, 9-14-1993; Ord. No. 06-06, 11-28-2006)

Sec. 2-22. Inventory of land use.

- (a) In order to carry out the purposes of the aquifer protection program, the agency will conduct an inventory of land use within the area to assess potential contamination sources.
- (b) Not later than three (3) months after approval by the Commissioner of the Connecticut Department of Environmental Protection of Level B mapping of aquifers, the agency will inventory land uses overlying the mapped zone of contribution and recharge areas of such aquifers in accordance with guidelines established by the commissioner pursuant to
- (c) state statute § 22a-354f. Such inventory shall be completed not more than one (1) year after authorization of the agency. (state statute § 22a-354e)

(Ord. No. 06-06, 11-28-2006)

State law reference—Authority to appoint aquifer protection agency, state statute § 22a-3540.

Secs. 2-23—2-39. Reserved.

Part B. - Board of Ethics.

Sec. 2-40. Appointment of members.

In February 1996, the town council shall appoint two (2) alternate members to the board of ethics, one (1) for a term of three (3) years and one (1) for a term of two (2) years. Thereafter, in the month of January, the town council shall appoint an alternate member to fill any expired term.

(Ord. No. 2-96, 2-20-1996)

Charter reference ó Board of ethics, § 8-19.

Secs. 2-41—2-59. Reserved.

Part C. - Cemetery Committee.

Sec. 2-60. Purpose; members.

In order to preserve, maintain, protect and oversee the cemeteries in the town a cemetery committee (hereinafter referred to as the "committee") is hereby established. It shall consist of five (5) members and one (1) alternate who shall be electors of the town. It shall be the purpose of the committee to oversee and maintain all town owned or town operated cemeteries in the town in accordance with the provisions of chapter 368j of the state statutes.

(Ord. No. 16-08, 12-02-2008)

Sec. 2-61. Membership and terms.

The town council shall appoint five (5) members to serve on the committee in the following manner: one (1) member shall serve for a term of two (2) years, two (2) members for a term of four (4) years, and two (2) members for a term of six (6) years. Biennially thereafter, the town council shall appoint one (1) member to replace each member whose term has expired. Within a period of sixty (60) calendar days after the appointment of members to the first committee, said members shall meet, organize, and elect a chairman, vice chairman and a clerk. Such committee shall have all the powers and duties of a committee established as provided for in chapter 368j of the state statutes.

(Ord. No. 16-08, 12-02-2008)

Sec. 2-62. Maintenance of fund.

A separate account known as the cemetery account (hereinafter the "account") shall be set up under the custody and control of the finance director of the town to hold, receive and administer funds for the preservation and maintenance of all town owned or town operated cemeteries. The funds in this account may be received from public or private sources including appropriation from the town's annual budget, private donations and the sale of gravesites or service fees associated with town owned or town operated cemeteries. Funds from the town's cemetery account shall be disbursed by the finance director upon the recommendation or request of the committee.

(Ord. No. 16-08, 12-02-2008)

Sec. 2-63. Donations and perpetual funds.

All private donations authorized or provided to be held in trust and perpetual funds established in accordance with § 19a-301 of the state statutes shall be under the control and custody of the finance director and shall not be commingled with the cemetery account or with the general funds of the town. The income, if any, from perpetual funds and the principal and interest from trust donations shall be used to maintain and preserve the cemeteries for which each fund was established or as otherwise authorized or provided for by the donor. The principal and interest of all private donations shall be used only in the manner and for the purposes designated by the donor(s) thereof. If no specific authorization or instructions are given with a donation it may then go into the account established in § 2-62 above.

(Ord. No. 16-08, 12-02-2008)

Sec. 2-64. Management of funds.

The finance director shall manage and control the private trust donations and perpetual funds and shall invest and reinvest the principal and interest of said funds as by law required for the investment of trust funds, except when otherwise authorized or provided by the donor of such funds. The principal of two (2) or more funds may be combined and merged in a single fund for the purpose of the investment of the same. The finance director shall annually on or before June 1st file an accounting of the cemetery account and all trust or perpetual funds including the balances, income earned, disbursements and the use of each disbursement. This report shall be forwarded to the committee for review and approval. Copies of the approved report shall go to the town council, the town clerk and the Berlin Probate Court as required by § 19a-301 of the state statutes no later than July 1st of each year.

(Ord. No. 16-08, 12-02-2008)

Secs. 2-65 to 2-79. Reserved.

Part D. - Commission for Persons with Disabilities.

Sec. 2-80. Definitions.

The following words, terms and phrases, when used in this part, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Major life activity means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

Person with a disability means any person who has a physical or mental impairment that substantially limits one (1) or more major life activities.

Physical or mental impairment means:

- (1) Any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one (1) or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory and speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin and endocrine; or
- (2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(Ord. No. 08-01, § 4, 7-10-2001)

Cross reference—Definitions generally, chapter I § 1-2 of this code book.

Sec. 2-81. Establishment.

There is hereby established a commission for persons with disabilities, which shall monitor and assess the needs and affairs of persons with disabilities within the town.

(Ord. No. 08-01, § 1, 7-10-2001)

Sec. 2-82. Membership and terms.

- (a) The commission for persons with disabilities shall consist of five (5) members all of whom shall be legal residents and electors of the town. At least two (2) members of the commission shall be persons with disabilities or representatives of a recognized, established, nonprofit group whose primary goals are compatible with the intent of this part.
- (b) On or before February 1, 2006, the town council shall appoint two (2) members to the commission for terms of three (3) years each, two (2) members for terms of two (2) years each, and one (1) member for a term of one (1) year. Thereafter, all members shall be appointed for terms of three (3) years each.

(Ord. No. 08-01, § 2, 7-10-2001; Ord. 08-05, 9-6-2005)

Sec. 2-83. Purposes and responsibilities.

The commission for persons with disabilities shall have the following purposes and responsibilities:

- (1) To foster understanding, respect, and involvement of persons with disabilities within the town;

- (2) To encourage participation of persons with disabilities in all aspects of community life;
 - (3) To continuously study and analyze the needs of persons with disabilities in order to ascertain, evaluate and where appropriate propose innovative approaches to their changing needs;
 - (4) To receive and refer complaints of discrimination to the proper agency having jurisdiction in the particular matter;
 - (5) To recommend to the town council such programs or ordinances as it may deem necessary to deal with existing or potential discrimination problems and to report to the council, from time to time, on the efficacy of such programs or ordinances;
 - (6) To ensure persons with disabilities equal access to town resources, facilities, programs and development through consultation and participation in planning and making recommendations for action;
 - (7) To serve as an advisory board to the town for the enforcement of the federal Americans With Disabilities Act and to assist the town with meeting its responsibilities for residents with disabilities;
 - (8) To provide educational programs for town and board of education employees regarding working with persons with disabilities;
 - (9) To identify and apply for alternative funding sources such as state, federal and other grants available to assist persons with disabilities;
 - (10) To expend funds allocated to the commission as part of the town's annual budget process and any other funds that are made available to it;
 - (11) To disseminate information regarding events and activities for persons with disabilities; and
 - (12) To perform such other functions as directed by the town council.
- (Ord. No. 08-01, § 3, 7-10-2001)

Secs. 2-84—2-99. Reserved.

Part E. - Committee for the Aging.

Sec. 2-100. Purpose; members.

There shall be in the town a committee to study the needs of and to coordinate the programs for the aging. Said committee shall consist of not less than five (5) nor more than nine (9) members who shall be appointed by a majority of the town council, said members so appointed shall serve without compensation and until their successors are appointed and qualified. Not more than a bare majority of the members of said committee shall hold other political office in said town and the age group concerned shall be represented. Said majority of the town council may designate appropriate terms of office for the members of this committee, not to exceed in any case five (5) years.

(Ord. of 12-17-1963, § 1)

Sec. 2-101. Duties.

The committee shall study continuously the conditions and needs of elderly persons in the community in relation to housing, economic, employment, health, recreational and other matters. It shall analyze the services for the aged provided by the community, both by public and private agencies, and shall make recommendations to the town council who shall transmit said

recommendations where necessary to the next subsequent town council meeting, regarding the development and integration of public and private agencies, in cooperation with state and other services to the extent possible.

(Ord. of 12-17-1963, § 2)

Sec. 2-102. Funding.

The town may make appropriations to cover the expense of the committee, including reasonable clerical services, provided that any budget therefore shall be prepared and submitted to the town council.

(Ord. of 12-17-1963, § 3)

Secs. 2-103—2-119. Reserved.

Part F. - Energy Improvement District Board.

Sec. 2-120. Purpose and intent.

- (a) In accordance with state statute § 32-80a, the town hereby establishes the Berlin Energy Improvement District within and for the area more particularly defined as the municipal boundaries of the town to be created and operated according to the procedures set forth in state statute § 32-80a.
- (b) The purpose of this article is to promote the planning, development, funding, acquisition, purchase, construction, reconstruction, improvement, extension or operation of one (1) or more energy improvement district with a view to the increase and efficiency, reliability and the furtherance of commerce and industry in the energy improvement district. It is further to coordinate district activities with regard to such resources with relevant state, regional and federal agencies.

(Ord. 11-08, § 1, 02-26-2008)

Sec. 2-121. Definitions.

In the interpretation hereof the following words and terms shall be taken to include the following meanings when context shall require or permit:

Board shall mean the energy improvement district board created by this part and as more particularly state statute § 32-80a.

State statutes shall mean Connecticut General State Statutes the revision of 1958, as revised and amended.

District shall mean the energy improvement district, which shall be the municipal boundaries of the town.

Energy improvement district distributed resources shall mean one (1) or more of the following:

- (1) Customer-side distributed resources, as defined in § 16-1 of the state statutes;
- (2) Grid-side distributed resources, as defined in said § 16-1;
- (3) Combined heat and power systems, as defined in said § 16-1;
- (4) Class III renewable energy sources, as defined in said § 16-1; and

(5) Microgrids, as defined below.

Ex officio shall mean non-voting member.

Federal agency shall mean the United States of America, and any department of, or corporation, agency, or instrumentality thereof or hereafter created, designated or established by the United States of America.

Microgrid shall mean small, locally controlled electric systems interconnected with electric distribution company facilities.

Project shall mean the acquisition, purchase, construction, reconstruction, improvement or extension of one (1) or more energy improvement district distributed resources.

State agency shall mean the State of Connecticut, any department of, or corporation, agency, or instrumentality thereof, heretofore, of or hereafter created, designated, or established by the State of Connecticut.

(Ord. 11-08, § 2, 02-26-2008)

Cross reference—Definitions generally, chapter 1 § 1-2 of this code book.

Sec. 2-122. Membership.

The board of the district shall consist of five (5) voting members. The voting members shall be electors or representatives of businesses located in the district, who shall be nominated by the mayor and approved by the town council for a two (2) year term. In addition the town council may appoint two (2) alternate members one (1) of whom shall be an elector. At any meeting of the board a quorum shall mean at least four (4) members, three (3) of whom must be electors of the town. Any vacancy shall be filled in the same manner as the original appointment. The mayor shall be an ex-officio member of the board. The board members shall serve without compensation, except for reasonable and necessary expenses.

(Ord. 11-08, § 3, 02-26-2008)

Sec. 2-123. Powers and duties of the board.

The energy improvement district and energy improvement district board shall have all the powers and duties conferred or imposed on it by the state statutes.

(Ord. 11-08, § 4, 02-26-2008)

Sec. 2-124. Bonding.

The board in addition to the powers set forth in § 2-123 above shall have the power to issue and secure bonds as more particularly set forth in state statute § 32-80a.

(Ord. 11-08, § 5, 02-26-2008)

Sec. 2-125. District properties.

The properties included in the district shall be bounded by the municipal boundaries of the town.

(Ord. 11-08, § 6, 02-26-2008)

Sec. 2-126. Regulations by the board.

The board may make and enforce any reasonable regulation which it may determine to be necessary relating to the facilities owned or leased by any individual or corporation, limited liability company, partnership, etc. within the district consistent with the laws of the State of Connecticut and the charter and the code of the town.
(Ord. 11-08, § 7, 02-26-2008)

Secs. 2-127—2-139. Reserved.

Part G. – Environment Commission.

Sec. 2-140. Policy.

It is the policy of the town to protect and preserve our natural resources, to minimize or eliminate residents' exposure to existing or potential environmental hazards, and to educate and encourage our residents and staff to practice conservation and efficient use of our precious natural resources.
(Ord. 054-11, § 1, 07-05-2011)

Sec. 2-141. Establishment.

To help achieve the town's policy goals the town council hereby establishes the Environmental Protection Advisory Commission ("EPAC"), consisting of seven (7) members who shall serve in an advisory and consulting capacity to the town council, town staff and other town commissions and boards. The members so appointed shall be electors in Berlin who are interested in the consideration and solutions of problems concerning and affecting our environment. Said seven (7) electors shall be appointed by majority vote of the town council subject to the rules of minority representation set forth in the general statutes.
(Ord. 05-11, § 2, 07-05-2011)

Sec. 2-142. Terms; Vacancies.

- (a) After the effective date of this ordinance the town council shall appoint members to EPAC in the following manner: one (1) member shall be appointed to serve until January 31, 2012; three (3) members shall be appointed to serve until January 31, 2013; and three members shall be appointed to serve until January 31, 2014. Thereafter, all members shall be appointed to serve for a term of three (3) years.
- (b) In the event of any vacancy, the town council shall appoint a successor to fill the unexpired portion of the vacant term.

(Ord. 05-11, § 3, 07-05-2011)

Sec. 2-143. Purpose.

The policy goals to be achieved by the EPAC shall include, but not be limited to, the following:

- (a) To look for opportunities to institute town policies and procedures that will promote the policies stated herein and to improve the quality of the environment for our residents;
- (b) To promote environmentally friendly policies and practices for residents, businesses and town staff that contribute to a clean, healthy and safe environment;
- (c) To monitor changes in state and federal environmental laws and regulations that may impact on the town; and

- (d) To advocate for the enactment and enforcement of environmental laws and regulations designed to protect the environment and the residents of Berlin.

(Ord. 05-11, § 4, 07-05-2011)

Sec. 2-144. Duties.

- (a) EPAC shall establish its own rules and procedures for the conduct of its meetings and must provide a copy of said rules and procedures to be kept on file by the town clerk. EPAC shall annually appoint its own chairperson and secretary and conduct its meetings in accordance with its rules and procedures, as well as in accordance with applicable state laws;
- (b) EPAC shall seek to educate and inform the town and the community on environmental, conservation and preservation matters in an effort to promote the policies set forth herein;
- (c) EPAC shall annually, in the fourth quarter of each calendar year, prepare and submit to the town council a written report of its activities and findings with any appropriate recommendations;
- (d) EPAC may advise, consult and coordinate with other town boards and commissions in furtherance of its purpose;
- (e) EPAC may solicit and obtain input from the community about issues affecting the environment;
- (f) EPAC may interact as necessary with other groups or organizations concerned with or having an impact on the environment;
- (g) EPAC may plan, develop, coordinate and participate in responsible conservation activities;
- (h) EPAC may advertise, prepare and distribute books, maps, charts, plans and pamphlets as necessary for its purpose;
- (i) EPAC may annually make a budgetary appropriation request of the town council for the purpose of carrying out its duties. The commission may also solicit and receive donations from private persons and entities with the approval of the town council;
- (j) Neither EPAC nor any of its members shall have the authority to give mandates or directives to the town manager or to any of the other staff members, either publicly or privately;
- (k) EPAC shall perform all other duties relating to environmental concerns as may be assigned to it by the town council from time to time.

(Ord. 05-11, § 5, 07-05-2011)

Secs. 2-145—2-159. Reserved

Part H. - Flood and Erosion Control Board.

Sec. 2-160. Establishment.

Pursuant to state statutes §§ 25-84 to 25-98, the town establishes a flood and erosion control board to be known as the town flood and erosion control board.

(Ord. No. 7-00, § 1, 12-19-2000)

Sec. 2-161. Composition.

Pursuant to the authority contained in state statute § 25-84, the members of the town council shall serve as the town flood and erosion control board. Five (5) members of the town council shall constitute a quorum of the town flood and erosion control board.

(Ord. No. 7-00, § 2, 12-19-2000)

Sec. 2-162. Powers and duties.

The town flood and erosion control board shall have all the powers and duties specified in state statutes §§ 25-84 to 25-98.

(Ord. No. 7-00, § 3, 12-19-2000)

Cross reference— Floods, chapter VIII of this code book.

State law reference— Municipal flood and erosion control board, state statute § 25-84.

Secs. 2-163—2-179. Reserved.

Part I. - Planning and Zoning Commission.

Sec. 2-180. Appointment of members; term.

As the terms of the members of the planning and zoning commission expire, members shall be appointed by the town council for a term of five (5) years.

(Ord. No. 1-96, 2-20-1996)

Charter reference— Planning and zoning commission, § 8-8-1 et seq.

Cross reference - Zoning Part Eight of this code book.

Secs. 2-181—2-199. Reserved.

Part J. - Veterans' Commission.

Sec. 2-200. Composition; appointment of members.

There shall be in the town a veterans' commission composed of seven (7) electors of the town, not more than four (4) of whom shall be of any one (1) political party. Members of the veterans' commission will be appointed by the town council. During the month of January 1999 and annually in the month of January thereafter, the town council shall appoint electors to fill each expired term, and each elector shall serve for a term of three (3) years. All terms of appointed members shall commence February 1. All members shall be honorably discharged veterans of the United States Armed Forces.

(Ord. No. 3-98, § 1, 8-18-1998)

Sec. 2-201. Duties.

It shall be the duty of the veterans' commission to:

- (1) Act as the coordinating agency in all matters concerning veterans and their dependents, coordinating the activities of public and private facilities concerned with veterans' reemployment, education, rehabilitation and adjustment to peacetime living;
- (2) Cooperate with all national, state and local government and private agencies in securing services and benefits to which a veteran or his dependents may be entitled;

- (3) Use the services and facilities of the veterans' organizations so far as possible to carry out the purposes of this division;
 - (4) Encourage and coordinate vocational training services for veterans; and
 - (5) Have supervision of the annual Memorial Day parade.
- (Ord. No. 3-98, § 2, 8-18-1998)

Sec. 2-202. Reports to the town manager.

A copy of the minutes of all veterans' commission meetings shall be forwarded to the town manager within seven (7) days after each meeting.
(Ord. No. 3-98, § 3, 8-18-1998)

Secs. 2-203—2-219. Reserved.

Part K. - Youth Services and Advisory Board.

Sec. 2-220. Establishment.

In accordance with state statutes §§ 17a-296 17a-32, there shall be in the town a youth services advisory board composed of no less than seven (7) members, who shall be appointed by and responsible to the town council.
(Ord. No. 6-80, § 1, 11-10-1980)

Sec. 2-221. Membership.

The youth services advisory board shall be comprised of representatives from public agencies with statutory responsibility for youth and private sector organizations representing community social institutions. These representatives shall include at least one (1) member currently under eighteen (18) years of age, a representative of the school system, the police department, and a private youth-serving agency. At least one-third (1/3) of the total membership shall be service consumers.
(Ord. No. 6-80, § 2(a), 11-10-1980)

Sec. 2-222. Duties.

The youth services advisory board shall study continuously the conditions and needs of young people in the community in relation to health, recreation, employment and other matters. It shall analyze the services for youth provided by the community, both by public and private agencies, and shall make recommendation to the town council regarding the development and integration of the public and private agencies, in cooperation with the state and other services to the extent possible. The youth services advisory board shall work with the community services director regarding matters concerning the youth of the community.
(Ord. No. 6-80, § 2(b), 11-10-1980)

Sec. 2-223. Terms.

Members shall serve for staggered terms of three (3) years.
(Ord. No. 1-81, 7-16-1981)

Sec. 2-224. Officers.

The youth services advisory board shall choose from among its members a chairperson and vice-chairperson. It shall employ as its secretary a member of the youth community, who shall, if possible, be under eighteen (18) years of age, who shall keep appropriate minutes of the meetings of the youth services advisory board and shall file the minutes with the office of the town clerk. The town treasurer shall act as the treasurer for the youth services advisory board and shall see to the proper disbursement of any funds, local, state, federal, or private, that may be awarded to such board as directed by the board.

(Ord. No. 6-80, § 4, 11-10-1980)

State law referenceô Regional advisory councils, state statute § 171-30.

Secs. 2-225—2-259. Reserved.

Article 3. – Employees*

Sec. 2-260. Sick leave.

The town shall grant, on account of sickness or accident disability, to its covered employees who have furnished satisfactory proof of such sickness or accident disability, sick leave with pay. Such sick leave shall be excluded from wages for which social security contributions are made in accordance with § 209(b) of the Social Security Act and permitted in state statute §7-460a.

(Ord. No. 3-80, § 1, 2-11-1980)

***Cross reference**ô Any ordinance prescribing the number, classification, benefits, retirement plan or compensation of any town officers or employees, not inconsistent herewith saved from repeal, chapter I § 1-10(8) of this code book.

Secs. 2-261—2-269. Reserved.

Article 4. - Town Historian.

Sec. 2-270. Position established; purpose.

Pursuant to state statute § 7-148(c)(5)(D), the town shall appoint a town historian to promote a knowledge and appreciation of local history.

(Ord. No. 06-01, § 1, 7-10-2001)

Sec. 2-271. Qualifications.

The town historian shall:

- (1) Be a legal resident and elector of the town.
- (2) Possess a knowledge, appreciation and enthusiasm for the town and its history, have a strong public service orientation and a desire to teach, write about, and promote local history.
- (3) Possess a general knowledge of regional, state and American history and an understanding of the relationship between this history and local history.
- (4) Possess knowledge of historical and archival research.
- (5) Possess good writing and speaking skills.

(Ord. No. 06-01, § 2, 7-10-2001)

Sec. 2-272. Term of office and method of appointment.

- (a) The town historian shall be appointed by the town council for a term of five (5) years and shall continue in office until a successor is appointed. The same person may be appointed to additional terms.
- (b) A vacancy in the office of town historian shall be filled by the town council for the unexpired portion of the term vacated.

(Ord. No. 06-01, § 3, 7-10-2001)

Sec. 2-273. Duties and responsibilities.

The town historian shall:

- (1) Promote an awareness of and appreciation for the town's history through research, writing and public speaking; through publications, news releases, projects, exhibits, public programs, displays, celebrations and commemorations; through the establishment and maintenance of plaques, markers, and monuments; and through the preparation of classroom aids, guides, workshops and training;
- (2) Advocate for the preservation of historically significant documents, objects, structures and sites;
- (3) Advise the town council on historical issues and subjects, including historical objects, structures and sites, historical districts, national register properties, and historic preservation;
- (4) Serve as a liaison among the town's museums, libraries, historic district commissions and historical associations and similar groups to encourage historical coordination, cooperation and resource sharing; and
- (5) Maintain a reference library to properly preserve historical information and serve as a central referral point for inquiries for information.

(Ord. No. 06-01, § 4, 7-10-2001)

CHAPTER III - ANIMALS

Article 1. - General

Sec. 3-1. Purpose and intent of chapter.

The purposes of this chapter are to promote the public health, safety, and general welfare of the citizens of the town by addressing the public nuisance caused by vicious and dangerous animals and to ensure that all animals receive adequate care. This chapter is intended to supplement and not supplant the provisions contained in state statute § 22-339 et seq. regarding domestic animals. The animal control officer shall have the discretion as to whether to proceed pursuant to state or local law.

(Ord. No. 1-99, § 1, 3-2-1999)

Sec. 3-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Adult means any individual eighteen (18) years of age or older.

Animal means any nonhuman animate being which is endowed with the power of voluntary motion, including fish and fowl.

Animal control officer means an employee or agent of the town to enforce the licensing, inspection and enforcement requirements contained within this chapter and state statutes.

Animal nuisance means any nuisance arising out of the keeping, maintaining or owning of, or failure to exercise sufficient control of, an animal.

Animal shelter means any facility operated by the town and shall also include any facility authorized by the animal control officer or his designee to impound, confine, detain, care for or destroy any animal.

At large means that an animal is off the premises of the owner and not on a leash or otherwise under the immediate control of a person capable of restraining the animal.

Disposition means adoption, sale, quarantine, voluntary or involuntary placement or euthanasia humanely administered to the animal.

Farm means a tract of land containing two (2) acres or more, used in part or wholly for agricultural purposes for profit, which may include the raising and keeping of domestic or other animals.

Guard or attack dog means a dog trained to attack or apprehend on command to protect persons or property.

Impoundment means the taking into custody of an animal by an animal control officer, or any authorized representative thereof.

Muzzle means a device constructed of strong, soft material designed to fasten over the mouth of an animal to prevent it from biting any person or other animal.

Owner or keeper means any person having temporary or permanent custody of, sheltering or having charge of, harboring, exercising control over, or keeping or having property rights to, any animal covered by this chapter.

Public nuisance means any animal that endangers the life or health of persons or other animals, or substantially interferes with the rights of citizens, other than their owners, to enjoyment of life or property. The term "public nuisance" shall include, but not be limited to, any animal that:

- (1) Is repeatedly found running at large;
- (2) Is in any section of any park or open space land where animals are not permitted, or where permitted, is not on a leash or otherwise under the control of its owner or keeper;
- (3) Damages or defiles any property other than that of the owner, unless the owner or keeper immediately picks up after the animal;
- (4) Barks, whines, howls or makes any noise natural to its species in an excessive or continuous fashion so as to disturb the peace, except where such activity occurs on a farm;
- (5) Is in heat and is not confined or under the owner's or keeper's control so as to prevent attraction or contact with other animals;
- (6) Whether or not on the property of its owner, that without provocation molests, attacks, or otherwise unreasonably interferes with the freedom of movement of persons in a public right-of-way or on private property other than that of the animal's owner;
- (7) Chases motor vehicles in a public right-of-way;
- (8) Is offensive or dangerous to the public health, safety or welfare by virtue of the number of animals maintained at a single residence and the inadequacy of the facilities and care; or
- (9) Attacks another animal off the property of the owner or keeper of the attacking animal.

Under restraint means that an animal is secured by a leash or is otherwise under the control of an individual who is mentally and physically capable of restraining the animal and obedient to that person's commands, or securely enclosed (e.g., appropriate fence) within the real property limits of the owner's premises.

Vicious or dangerous animal means an animal that has attacked, bitten, or physically injured human beings without adequate provocation. Any animal that without provocation has bitten or attacked a human being or has behaved so as to impose a threat of imminent bodily harm to a person conducting himself peacefully and lawfully shall be prima facie presumed vicious or dangerous. No animal may be declared vicious if an injury or damage is sustained by a person who, at the time of such injury or damage was sustained, was committing a willful trespass or other tort upon premises occupied by the owner or keeper of the animal or was teasing, tormenting, abusing or assaulting the animal or was committing or attempting to commit a crime.

No animal may be declared vicious if the animal was protecting or defending a human being within the immediate vicinity of the animal from an unjustified attack or assault.

(Ord. No. 1-99, § 2, 3-2-1999)

Cross reference— Definitions generally, chapter I § 1-2 of this code book.

State law reference— Definitions, state statute § 22-327.

Sec. 3-3. Nuisance.

It shall be unlawful for any person to keep any animal on any property located within the town when the keeping of such animal constitutes a public nuisance or menace to public health or safety.

(Ord. No. 1-99, § 3, 3-2-1999)

Sec. 3-4. Adequacy of facilities and care.

Every owner shall provide his animals with sufficient good and wholesome food and water, proper shelter and protection from the weather; veterinary care when needed to prevent suffering; humane care and treatment; and maintain them in a secure enclosure.

(Ord. No. 1-99, § 4, 3-2-1999)

Sec. 3-5. Administrative sanctions and remedies.

As part of any order issued in writing and by certified mail, pursuant to this chapter, the animal control officer shall have the authority to order the following administrative sanctions and remedies if there is no compliance after seven (7) days from the date of issue:

- (1) Obedience training for the animal in question,
- (2) Muzzling of a dog or animal while off the property of the owner,
- (3) Confinement of an animal indoors, unless the animal is under the direct control of a responsible adult;
- (4) Confinement of an animal in a secure enclosure;
- (5) Reduction of the number of animals kept at any one location;
- (6) Removal of an animal from the custody of the animal's owner or keeper in cases of neglect or cruelty;
- (7) The sterilization of an animal;
- (8) A ban on maintaining other animals in the town;
- (9) The euthanizing of an animal; and
- (10) Any other measure or sanction designed to eliminate a violation, prevent future violations, or protect the health and safety of the public.

(Ord. No. 1-99, § 11, 3-2-1999)

Sec. 3-6. Enforcement of chapter provisions.

The animal control officer or his designees shall be the enforcement officials for this chapter. These officials, along with police officers, shall have the authority to act on behalf of the town in investigating complaints, impounding and destroying animals, issuing citations, and taking other lawful actions as required to enforce the provisions of this chapter. The animal control officer shall fully investigate all complaints made pursuant to this chapter and shall take all statements under oath. The owner or keeper of such animal shall be given an opportunity to make a statement under oath. It shall be a

violation of this chapter to interfere with any animal control officer or other enforcement official in the performance of his duties.

(Ord. No. 1-99, § 12, 3-2-1999)

Sec. 3-7. Penalties for violation of chapter.

(a) It shall be a violation of this chapter to:

- (1) Fail to comply with any provision of this chapter,
- (2) Fail to pay any fines, civil penalties or costs imposed by the animal control officer, within (15) days of the imposition of such fines or costs, unless payment thereof is lawfully stayed, or
- (3) Make any false statements, under oath, with respect to this chapter.

(b) Any person who fails to comply with a written citation issued by the animal control officer or his designee within seven (7) days shall be deemed guilty of a municipal infraction and shall be subject to a fine as listed in the town fee schedule. If a violation continues after such written notice, each day's violation shall be deemed to be a separate offense.

(Ord. No. 1-99, § 13, 3-2-1999)

Sec. 3-8. Appeals procedure.

Any provision of this chapter may be appealed to the town manager within thirty (30) days of the issuance of the citation. The citation holder can appeal the decision of the town manager to the superior court.

(Ord. No. 1-99, § 14, 3-2-1999)

Sec. 3-9. Reserved.

Article 2. -Dogs

Part A. - Generally

Sec. 3-10. Restraint generally.

(a) It shall be unlawful for the owner or keeper of any dog to fail to keep his dog under restraint or to permit his dog to run at large upon the streets and public ways of the town or upon property other than that of such owner or keeper.

(b) No owner, keeper or custodian of any animal shall fail to exercise proper care and control of such animal to prevent the animal from becoming a public nuisance.

(Ord. No. 1-99, § 5, 3-2-1999)

Sec. 3-11. Restraint of guard or attack dogs.

(a) Every owner of a guard or attack dog shall keep such dog confined in a building, compartment or other enclosure. Any such enclosure shall be completely surrounded by a secured fence or enclosure that is appropriate to confine such dogs and shall be approved by the animal control officer.

(b) The areas of confinement shall have gates and entrances thereto securely closed and locked, and all fences shall be properly maintained and escape-proof.

- (c) When outside the enclosure on the owner's or keeper's property, all guard or attack dogs shall be under the direct and immediate control of a responsible adult who can fully control the dog at all times.
- (d) When off the property of the owner or keeper, all guard or attack dogs shall be under restraint of a responsible adult at all times.
- (e) The provisions of this section shall not apply to dogs owned or controlled by government law enforcement agencies while in the course of their official duties.

(Ord. No. 1-99, § 6, 3-2-1999)

Sec. 3-12. Feces removal.

- (a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Dog means any member of the canine species, male or female.

Keep means possessing, controlling, exercising or allowing a dog to run at large.

Owner means any person possessing, keeping, harboring or having custody of a dog.

- (b) *Required; provision of disposal containers.* It shall be unlawful for any person owning, keeping, walking or in control of any dog to allow or permit such animal to defecate upon any private property owned by another person, condominium common elements, street, sidewalk, gutter or other public area unless such person shall remove all feces so deposited by such dog before leaving the immediate premises; provided, however, that the town shall provide excrement disposal containers in all public parks into which a person may deposit any feces instead of removing such feces from the park premises.
- (c) *Exception.* The provisions of this section shall not apply to any visually impaired person walking in control of a guide dog or by any person who is physically unable to remove such feces.
- (d) *Enforcement of section provisions.* For the purposes of enforcing the provisions of this section, tickets may be issued by any persons authorized to issue tickets for parking violations, the canine control officer of the town or his agent.
- (e) *Appeal.* Any person issued a ticket for violating any of the provisions of this section may appeal the fine as listed in the town fee schedule to the town manager and, if necessary, to the superior court. The town manager may, following a hearing on any such appeal, upon a showing of good cause, sustain the appeal and dismiss the ticketed violation.

(Ord. No. 2-93, §§ Iô IV, 6-8-1993)

Secs. 3-13—3-19. Reserved.

Part B. - Vicious or Dangerous Dogs

Sec. 3-20. Restraint.

Every animal established to be vicious or dangerous shall be confined by its owner or authorized agent of its owner within a building or secure enclosure as set forth in § 3-11 and, whenever outside the building or secure enclosure, shall be securely muzzled and restrained by a responsible adult with a chain having a minimum tensile strength of three hundred (300) pounds and not more than six (6) feet in length, or caged. Every person harboring an animal established

to be vicious or dangerous is charged with an affirmative duty to confine the animal in such a way as defined in § 3-11.

(Ord. No. 1-99, § 7, 3-2-1999)

Sec. 3-21. Registration and insurance requirements.

Every owner of an animal which has been established to be vicious or dangerous shall be subject to the following requirements:

- (1) The owner shall provide the town with written proof that the owner has procured liability insurance in an aggregate amount of not less than one hundred thousand dollars (\$100,000) for damage or injury to persons or property. Policy cancellation shall constitute a violation of this section and subject the owner to the penalties provided in this chapter, unless the owner provides the town with written proof that the vicious or dangerous animal has been sold, given away, died, or otherwise disposed of.
- (2) The owner or keeper shall display a sign on the premises warning that there is a vicious or dangerous animal or guard or attack dog on the premises. Such sign shall be visible to anyone entering the main entrance to the premises where the animal is domiciled or kept. The sign shall include both an approved vicious animal logo and lettering so as to warn both children and adults.

(Ord. No. 1-99, § 9, 3-2-1999)

Secs. 3-22—3-29. Reserved.

Article 3. - Impoundment

Sec. 3-30. Issuance of citations; hearing procedure.

- (a) In addition to any other remedies provided in this chapter and under state law, the animal control officer may seize, impound and humanely confine to an animal shelter or hospital, any of the following:
 - (1) Any dog without a valid license or identification tag when required by state law or town ordinance;
 - (2) Any dog at large;
 - (3) Any dog or animal constituting a public nuisance or considered to be a vicious or dangerous animal;
 - (4) Any dog or animal that is in violation of any quarantine or confinement order of the town's animal control officer;
 - (5) Any unattended animal that is ill, injured or otherwise in need of care;
 - (6) Any animal that is reasonably believed to have been abused or neglected;
 - (7) Any animal that is reasonably suspected of having rabies;
 - (8) Any dog or animal which an animal control officer or the police has established is a threat to public health and safety;
 - (9) Any dog or animal that an agency or court of competent jurisdiction has ordered impounded or destroyed; or
 - (10) Any dog or animal that is considered unattended or abandoned, such as in situations where the owner is deceased or has been arrested, incarcerated, or evicted.

- (b) The animal control officer may petition the superior court for such orders as required to enforce this article.

(Ord. No. 1-99, § 8, 3-2-1999)

Sec. 3-31. Notice to owner and redemption.

- (a) Upon impoundment of an animal, the animal control officer shall, within twenty-four (24) hours, attempt to notify the owner by telephone or by certified mail. If the owner is unknown, the animal control officer shall advertise for one (1) day in the lost and found column of a newspaper having a circulation in the town describing the animal, impounding number, and the phone number of the shelter.
- (b) An owner reclaiming an impounded animal shall pay a fee, as determined by the town council and listed in the town fee schedule, for impoundment, plus any advertising costs, plus board for each day the animal is impounded, plus veterinary costs incurred by the town.
- (c) It shall be the duty of the animal control officer to keep all impounded dogs for a period of seven (7) days from the date of notice to the owner by telephone or certified mail, or publication of notice. Any animal not claimed by and released to its owner within seven (7) days after publication or notice shall become the property of the town and shall be placed for adoption in a suitable home or euthanized in a manner prescribed by the local humane society.

(Ord. No. 1-99, § 10, 3-2-1999)

State law referenceô Redemption of impounded dog, state statute § 22-333.

CHAPTER IV - BUILDINGS AND BUILDING REGULATIONS

Article 1. - Building Code¹

Sec. 4-1. Additions, insertions, deletions and changes to state building code.

The following additions, insertions, deletions and changes to the state building code are hereby adopted:

Section 107.1 is hereby deleted in its entirety and the following substituted therefor:

107.1 Municipal officer to administer code. The building official shall be appointed by the town manager.

Sections 118.2, 118.3 and 118.4 shall be deleted in their entirety and the following substituted therefor:

- (1) *Building permit fees.* There is due the town a building permit fee for the construction, alteration, removal, or demolition of all buildings or structures at the rate listed in the town fee schedule of the value of such construction, alteration, removal or demolition work. The value of such work shall be as determined by the building department. There is no limit as to the maximum fee for any one permit. Failure to obtain the required permit will result in an additional fee listed in the town fee schedule of such work.
- (2) *Certificate of occupancy fees.* All persons desiring a certificate of occupancy for one-family or two-family dwellings shall pay to the town, before such certificate is issued, a fee as listed in the town fee schedule for each visit to the dwelling by the building official or his delegate. All persons desiring a certificate of occupancy for any other type of structure or dwelling shall pay a per visit fee listed in the town fee schedule.

Section 119 of the BOCA National Building Code. The chief building official is hereby authorized to issue citations in the amount listed in the town fee schedule for violations of section 119 of the BOCA National Building Code, which would be for the occupancy of a new building or change of use of an existing building, without a certificate of use and occupancy. Each day of occupancy for which there is not a certificate of occupancy shall be considered a separate violation. Any such fine issued pursuant to this section may be appealed to the town manager.

Section 1721.0 and sections following, entitled, "Septic tanks, privies, cesspools and other receptacles for domestic sewage: public toilet accommodations" are hereby deleted in their entirety.

(Ord. No. 1-87, § 2, 3-16-1987; Ord. No. 5-91, § 2, 6-18-1991; Ord. No. 3-97, § 6, 8-19-1997; Ord. No. 2-98, § 2, 7-14-1998)

¹ **State law references**—State building code, state statute § 29-252; state building code applicable to municipalities, state statute § 29-253; amendments to state building code, state statute § 29-254; penalty for violation of state building code, state statute § 29-254a.

Secs. 4-2—4-9. Reserved.

Article 2. - Vacant and Blighted Buildings²

Sec. 4-10. Purpose of article.

This article is authorized pursuant to state statutes §§ 7-148(C)(7)(A)(ii), and 7-148(C)(7)(H)(ii), (xi), (xiii), (xv). It is hereby found and declared that there exists within the town a significant number of real properties which contain vacant and blighted buildings. It is further found that the existence of these vacant and blighted buildings adversely effects property values within the town and threatens the health, safety and general welfare of its residents. (Ord. No. 1-00, § I, 1-25-2000)

Sec. 4-11. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accessory structure means a structure, the use of which is customarily incidental and subordinate to that of the principal building, structure or use on the same lot.

Blighted premises means:

- (1) Any vacant building or structure, or any vacant part of a structure that is a separate unit, or a vacant parcel of land, or any accessory structure, or a fence, and in which at least one (1) of the following additional conditions exists:
 - a. The building official determines that existing conditions pose a serious threat to the health and safety of the persons in the town;
 - b. It is not being maintained, as evidenced by the existence of one (1) or more of the following conditions:
 1. Missing or boarded windows or doors;
 2. Collapsing or missing walls, roof or floor;
 3. Exterior walls which contain holes, breaks, loose or rotting materials or which are not properly surface coated to prevent deterioration;
 4. Foundation walls which contain open cracks and breaks;
 5. Overhang extensions including, but not limited to, canopies, marquees, signs, awnings, stairways, fire escapes, standpipes and exhaust ducts, which contain rust or other decay;
 6. Chimneys and similar appurtenances which are in a state of disrepair;
 7. Insect screens which contain tears or ragged edges;
 8. Vermin infestation;
 9. Garbage, trash or abandoned vehicles on the premises, unless the premises is a junkyard licensed by the state;
 10. Overgrown grass or weeds at least one (1) foot in height; or
 11. In the case of a fence, missing or rotted boards or in an otherwise dilapidated condition;
 - c. It is attracting illegal activity as documented in police department records;

² **State law references**—Authority to regulate unsafe buildings, state statute § 29-253(b); state demolition code, state statutes § 29-401 et seq.

- d. It is a fire hazard as determined by the fire marshal or as documented in fire department records; or
 - e. It is a factor creating a substantial and unreasonable interference with the use and enjoyment of other premises within the surrounding area as documented by neighborhood complaints, police reports or the cancellation of insurance on proximate properties.
- (2) Any nonvacant building or structure, or any nonvacant part of a structure that is a separate unit, of which the building official determines that existing conditions pose a serious threat to the health and safety of the persons in the town.
- (3) Blighted premises shall not include any such building or structure located on any active farm.

Building citation hearing officer means such individual as is appointed by the town manager to conduct hearings authorized by this article.

Building official means such individual as is designated the chief building official by the town manager pursuant to state statutes.

Legal occupancy means occupancy in accordance with state building, state fire, local zoning, local housing and all other pertinent codes.

Neighborhood means an area of the town comprised of all premises or parcels of land any part of which is within a radius of one thousand (1,000) feet of any part of another parcel or lot within the town.

Owner means any person, institution, foundation, entity or authority which owns or leases real property within the town.

Proximate property means any premises or parcel of land within one thousand (1,000) feet of a blighted premises.

Vacant shall mean a period of sixty (60) days or longer during which a building or structure or part thereof is not legally occupied by human beings.

Vacant parcel shall mean a parcel of land with no structures thereon.
(Ord. No. 1-00, § II, 1-25-2000)

Cross reference—Definitions generally, chapter I § 1-2 of this code book.

Sec. 4-12. Administrative responsibility.

The town manager may prescribe administrative procedures for the purpose of effectuating this article.

(Ord. No. 1-00, § VII, 1-25-2000)

Sec. 4-13. Appointment of building citation hearing officer.

The town manager shall appoint one (1) or more town residents as building citation hearing officers, other than police officers or employees or persons who issue citations, to conduct the

hearings authorized by this article. Further, no zoning enforcement officer, building official or employee of the municipal body exercising code compliance authority may be appointed to be a hearing officer for citations issued for violations under this article.

(Ord. No. 1-00, § VI, 1-25-2000)

Sec. 4-14. Creating or maintaining.

No owner of real property within the town shall cause or allow blighted premises to be created, nor shall any owner allow the continued existence of blighted premises.

(Ord. No. 1-00, § III, 1-25-2000)

Sec. 4-15. Certification of list of blighted premises.

- (1) The town manager shall request that all town department heads report any property of which they are aware which appears to be blighted, as defined by this article. Such reports shall be submitted within thirty (30) days of the town manager's request.
- (2) The town manager shall use this information and any other available information to complete a list of blighted properties within sixty (60) days of his original request.
- (3) Within thirty (30) days of its completion, the town manager shall present the list to the town council which shall approve, disapprove, or modify the list. If the town council fails to approve, disapprove or modify the list within seventy-five (75) days from the date it receives it, then the list shall be deemed to have been approved.
- (4) Thereafter, the town manager may request the addition of any premises to or deletion from the blighted properties list for consideration by the town council. On or before January 15 of each year, the town manager shall renew the process of completing a list of blighted properties as specified in this section.
- (5) Any individual, or any civic organization or municipal agency, affected by the action or inaction of an owner of property subject to the provisions of this article, may file, in writing, a complaint of violation of this article with the town manager. If the town manager has reason to believe that an owner has violated the provisions of this article, he shall request the addition of the subject property to the blighted properties list for consideration by the town council.

(Ord. No. 1-00, § IV, 1-25-2000)

Sec. 4-16. Enforcement and hearings with property owners.

- (1) Once such list of blighted properties, or any additions thereto, has been approved by the town council, the town manager, or his designee, shall notify in writing by certified mail, return receipt or in-hand service by any proper officer or indifferent person, any owner of a blighted premises of the conditions in violation of this article. Further, that person shall be directed to correct such condition within fifteen (15) days of receipt of notification or to contact the town manager within fifteen (15) days of receipt of notification. Any fines, costs and fees for noncompliance within the provisions of the enforcement section of this article shall be included in such notice. If, within such fifteen (15) days, the owner contacts the town manager, the town manager may, upon representation of the owner that he intends to correct the blighted condition of his property, extend the period for correcting such blighted condition up to an additional one (1) year. If, after such fifteen (15) days, the conditions referred to within the notice have not been corrected and the owner has not contacted the town manager and received an extension pursuant to this

paragraph, the town manager shall issue a citation and impose a fine as listed in the town fee schedule for each day that the blighted premise(s) is in violation of this article. Each day that the blighted premise(s) is in violation of this article shall constitute a separate offense.

- (2) Within five (5) days of the issuance of such citation, the town manager shall send notice of it via certified mail, return receipt or in-hand service by any proper officer or indifferent person, to the person cited. Such notice shall inform the person cited:
 - (a) Of the allegations against him and the amount of the fines, costs and fees due;
 - (b) That he may contest his liability before a building citation officer by delivering in person, or by mail, written notice within ten (10) days of the date thereof;
 - (c) That if he does not demand such a hearing, any unpaid fine, cost or fee shall constitute a lien upon the subject real estate against which the fine, cost or fee was imposed as set forth in § 6 of this section; and
 - (d) That such lien may attach without further notice.
- (3) If the person who is sent notice pursuant to § (2) of this section wishes to admit liability for any alleged violation, he may, without request a hearing, pay the full amount of the fines, costs and fees admitted to in person or by mail to an official designated by the town manager. Such payment shall be inadmissible in any proceeding, civil or criminal, to establish the conduct of such person or other person making the payment. Any person who does not deliver or mail written demand for a hearing within ten (10) days of the date of the first notice provided for in § (2) of this section shall be deemed to have admitted liability, and the designated municipal official shall certify such person's failure to respond. The hearing officer shall thereupon enter and assess the fines, costs and fees provided for within the town fee schedule and shall follow the procedures set forth in § 6 of this section.
- (4) Any person who requests a hearing shall be given written notice via certified mail of the date, time and place for the hearing. Such hearing shall be held not less than fifteen (15) days, nor more than thirty (30) days from the date of the mailing of notice of hearing, provided that the hearing officer shall grant, upon good cause shown, any reasonable request by any interested party for postponement or continuance. An original or certified copy of the initial notice of violation issued by the town manager, or his designee, shall be filed and retained by the municipality, and shall be deemed to be a business record within the scope of state statute § 52-180 and evidence of the facts contained therein. The presence of the town manager, or his designee, shall be required at the hearing if such person so requests. A person wishing to contest his liability shall appear at the hearing and may present evidence on his behalf and shall have the right to cross examine all witnesses. A designated municipal official, other than the hearing officer, may present evidence on behalf of the municipality. If such person fails to appear, the hearing officer may accept from such person copies of police reports, investigatory and citation reports, and other official documents by mail, and may determine thereby that the appearance of such person is unnecessary. The hearing officer shall conduct the hearing in the order and form and with such methods of proof as he deems fair and appropriate. The rules regarding the admissibility of evidence shall not be strictly applied, but all testimony shall be given under oath or affirmation.
- (5) The hearing officer shall announce his decision at the end of the hearing. If he determines that the person is not liable, he shall dismiss the matter and enter his

determination in writing accordingly. If the person demonstrates that he intends to rehabilitate or demolish the blighted structure, the hearing officer shall stay the matter, and enter his determination in writing accordingly. Such stay shall be expressly conditioned upon the rehabilitation or demolition of the blighted structure within three (3) months. If the conditions of the stay have not been met within three (3) months, the hearing officer shall enter and assess the fines, costs and fees against such person as provided by this article retroactive to the date of the hearing. If the hearing officer determines that the person is liable for the violation, he shall forthwith enter and assess the fines, costs and fees against such person as provided by this article.

(6) If such assessment is not paid on the date of its entry, any unpaid fine, cost or fee shall constitute a lien upon the real estate against which the fine, cost or fee was imposed from the original date of such assessment. Each such lien may be continued, recorded and released in the manner provided by the state statutes of continuing, recording and releasing property tax liens. Each such lien shall take precedence over all other liens and encumbrances filed after the effective date of the article from which this article is derived, except taxes, and may be enforced in the same manner as property tax liens.

(7) In addition to any fines imposed in this section, this article may be enforced by injunctive procedure in the superior court. The town may further recover from such owner any and all costs and fees, including reasonable attorneys' fees, expended by the town in enforcing the provisions of this article.

(Ord. No. 1-00, § V, 1-25-2000)

Secs. 4-17—4-19. Reserved.

Article 3. - Numbering

Sec. 4-20. Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Building unit means a single-family dwelling, multifamily dwelling, permanent trailer home, apartment or condominium building or any unit therein with a separate exterior ground floor entrance, motel, commercial establishment, industrial building or governmental building, which may be occupied at any time by any person.

Building unit number means a number consisting of one (1) or more digits, each digit being no less than four (4) inches in height and two (2) inches in width, and such digits being of such color as to contrast with the color of the structure to which such building unit is attached; provided, however, that a digit for the numeral "one" shall not be subject to the stated width requirement.

Street means any public street or private way servicing the building unit.

(Ord. No. 5-88, § 1, 10-24-1988; Ord. No 1-90 §1, 2-13-1990)

Cross reference—Definitions generally, chapter I § 1-2 of this code book.

Sec. 4-21. Town engineering department to ascertain proper numbers.

The owner of a building unit shall ascertain the proper building unit number for the building unit from the town engineering department.

(Ord. No. 5-88, § 2, 10-24-1988)

Sec. 4-22. Display of building unit numbers.

The owner of a building unit shall display the building unit number on the building unit so as to be visible from the street to which it relates. In the case of a building unit being more than fifty (50) feet from the street, the owner shall, in addition to the number on the building unit, display a building unit number on a fence or post which is located within fifty (50) feet of the street and visible from the street. Any apartment or condominium building which contains units with separate exterior ground floor units shall comply with this article by displaying the building unit number on the corresponding building unit's exterior entrance.

(Ord. No. 5-88, § 3, 10-24-1988)

Sec. 4-23. Compliance with article provisions required.

Prior to the issuance of a certificate of occupancy for any building unit by the town building official, the owner shall fully comply with the provisions of this article.

(Ord. No. 5-88, § 4, 10-24-1988)

Sec. 4-24. Repair of damaged numbers.

If a building unit number becomes damaged, the owner shall repair the number within fourteen (14) days of written notice by the town police department to the owner's most recent mailing address as listed with the town assessor.

(Ord. No. 5-88, § 5, 10-24-1988)

Sec. 4-25. Penalty for violation of article.

Any owner who violates the provisions of this article shall be subject to a fine as listed in the town fee schedule. Each day of failure to comply shall be considered a separate violation.

(Ord. No. 5-88, § 6, 10-24-1988)

Secs. 4-26—4-29. Reserved.

Article 4. - Demolition

Sec. 4-30. Safety measures required.

Whenever a building or structure is removed or demolished, safety measures for all workmen there employed shall be provided and suitable protection shall be provided for the general public.

(Ord. of 12-17-1962, § 1)

Sec. 4-31. Fence or barricade.

- (1) During demolition operations, a substantial fence or barricade, not less than eight (8) feet high, shall be erected and maintained for the entire time that demolition work is performed on the building or structure.
- (2) The fence or barricade shall extend along the street line for the entire length of the building facing on the street, and each end shall be returned back to the building line.

Such fence shall be built solid for the entire length, except for such openings provided with sliding doors or doors swinging inward as may be necessary for a proper prosecution of the work.

- (3) The building inspector may waive the above fence or barricade requirements if, in his opinion, the absence of such would not create any hazard to person or property or he may impose similar requirements if in his opinion such are necessary for the protection of adjoining property or persons thereon or to prevent substantial interference with the use of such adjoining property.

(Ord. of 12-17-1962, § 2)

Sec. 4-32. Sidewalk sheds.

- (1) Whenever a building or structure, or part thereof, within six (6) feet of the street line and twelve (12) feet or more in height is to be demolished, or whenever a building or structure, or part thereof, within six (6) feet of which building the owner or lessee of the premises provides and invites the public to use a portion of the premises as they would a public way, is to be demolished, (unless the street is officially closed during demolition) a sidewalk shed shall be erected and maintained for the full length of the building on all street fronts for the entire time that demolition work is performed on the building. Buildings further than six (6) feet from the street line, or from an area where the owner or lease of the premises provides and invites the public to use a portion of their premises as they would a public way, shall require a sidewalk shed provided the distance from the street line to building is less than one-half (1/2) the total height of the building to be demolished, except that the building inspector may waive the requirement of a sidewalk shed where the building is more than forty (40) feet from the street line and its demolition is accomplished by the removal of one story at a time. Such sidewalk shed shall be not less than four (4) feet wide and eight (8) feet high in the clear. Such sheds shall be made water-tight and provisions shall be made for adequate lighting of walkways.
- (2) When the roofs of such sheds are used for the storage of material or for the performance of work of any kind, substantial railings not less than three (3) feet high and solid toe boards not less than six (6) inches high shall be placed along the open sides and ends of such roofs.
- (3) The roofs of such sheds shall be of sufficient strength and stability to maintain safely the weight of materials that may be placed thereon or sustain the shocks incidental to the handling of such materials or their preparation for use and to the accidental jars from trucks or material being delivered. In no case shall the design of this roof be such that it will not sustain a minimum live load of one hundred and fifty (150) pounds per square foot.
- (4) When the area occupied by the sidewalk or temporary walkway is to be excavated, such walkway shall be designed to support a total of not less than one hundred and fifty (150) pounds per square foot and shall be provided with suitable ramps at each end.

(Ord. of 12-17-1962, § 3)

Sec. 4-33. Certificate of insurance required.

Every applicant for a permit to demolish a building or structure or any part thereof within the city or town shall file with the building inspector evidence of the applicant's financial responsibility in the form of a certificate of insurance. The certificate of insurance shall provide

liability insurance covering bodily injury to persons with limits of at least one hundred thousand dollars (\$100,000) per accident with an aggregate of at least three hundred thousand dollars (\$300,000). The certificate of insurance shall provide liability insurance covering property damage of at least fifty thousand dollars (\$50,000) per accident with an aggregate of at least one hundred thousand dollars (\$100,000). The certificate of insurance shall provide that the town or city and its agents shall be saved harmless from any claim or claims resulting from the operations of the demolition which are caused by the negligence of the applicant, his agents, or employees. (Ord. of 12-17-1962, § 4)

Sec. 4-34. Utility connections to be severed.

Before a building or structure or any part thereof can be demolished, the applicant for a demolition permit shall furnish written evidence to the building inspector that all public utilities having service connections within the premises of the proposed demolition have severed such connections and service upon said premises. (Ord. of 12-17-1962, § 5)

Sec. 4-35. Protection required immediately upon obtaining permit.

After obtaining a permit for demolition from the building inspector the applicant shall immediately proceed to provide all protection as required by this article. (Ord. of 12-17-1962, § 6)

Sec. 4-36. Responsibility of permittee for compliance with article and application of regulations.

The demolition company, or the individual who obtains the permit for the demolition of the building, structure, or part thereof, shall be responsible for full compliance with all regulations contained in this article and any other statutes or ordinances pertaining to demolition. Demolition procedures shall not be used if they involve undue hazard or risk to the general public or unnecessary danger to the workmen; and any and all procedures followed in demolition operations shall be in accordance with good practice. The demolition contractor shall make suitable provision for the disposal of all materials accumulated during the demolition operations. No part of the protective structures erected during the demolition operations shall be overloaded by storage, materials, or debris to an extent beyond the per square foot live load capacity; and, in the event any protective structure shall become loaded to the extent of its live load capacity per square foot, then the demolition contractor shall immediately proceed to remedy such situation as it is construed to be a hazardous condition within the meaning of this article. Materials, which in their nature, would in removal cause or create excessive amounts of debris, dirt or dust to accumulate in the air shall be wet down to prevent the creation of any such nuisance. The requirements of this section are designated as the minimum necessary for average conditions. In unusual or dangerous situations adequate provisions shall be made by the demolition contractor and all precautions taken for the protection of the safety of the public and workmen employed on the site, in compliance with the requirements of the building inspector. (Ord. of 12-17-1962, § 7)

Sec. 4-37. Filling of basements, cellars, holes.

Where in the demolition of any building, structure, or part thereof, there remains on the premises, basements, cellars or holes and the like or any other such receptacles or containers of

percolating or rain waters shall be so altered to allow the drainage of said waters, and then such excavations shall be filled to grade and all excess materials, rubbish and debris, shall be removed from the premises. If a new building or structure is to be created upon the site of the demolished premises, then subject to the approval of the building inspector any of the aforesaid provisions of this section may be waived.
(Ord. of 12-17-1962, § 8)

Sec. 4-38. Notice of demolition to owners of adjoining property.

Prior to the commencement of any demolition operations under this code, notice by registered or certified mail shall be sent to the owners of any adjoining property.
(Ord. of 12-17-1962, § 9)

Sec. 4-39. Penalty for violation.

Any person or persons convicted of the violation of any of the provisions of this article shall be subject to a fine as listed in the town fee schedule or imprisonment for not more than one (1) year, or both.
(Ord. of 12-17-1962, § 10)

Article 5. Withhold Permits when Taxes are Delinquent

Sec. 4-40. Payment of delinquent taxes required for permit issuance.

The issuance of building permits, certificates of occupancy or other related certificates or permits shall be withheld when there is a tax delinquency with respect to the subject property. All permits or certificates for construction, alteration or occupancy must be withheld by the building or zoning official until the tax collector verifies that no tax delinquencies exist on the property for which the permit or certificate is sought.

The town manager shall have the authority to override the withholding of such permits on the property for which a tax delinquency exists if it is determined by the town manager that health or safety concerns, or other extraordinary circumstances, warrant such an override of this ordinance. Notification of such override shall be provided, along with the reasons for such override, to the tax collector and the building or zoning official.
(Ord. 03-11, 06-07-2011)

CHAPTER V - BUSINESSES

Article 1. - General

Note: Food Service Establishments ó ordinance repealed in its entirety by town council 2-26-2008

Note: Coin-Operated Machines ó ordinance repealed in its entirety by town council 10-16-2007 (Effective 7-1-2008.)

Secs. 5-1—5-9. Reserved

Article 2. - Motels³

Sec. 5-10. Scope of article.

- a) The purpose of this article is to set forth the minimum conditions for the maintenance of motels, exterior and interior, and all rooming units located within the motel, in the town.
- b) It is further declared that for all such motels this article shall:
 - 1) Establish minimum standards for basic equipment and facilities for safety from fire and accidents.
 - 2) Establish minimum standards for the amount of space for human occupancy.
 - 3) Establish minimum standards for the maintenance of a safe, sanitary and healthy environment.
- c) Additionally, this article will determine the responsibilities of owners and occupants of motels and rooming units and it will provide for the administration and enforcement of all such standards and responsibilities.

(Ord. No. 8-99, § 1, 9-14-1999)

Sec. 5-11. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accessory building means a building, the use of which is customarily incidental to that of a main building on the same lot, or on a contiguous lot under the same ownership.

Building means any structure having a roof and intended for the shelter, housing or enclosure of persons.

Building code means the state building code and any other state and local codes that are applicable.

Director of health means the director of health of the Central Connecticut Health District and shall include his agent.

³ **State law reference**—Lodginghouses, state statute §§ 19a-355 et seq., 21-48.

Garbage means the animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food.

Infestation means the presence, or evidence of presence, within or contiguous to a main or accessory building or premises, of insects, rodents, vermin or other pests.

Main building means any building in which is conducted the main or principal use of the lot on which such business is situated.

Motel means any house or building or portion thereof, kept, used, maintained, advertised or held out to the public to be a place, where sleeping accommodations are offered for pay to transient guests.

Occupant means any individual received or lodged for hire in a motel.

Owner means any person who, alone or jointly or severally with others, shall have legal title to any motel.

Premises means a lot, plot or parcel of land, excluding any building or structure thereon, on which is situated a motel.

Rooming unit means any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping.

(Ord. No. 8-99, § 2, 9-14-1999)

Cross reference—Definitions generally, chapter I § 1-2 of this code book.

Sec. 5-12. Applicability of article provisions.

Every motel and all rooming units therein shall comply with the provisions of this article. This article, however, shall not infringe upon any other applicable state or municipal statute, ordinance or regulation. The statute, ordinance or regulation which provides the maximum protection for the health, safety and welfare of the people shall prevail.

(Ord. No. 8-99, § 3, 9-14-1999)

Sec. 5-13. Licensing.

- a) *Motel permit required; fees.* No person shall operate a motel unless that person holds a valid motel permit issued by the director of health in the name of the owner and the motel. The owner shall apply to the director of health for such permit, or renewal thereof, on an application prepared by the director of health. Fees as listed in the town fee schedule must accompany the application. Licenses shall be issued/renewed in the month of June on an annual basis.
- b) *Issuance of permit; display; transfer; expiration date.* The director of health shall issue the motel permit only after such motel has been inspected by the director of health, town building official, and the town fire marshal and found to be in compliance with applicable state statutes, town ordinances and town regulations. Upon issuance, the motel permit shall be displayed in a conspicuous place within the motel at all times. No

such permit shall be transferable. Every permit shall expire one (1) year from the date of issuance.

(Ord. No. 8-99, § 4, 9-14-1999)

Sec. 5-14. Rooming unit standards and restrictions.

- a) Every rooming unit shall be equipped with a complete bathroom fixture group consisting of a flush water closet, lavatory basin and bathtub or shower in good working condition and installed and maintained in a manner prescribed by ordinances, rules and regulations of the town and the state. Such fixture group shall be properly connected to an approved disposal system and to an approved pressure water system.
- b) All bathroom fixtures shall be maintained in a sanitary condition.
- c) Linen, blankets, bed coverings and mattresses shall be clean and well-maintained. Clean sheets and pillow cases shall be provided for each new occupant and/or provided on a weekly basis. All clean linen, blankets and other laundry shall be stored in a separate area in a sanitary manner.
- d) Drinking cups provided by the management shall be either single service, throwaway type or glass which is sanitized and wrapped at each change of occupancy.
- e) Extermination, necessary to prevent infestation, shall be provided by a professional exterminator, registered in the state.
- f) All floor coverings shall be maintained in a clean, sanitary and safe manner and in good repair.
- g) Adequate window screening shall be provided.
- h) All storage areas shall be maintained in a clean, sanitary and organized manner, free from combustible and flammable materials. Such materials shall be stored as approved by the town fire marshal.
- i) Every rooming unit shall be equipped with permanent heating facilities which are properly installed and maintained in a safe and acceptable working condition and capable of safely and adequately heating all rooming units and bathrooms located therein to a minimum temperature of sixty-five (65°) degrees Fahrenheit. No portable heating unit is permitted. Hot water shall be provided at a minimum of one hundred and twenty (120°) degrees Fahrenheit as measured at the tap or discharge point.
- j) Every rooming unit shall contain written notice, posted in a conspicuous spot, of the maximum number of occupants as follows:
 - 1) There shall not be less than five hundred (500) cubic feet of air to each occupant over twelve (12) years of age.
 - 2) There shall not be less than three hundred (300) cubic feet of air to each occupant under twelve (12) years of age.
 - 3) In an emergency situation, an owner or representative of a motel may request of the town social service director for an exemption from the applicability of these minimum space requirements. Such request must be made prior to the creation of an overcrowding situation or within forty-eight (48) hours thereof. The social services director may allow such exemption for a period not to exceed seventy-two (72) hours. Such exemption must be in writing.
- k) No rooming unit may contain temporary kitchen facilities including, but not limited to, a hot plate or similar device.

(Ord. No. 8-99, § 5, 9-14-1999)

Sec. 5-15. Premises standards.

- a) All premises shall be graded and maintained so as to prevent the accumulation of stagnant water thereon.
- b) All premises shall be kept free from species of weeds or plant growth which are noxious or detrimental to the public health and/or in excess of a height of six (6) inches.
- c) All premises shall be maintained in a clean and sanitary condition, free from any accumulation of rubbish or garbage.
- d) All premises shall have sufficient containers kept secure in a sanitary condition for the disposal of garbage and rubbish.

(Ord. No. 8-99, § 6, 9-14-1999)

Sec. 5-16. Exterior and interior structure standards.

- a) All principal and accessory buildings shall be maintained structurally sound and in good repair.
- b) Every foundation, exterior wall, roof and all other exterior surfaces shall be maintained in a workmanlike fashion, and in such condition as to exclude rodents. The foundation elements shall adequately support the building at all points.
- c) Every exterior and interior wall shall be free of holes, breaks, loose or rotting boards or timbers and any other condition which might admit rain or dampness to the interior portions of the halls or to the occupied spaces of the building. All exterior and interior surface material must be adequately protected with paint, stain or siding in accordance with acceptable standards, and all siding material must be kept in good repair.
- d) Stairs and other exit facilities shall be adequate for safety, as provided in the building code, and shall comply with the following:
 - 1) Every stair, porch and appurtenance attached thereto shall be constructed as to be safe to use and capable of supporting the loads to which it is subjected, as required by the building code, and shall be kept in sound condition and good repair.
 - 2) Where deemed necessary for safety, every flight of stairs which is more than two (2) risers high shall have handrails located as required by the building code, and every porch which is more than two (2) risers high shall have handrails so located and of such design as required by the building code. Every handrail and balustrade shall be firmly fastened and shall be maintained in good condition.
- e) Every exterior window and basement hatchway shall be substantially tight and shall be kept in sound condition and repair.
- f) Every window shall be fully supplied with glass window panes, or an approved substitute, which are without open cracks and holes.

(Ord. No. 8-99, § 7, 9-14-1999)

Sec. 5-17. Electric service standards.

- a) Each rooming unit shall have electric service and outlets and/or fixtures capable of providing at least three (3) watts per square foot of floor area and shall have at least one (1) floor to wall-type outlet for each six (6) square feet or fraction thereof of floor area. In no case shall there be fewer than two (2) outlets.
- b) Convenient switches for turning on one (1) light in each room or passageway shall be located so as to permit the area ahead to be lighted.

- c) Every public hall and stairway in buildings containing three (3) or more rooming units shall be adequately lighted at all times so as to provide at least six (6) footcandles of light at the tread or foot level.
- d) Every public hall and stairway in buildings containing not more than two (2) rooming units may be supplied with conveniently located light switches controlling an adequate lighting system which may be turned on when needed, in place of full-time lighting.

(Ord. No. 8-99, § 8, 9-14-1999)

Sec. 5-18. Responsibility of occupants.

All tenants shall be responsible for maintaining the rooming unit in which he resides and shall exhibit a degree of personal hygiene within the rooming unit so as to maintain safe and sanitary conditions in compliance with this article. At no time shall a tenant infringe upon any neighboring rooming units due to odor, vermin or any other result emanating from poor sanitary practices.

(Ord. No. 8-99, § 9, 9-14-1999)

Sec. 5-19. Enforcement of article provisions.

- a) The director of health and the town fire marshal have concurrent responsibility for the enforcement of the provisions of this article. Both the director of health and fire marshal may periodically inspect any motel and its premises for violations of this article.
- b) Upon discovery by either the director of health or the town fire marshal of any violation of the provisions of this article, such director of health or fire marshal shall immediately notify the owner of the motel. Such notice shall be in writing, identifying the motel and specifying the violation, and stipulating the remedial action required.
- c) The service of notice of violation upon the owner shall be effectuated upon compliance of one of the following:
 - 1) By delivery to the owner or owner's agent personally or by leaving the notice at the usual place of abode of such owner or agent with a person of suitable age and discretion;
 - 2) By certified or registered mail addressed to such owner or agent at that person's last known address and at the mailing address of the motel, with postage prepaid; or
 - 3) By posting a copy of the notice in placard form in a conspicuous place on the premises.
- d) The owner of a motel found to be in violation of any of the provisions of this article, except any emergency overcrowding situation per § 5-14(j)(3), shall have thirty-six (36) days from the mailing of the notice to cure such violation.

- e) Whenever a violation of this article is deemed by the director of health or the town fire marshal to be dangerous or detrimental to life or health, such director of health or fire marshal may declare the motel to be a public nuisance. A declaration of public nuisance must be stated on the notice of violation, and such notice must clearly state that the nuisance must be abated within five (5) days of the receipt of notice. Should the nuisance not be timely abated, the director of health or fire marshal may remedy the situation through its officers, agents, employees or contractors. The expense of abating the nuisance shall be collected from the owner of the motel, including a service charge and penalty. Should voluntary payment not be tendered, then the cost of abating such nuisance shall be a lien on the property on which the motel is located.

(Ord. No. 8-99, § 10, 9-14-1999)

Sec. 5-20. Penalties for violation of article.

- a) Any person operating a motel in violation of any of the provisions of this article shall be guilty of a misdemeanor punishable by a fine as listed in the town fee schedule for each and every day that such violation shall continue.
- b) Any person found to have violated any provision of this article three (3) times shall forfeit his motel permit.

(Ord. No. 8-99, § 11, 9-14-1999)

Sec. 5-21. Appeal.

- a) Any person aggrieved by any order, requirement or decision made by an official under this article may take an appeal from such order or decision to the town manager within forty-eight (48) hours of the notice of violation by filing a written appeal with the town manager's office. The written appeal must be signed by the owner or the owner's agent and set forth why the finding of the violation was not proper.
- b) Upon the filing of a written appeal, the town manager shall schedule a hearing within fourteen (14) days. The decision of the town manager shall constitute the final decision of the town.

(Ord. No. 8-99, § 12, 9-14-1999)

Secs. 5-22—5-29. Reserved.

Article 3. - Peddlers and Solicitors⁴

Sec. 5-30. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Chief of police means the chief of police of the town or his designee.

⁴ **Editor's note**—Ord. No. 02-03, adopted March 25, 2003, enacted a new Art. 3 as set out herein. The former Art. V pertained to similar subject matter and was derived from Ord. No. 2-91, §§ 10-6, adopted May 9, 1991. Art. V was changed to Art. 3 with the new code.

Cross reference—Streets, sidewalks and other rights-of-way, state statute § 42-31 et seq.

State law references—Solicitation of charitable funds, state statute § 21a-175 et seq.; hawkers and peddlers, state statute § 21-36 et seq.; Home Solicitation Sales Act, state statute § 42-134a et seq.

Peddler means any person who travels from house to house selling or bartering any goods, wares, or merchandise whether on foot or from a motor vehicle.

Person means any individual, corporation, partnership, association or other entity, whether principal or agent, unless specifically exempted by statute from the provisions of this article.

Solicitor means any person traveling by foot or vehicle from house to house taking or attempting to take orders for the sale of goods, wares, or merchandise for future delivery, or for services to be performed in the future whether or not such soliciting employs samples and whether or not deposits or advance payments are collected.

Vendor means any person who engages in temporary or transient business in the town either in one or more locations, selling goods, wares, merchandise or foodstuffs.

(Ord. No. 02-03, 3-25-2003)

Cross reference—Definitions generally, chapter I § 1-2 of this code book.

Sec. 5-31. Hours of business.

Persons are prohibited from traveling from house to house engaging in the business of peddler, vendor or solicitor within the corporate limits of the town except between the hours of 8:00 a.m. and 8:00 p.m. Persons engaged in the business of peddler, vendor or solicitor who do not travel from house to house are prohibited from engaging in such business within the corporate limits of the town except between the hours 5:00 a.m. and 8:00 p.m.

(Ord. No. 02-03, 3-25-2003)

Sec. 5-32. License required; exemption; fee.

Persons are prohibited from engaging in the business of peddler, vendor or solicitor within the corporate limits of the town without first obtaining a license as prescribed in this section. Charitable, philanthropic, ecclesiastical and civic organizations shall be exempt from the provisions of this section, provided that any such organization shall register with the chief of police on a form provided by the police department prior to engaging in any vendor, solicitor or peddler activity. The registration fee shall be as listed in the town fee schedule for any organization and may be waived for good cause. No fee shall be required from any veteran who qualifies under state statute § 21-37, nor from anyone when otherwise prohibited by law. A copy of such registration shall be provided to each registrant and shall be carried by any person while engaging in any vendor, solicitor or peddler activity on behalf of any such organization.

(Ord. No. 02-03, 3-25-2003)

Sec. 5-33. Transaction of business on state highways and rights-of-way.

Notwithstanding the provisions of § 5-32 vendors, peddlers and solicitors are prohibited from transacting business on state highways or state rights-of-way abutting thereto. Vendors transacting business on private property abutting a state highway shall provide ample parking for patrons, and no parking is permitted on the state highway or state right-of-way. A violation of such parking prohibition shall be a violation by the vendor and subject the vendor to sanctions in § 5-36.

(Ord. No. 02-03, 3-25-2003)

Sec. 5-34. Sale of ice cream, candy, popcorn and similar foodstuffs prohibited; exception.

Notwithstanding the provisions of § 5-31, selling or soliciting the sale of ice cream, candy, popcorn and similar foodstuffs by a vendor, peddler or solicitor within five hundred (500) feet in any direction of a public school on any day school is in session is prohibited from one-half hour prior to the time set by school authorities for the opening of school to one-half hour after the time set for the end of the school day. Selling or soliciting the sale of ice cream, candy, popcorn and similar foodstuffs in any park or playground in the town by a vendor, peddler or solicitor is prohibited unless, in addition to meeting the other requirements of this article, prior written permission is obtained from the parks and recreation commission.

(Ord. No. 02-03, 3-25-2003)

Sec. 5-35. Application and licensing procedure.

- a) *Application.* Applicants for a license under this article must file with the chief of police a sworn written application, in duplicate, on a form provided by the police department.
- b) *Investigation of applicant.* Upon the filing of an application, the chief of police shall investigate the fitness of the applicant to become licensed under this article. In doing so the chief of police may conduct a wanted persons check and a state police records check (SPBI) on the applicant(s). Should the applicant's fitness be found unsatisfactory, the chief of police shall deny the application and note on the application the reasons for the unsatisfactory finding. Should the applicant's fitness be found satisfactory, the chief shall note such satisfactory finding on the application. The issue of fitness is determined by whether issuance of the license is consistent with protecting the health and welfare of the town residents.
- c) *Health certificate.* No person making application under this article to sell or solicit the sale of foodstuffs shall be issued a license until providing to the chief of police a certificate executed by the director of health of the Central Connecticut Health District stating that the director of health of the Central Connecticut Health District has approved the methods and equipment used by the applicant as being in accordance with the state public health code and regulations promulgated under such code.
- d) *Zoning certificate.* No person making application under this article shall be issued a license until providing to the chief of police a certificate executed by the zoning enforcement officer of the town stating that the proposed method of sale in the application is consistent with the town zoning regulations.
- e) *Proof of sales and use tax permit.* No person making application under this article shall be issued a license until providing proof to the chief of police of having a valid state sales and use tax permit or an exemption permit from such tax.

- f) *Issuance; fees; period of validity.* The chief of police, upon a determination that the requirements of this section have been met and that a license can be issued, shall approve the application and issue a license to the applicant upon payment of license fees as listed in the town fee schedule. All licenses issued under this article are valid for one (1) year from the date of issuance and, upon expiration, require the submission of a new application and, if approved, payment of the license fee. Upon issuance of a license the chief of police shall note on the license whether the park and recreation commission has permitted the license holder to sell or solicit the items set forth in § 5-34.

(Ord. No. 02-03, 3-25-2003)

Sec. 5-36. Penalty.

Any person violating any provision of this article shall be guilty of a violation and shall be subject to a fine in the amount as listed in the town fee schedule. Every day that a person continues in violation of this article shall be deemed a separate violation. The police department of the town shall enforce this article through the issuance of a summons to any person violating the provisions herein.

(Ord. No. 02-03, 3-25-2003)

Secs. 5-37—5-39. Reserved.

Article 4. - Sexually Oriented Business*

Part A. - Generally

Sec. 5-40. Declaration of article policy; findings; purpose and intent.

The town council finds:

1. The operation of sexually oriented businesses in the town requires special regulation and supervision by the town to protect, preserve and promote the health, safety and welfare of the patrons of such businesses, as well as the health, safety and welfare of the town's residents. Further, protecting order and morality, preserving the character and preventing the deterioration of the town's neighborhoods, promoting retail trade, maintaining property values, and ensuring sanitary and safe public places are desirable objectives of the community and its leaders.
2. The town council has reviewed the following materials and information regarding sexually oriented business:
 - a. Virginia Adult Use Study dated March 1996, published by the Newport News Department of Planning and Development in the Newport News, Virginia;
 - b. A study called the "Adult Entertainment Businesses in Indianapolis" dated February 1984 which was conducted by the Department of Metropolitan Development, Division of Planning;

* **Cross reference**—Zoning, Part Eight of this code book.
State law reference—Obscenity, state statutes § § 53a-93 et seq.

- c. A study called the "Adult Entertainment Businesses in Oklahoma City: A study of Real Estate Appraisers" dated March 3, 1986 which was conducted by the City of Oklahoma City Community Development Department;
 - d. *City of Renton v. Playtime Theatres, Inc. et.al.*, 475 US 41, 106 S.Ct.925 (1986);
 - e. Police records from the Orange Police Department relating to calls to the VIP store in Orange, Connecticut in 2003 and 2006;
 - f. Police records from the Berlin Police Department relating to calls to the Twin Spruce Motel located at 697 Berlin Turnpike;
 - g. Police records from the Hartford Police Department relating to calls to the VIP store in Hartford, Connecticut in 2003, 2004, 2005, 2006 and 2007;
 - h. Expert Opinion Testimony as set forth in the Expert Witness Disclosures in the case of *Tenø Cabaret, Ltd. V. City of New York, et.al.*, Index No. 121197/02, Supreme Court of the State of New York, County of New York, dated March, 2008.
 - i. Survey of Texas Appraisers "Secondary Effects of Sexually Oriented Businesses on Market Values" by Connie B. Cooper, FAICP, Eric Damian Kelly, Ph.D., FAIC, and "Crime Related Secondary Effects-Secondary Effects of Off Site sexually Oriented Businesses" by Richard McCleary, Ph.D. dated June 2008;
 - j. "Men's Behavior Toward women After Viewing Sexually-Explicit Films: Degradation Makes a Difference," Mulac, Jansma and Linz; *Communication Monographs*, Vol. 69, No. 4, December 2002, pp.311-328;
 - k. "Crime Risk in the Vicinity of a Sexually Oriented Business: A Report to the Centralia City Attorney's Office" by Richard McCleary, Ph.D. dated February 28, 2004;
 - l. "Do Off Site Adult Businesses Have Secondary Effects? Legal Doctrine, Social Theory, and Empirical Evidence," McCleary and Weinstein, November 14, 2007;
 - m. "Men's Interaction with Woman After Viewing Sexually Explicit Films: Does Degradation Make a Difference?" Jansma, Linz, Mulac and Imrich, *Communication Monographs*, Volume 64, March 1997;
 - n. Selected Craigslist Postings in 2007 and 2008;
 - o. City of Milford Adult Use Ordinance.
3. Statistics and studies performed by a substantial number of cities and towns in the United States indicate that:
- a. Large numbers of persons, primarily male, frequent such sexually oriented businesses, especially those which provide closed booths, cubicles, studios and rooms for the private viewing of so-called "adult" motion pictures, videotapes or live entertainment.
 - b. Such closed booths, cubicles, studios and rooms have been used by patrons, clients or customers of such sexually oriented businesses for the purpose of engaging in specified sexual activities.
 - c. Male and female prostitutes have been known to frequent such businesses in order to provide sex for hire to the patrons, clients or customers of such businesses within such booths, cubicles, studios and rooms.
 - d. Doors, curtains, blinds and other closures installed in or on the entrances and exits of such booths, cubicles, studios and rooms which are closed while such booths, cubicles, studios and rooms are in use encourage patrons using such booths, cubicles, studios and rooms to engage in specified sexual activities therein with prostitutes,

- other persons or by themselves, thereby promoting and encouraging prostitution and the commission of specified sexual activities which cause blood, semen, urine or other bodily secretion to be deposited on the floors and walls of such booths, cubicles, studios and rooms, which deposits could prove detrimental to the health and safety of other persons who may come into contact with such deposits.
- e. Booths, cubicles, studios and rooms that are closed while they are in use often contain holes that have been cut or smashed out of the walls or other partitioning material. These holes permit the inhabitant of one booth, cubicle, studio or room to engage in specified sexual activities with the inhabitant of the adjoining booth, cubicle, studio or room. These holes promote and encourage specified sexual acts to occur between persons anonymously. Anonymous sexual contact poses a higher risk of spread of communicable diseases, including the AIDS virus, Hepatitis B and other sexually transmitted diseases. Further, the existence of such holes in booths, cubicles, studios and rooms at sexually oriented businesses provides an increased risk that blood, semen, urine or other bodily secretion will be deposited on the floors and walls of such booths, cubicles, studios and rooms, which deposits could prove detrimental to the health and safety of other persons who may come into contact with such deposits.
 - f. Specified sexual activities often occur at unregulated sexually oriented businesses that provide live adult entertainment. Specified sexual activities include sexual physical contact between employees and patrons of sexually oriented businesses and specifically include ölap dancingö or manual or oral touching or fondling of specified anatomical areas, whether clothed or unclothed. Such casual sexual physical contact between strangers may result in the transmission of communicable diseases, which would be detrimental to the health of the patrons and employees of such sexually oriented businesses.
 - g. The unregulated operation of sexually oriented businesses, including off-site adult businesses like adult bookstores, adult video stores and adult novelty stores, is associated with an increase in the incidence of sex-related crimes and other crimes and also has a disruptive effect on the surrounding neighborhood by causing excessive noise, parking problems, the presence of discarded sexually oriented material on residential lawns, and the performance of sexual acts in public places, as well as causing a deleterious effect on surrounding businesses and decrease in the value of surrounding property.
 - h. Sexually oriented businesses that operate in close proximity to each other further contribute to an increase in crime, lower property values, blight and the downgrading of the quality of life and value of property in the adjacent area, and sexually oriented businesses that operate within a short distance of schools, churches, parks, libraries and other public facilities negatively impact such places and have an adverse effect upon persons, particularly children, walking to and from such places.
 - i. The reasonable regulation and supervision of such sexually oriented businesses tends to discourage prostitution, other sex-related crimes, anonymous and high-risk sexual contact and unsanitary sexual activity, excessive noise and property devaluation, thereby decreasing the incidences of communicable diseases and sex-related crimes, all thereby promoting and protecting the health, safety and welfare of the employees and the members of the public who patronize such businesses and protecting the health, safety and property interests of a town and its residents.

- j. Location and zoning regulations alone do not adequately protect the public health, safety and welfare and thus certain requirements with respect to the ownership, employees, facility, operation, advertising, hours of business and other aspects of the sexually oriented business are in the public interest.
4. The continued unregulated operation of such sexually oriented businesses is and would be detrimental to the health, safety and general welfare of the residents of the town.
5. The constitution and laws of the state grant to the town powers, especially the police power, to enact reasonable legislation and measures to regulate and supervise sexually oriented businesses in order to protect the public health, safety and welfare.
6. It is the purpose and intent of the town council, in enacting this article, to regulate sexually oriented businesses to promote the health, safety and general welfare of the residents of the town and to establish reasonable and uniform regulations of such businesses in order to reduce or eliminate the adverse secondary effects of such sexually oriented businesses, protect residents from increased crime, preserve the quality of life, preserve the property values and the character of surrounding neighborhoods and businesses, deter the spread of blight, and protect against the threat to public health from the spread of communicable and social diseases.
7. It is not the intent of the town council, in enacting this article, to deny to any person rights to speech protected by the United States or state constitutions, nor is it the intent of the council to impose any additional limitations or restrictions on the content of any communicative materials including sexually oriented films, videotapes, books or other materials. Further, by enacting this article, the council does not intend to deny or restrict the constitutionally protected rights of any adult to obtain or view any sexually oriented materials under the United States or state constitutions, nor does it intend to restrict or deny any constitutionally protected rights that distributors or exhibitors of such sexually oriented materials may have to sell, distribute or exhibit such materials.

(Ord. No. 5-00, § 1, 6-20-2000; Ord. of 9-6-2005; Ord. of 10-5-2006; ordinance rescinded 02-03-2009; Ord. No. 01-09, 02-03-2009)

Sec. 5-41. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Adult arcade means any establishment where one (1) or more still or motion picture projectors, slide projectors or similar machines, or other image producing machines, for viewing by five (5) or fewer persons each, are regularly used to show films, motion pictures, videocassettes, slides or other photographic reproductions that are characterized by the depiction or description of specified anatomical areas or specified sexual activities.

Adult cabaret means any nightclub, bar, restaurant or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features:

1. Persons who appear nude or seminude;
2. Live performances that are characterized by the exposure of specified anatomical areas; or

3. Films, motion pictures, videocassettes, slides or other photographic reproductions that are characterized by the depiction or description of specified anatomical areas or specified sexual activities.

Adult books means any books, magazines, periodicals, pamphlets, or other printed materials that depict, display or describe specified anatomical areas or specified sexual activities.

Adult entertainment means:

1. Any exhibition of any adult-oriented motion picture, live performance, display or dance of any type that has as a significant or substantial portion of such performance, any performance of specified sexual activities or exhibition and viewing of specified anatomical areas, removal of articles of clothing or appearing unclothed, pantomime, modeling, or any other personal services offered customers, when such adult entertainment is held, conducted, operated or maintained for profit, direct or indirect; and
2. Any amusement machine that is regularly used for presenting material that is characterized by the depiction or description of specified anatomical areas or specified sexual activities, for observation by patrons thereof.

Adult minimotion picture theater means any enclosed building with a capacity of fifty (50) or less persons regularly used for showing films, motion pictures, videocassettes, slides or other photographic reproductions that are characterized by the depiction or description of specified anatomical areas or specified sexual activities, for observation by patrons therein.

Adult motion picture theater means any enclosed building with a capacity of more than fifty (50) persons regularly used for showing films, motion pictures, videocassettes, slides or other photographic reproductions that are characterized by the depiction or description of specified anatomical areas or specified sexual activities, for observation by patrons therein.

Adult novelties means:

- a. instruments, devices, toys or paraphernalia that are designed for or marketed primarily for stimulating human genital organs, sexual arousal or sadomasochistic use;
- b. instruments, devices, gag gifts, toys or paraphernalia that depict, display or are shaped in the form of specified anatomical areas; and
- c. oils, lotions, gels or creams that are designed for or marketed primarily for use upon specified anatomical areas and intended for stimulating human genital organs, sexual arousal or as an aid to enhance or promote specified sexual activities.

Adult oriented store means any establishment having:

1. a substantial or significant portion of its stock in trade in Adult Books, Adult Videos or Adult Novelties or any combination thereof;
2. any portion of its stock in trade in Adult Books, Adult Videos or Adult Novelties and in conjunction therewith has rooms, designated areas or facilities for the presentation, observation or use by patrons of any item sold or rented in such establishment.

Adult theater means any theater, concert hall, auditorium or similar commercial establishment that regularly features persons who appear nude or seminude or who appear in live performances that are characterized by the depiction or description of specified anatomical areas or specified sexual activities, for observation by patrons therein.

Adult videos means films, motion pictures, videocassettes, DVDs, software, slides or other photographic reproductions that depict, display or describe specified anatomical areas or specified sexual activities.

Church means any church, synagogue, mosque, temple or building that is used primarily for religious worship and related religious activities.

Employee means any and all persons, including independent contractors, who work in or at or render any services directly related to the operation of a sexually oriented business.

Entertainer means any person who provides adult entertainment within a sexually oriented business, whether or not a fee is charged or accepted for such entertainment and whether or not such entertainment is provided as an employee or independent contractor.

Escort means any person who, for any form of consideration, agrees or offers to act as a social companion, guide or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

Escort agency means any person or business that furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

Inspector means the town manager, chief of police, fire marshal, chief building official, director of health, zoning enforcement officer, their agent or representative, or any town or state employee designated to make inspections for public safety, fire code, building code, public health, zoning purposes, violations of this article, or for violations of other laws and ordinances of the town or state.

Licensed premises means any premises that requires a sexually oriented business license pursuant to this article, including any buildings, parking areas and all other portions of the property of which the licensee has control.

Licensee means any person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on an application for a license.

Live adult entertainment means any live performance by a person who appears nude or seminude or any live performance that is characterized by the exposure of specified anatomical areas.

Massage parlor means any establishment having a fixed business where any person engages in or carries on, or permits to be engaged in or carried on, any method of pressure on, or

friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating of the external soft parts of the body with the hands or with the aid of any mechanical or electric apparatus or appliance with or without any supplementary aids such as rubbing alcohol, liniments, antiseptics, oils, powders, creams, lotions, ointments, or other similar preparations commonly used in this practice. The definition of massage parlor shall not include the practice of massage:

1. In any state-licensed hospital, nursing home, clinic, medical office or rehabilitation facility;
2. By a state-licensed physician, surgeon, chiropractor, osteopath, physical therapist, or massage therapist;
3. By any registered nurse, licensed practical nurse or technician working under the supervision of a state-licensed physician, surgeon, chiropractor, osteopath, physical therapist, or certified massage therapist who shall be present on the licensed premises during the time the service is rendered;
4. By trainers for any amateur or professional athlete or athletic team or school athletic program; or
5. By any state-licensed barber or beautician with regard to the massaging of the neck, face, scalp and hair for cosmetic or beautifying purposes.

Masseur means any person who, for any form of consideration, performs massage activities as described in the previous definition of this section.

Minor means any person under the age of eighteen (18) years.

Nude model studio means any place where a person, for any form of consideration, regularly appears nude or seminude or displays specified anatomical areas to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. A nude model studio shall not include a modeling class operated by an accredited public or private school or college.

Nudity means:

1. The appearance of human bare buttocks, anus, genitals, pubic region or the areola or nipple of the female breast; or
2. A state of dress that fails to opaquely and fully cover human buttocks, anus, genitals, pubic region or areola or nipple of the female breast.

Operator means any person operating, owning, managing, conducting or maintaining a sexually oriented business.

Public building means any building owned, leased or otherwise held by the United States, the state, the town, any other town, any fire district, any school district, or any other agency or political subdivision of the United States or the state, which building is used for governmental purposes.

Public park and recreation area means public land that has been designated for park or recreational activities including, but not limited to, a park, playground, nature trails,

swimming pool, reservoir, athletic field, golf course, basketball or tennis courts, pedestrian or bicycle paths, open space, wilderness areas, or similar public land within the town that is under the control, operation, or management of the town, any other town, or the state.

School means any public, private or parochial educational facility including, but not limited to, child day care facilities, nursery schools, preschools, kindergartens, elementary schools, middle schools, junior high schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, alternative schools, junior colleges, colleges and universities. School includes the school grounds, but does not include any facility used primarily for another purpose and only incidentally as a school.

Seminude means a state of dress in which clothing covers no more than the genitals, pubic region and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

Sexual activities is not intended to include any medical publications or films or bona fide educational publication or films, nor does it include any art or photography publications that devote at least twenty-five percent (25%) of the lineage of each issue to articles and advertisements dealing with subjects of art or photography. Nor does this definition apply to any news periodical that reports or describes current events and which, from time to time, publishes photographs of nude or seminude persons in connection with the dissemination of the news. Nor does this definition apply to publications or films that describe and report different cultures and which, from time to time, publish or show photographs or depictions of nude or seminude persons when describing cultures in which nudity or seminudity is indigenous to the population.

Sexual encounter establishment means a business or commercial establishment that, for any form of consideration, offers a place where two (2) or more persons may congregate, associate or consort for the purpose of specified sexual activities or the exposure of specified anatomical areas. A sexual encounter establishment shall not include an establishment where a state-licensed medical practitioner, psychologist, psychiatrist, or similar professional person engages in medically approved and recognized sexual therapy.

Sexually oriented business means:

1. An adult arcade, adult oriented store, adult cabaret, adult minimotion picture theater, adult motion picture theatre, adult theatre, escort agency, massage parlor, nude model studio or sexual encounter establishment;
2. Any premises to which the public, patrons, or members are invited or admitted and wherein an entertainer provides adult entertainment, or which premises are so physically arranged as to provide booths, cubicles, studios, rooms, compartments or stalls separate from the common areas of the premises for the purpose of viewing adult-oriented motion pictures or wherein an entertainer provides adult entertainment, when such adult entertainment is held, conducted, operated or maintained for profit, direct or indirect; or
3. Any adult entertainment studio or any premises that are physically arranged and used as such, whether advertised or represented as an adult entertainment studio, rap

studio, exotic dance studio, encounter studio, sensitivity studio, modeling studio or any other term of like import.

Specified anatomical areas means:

1. Less than completely and opaquely covered human genitals, pubic region, buttocks, anus or female breasts below a point immediately above the top of the areola; or
2. Human male genitals in a discernibly turgid state, even if completely opaquely covered.

Specified sexual activities means:

1. Showing of human genitals in a state of sexual stimulation or arousal;
2. Acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sadomasochistic abuse, fellatio or cunnilingus;
3. Fondling or touching of another person's genitals, pubic region, buttocks or female breasts;
4. Lap dancing; or
5. Excretory functions as part of or in connection with any of such activities.

(Ord. No. 5-00, § 2, 6-20-2000; Ord. of 9-6-2005; Ord. of 10-5-2006; ordinance rescinded 02-03-2009; Ord. No. 01-09, 02-03-2009)

Cross reference—Definitions generally, chapter I § 1-2 of this code book.

Sec. 5-42 Penalties for violation of article.

- a. Any licensee, operator, employee or other person who violates any of the provisions of this article shall be subject to a fine as provided in the town fee schedule for each such violation.
- b. Each violation of this article shall be considered a separate offense, and any violation continuing more than one (1) hour of time shall be considered a separate offense for each hour of violation.
- c. In addition to any fines or penalties imposed in this section, this article may be enforced by injunctive procedure in the superior court. The town may further recover from any violator any and all costs and fees, including reasonable attorney's fees, expended by the town in enforcing the provisions of this article.
- d. This article shall not preclude any additional enforcement action taken by any appropriate town, state or federal official conducted pursuant to any applicable ordinance, regulation or law of the town or state or the United States of America.
- e. All remedies and penalties provided for in this section shall be cumulative and independently available to the town, and the town shall be authorized to pursue any and all remedies set forth in this section to the fullest extent allowed by law.

(Ord. No. 5-00, § 14, 6-20-2000; Ord. of 9-6-2005; Ord. of 10-5-2006; ordinance rescinded 02-03-2009; Ord. No. 01-09, 02-03-2009)

Part B. - License

Sec. 5-43. Required.

- a. Except as provided in § 5-50(c), from and after the effective date of the ordinance from which this article is derived it shall be unlawful for any person to engage in, conduct or

carry on or permit to be engaged in, conducted or carried on, in or upon any premises in the town, the operation of a sexually oriented business without first obtaining a license to operate from the town.

- b. A license may be issued for only one (1) sexually oriented business located at a fixed and certain place. Any person who desires to operate more than one (1) sexually oriented business must have a license for each such business.
- c. It shall be a violation of this article for any owner, operator, entertainer or employee to knowingly work in or about, or to knowingly perform any service directly related to, the operation of any unlicensed sexually oriented business.
- d. Each license shall be specific to a licensee and to a location and may not be sold, assigned or transferred to any other person or location in any way, including, but not limited to:
 1. The sale, lease or sublease of the business;
 2. The transfer of shares, securities or interests that constitute a controlling interest in the business, whether by sale, exchange or similar means; or
 3. The establishment of a trust, gift or other similar legal devise that transfers ownership or control of the business, except for a transfer by bequest or other operation of law upon the death of the licensee or a person possessing the ownership or control of the licensee.

(Ord. No. 5-00, § 8, 6-20-2000; Ord. of 9-6-2005; Ord. of 10-5-2006; ordinance rescinded 02-03-2009; Ord. No. 01-09, 02-03-2009)

Sec. 5-44. Application.

- a. The operator of each sexually oriented business shall submit an application to the town clerk together with an application fee as listed in the town fee schedule prior to the commencement of business or within sixty (60) days of the effective date of the ordinance from which this article is derived for any establishment already open for business. The town clerk shall date stamp the application and shall promptly deliver the application to the town manager. The application shall be made upon a form prepared by the town manager and disseminated by the town clerk.
- b. The application shall be signed and filed by a person having direct control or management of the proposed sexually oriented business. In instances where the applicant is a partnership, limited liability company or corporation, the application shall be signed and filed by a duly authorized partner, member, manager, officer, director, or majority shareholder of such entity, as the case may be. The application shall be sworn to be true and correct by the applicant.
- c. The applicant for a license shall furnish the following information:
 1. Name and business and residence address of the applicant, owner, operator, manager and any other person having direct control or management of the sexually oriented business, including all fictitious names. If the applicant is a partnership, the names of all general partners. If the applicant is a limited liability company, the names of all members and managers of such company. If the applicant is a corporation, the names of all officers, directors and shareholders holding a ten percent (10%) or greater interest in the total number of shares of such corporation;
 2. Name and business and residence address of the spouse of each individual named in § (c)(1) of this section;

3. Name and address of all employees and any other persons directly involved in the operation of the sexually oriented business, including all fictitious names;
4. Written proof that the applicant is at least eighteen (18) years of age;
5. A recent photograph of the applicant;
6. The applicant's driver's license number and social security number or federal employer identification number;
7. If the applicant is:
 - a. A partnership, the application shall be accompanied by the partnership agreement, if any;
 - b. A limited partnership, the application shall specify the name of the partnership, the date and state of the filing of its certificate of limited partnership, and the name and address of its statutory agent for service of process, and shall be accompanied by a copy of the partnership agreement, if any, and by evidence that such partnership is in good standing under the laws of the state;
 - c. A limited liability company, the application shall specify the name of the company, the date and state of the filing of its articles of organization, and the name and address of its statutory agent for service of process, and shall be accompanied by a copy of the operating agreement, if any, and by evidence that such company is in good standing under the laws of the state;
 - d. A corporation, the application shall specify the name of the corporation, the date and state of incorporation, and the name and address of its statutory agent for service of process, and shall be accompanied by a copy of its bylaws, if any, and by evidence that such corporation is in good standing under the laws of the state;
 - e. Operating under a fictitious name, the application shall be accompanied by a copy of the applicant's recorded trade name certificate.
8. The applicant's sexually oriented business or adult entertainment license or permit history, which shall include, but not be limited to whether such person is currently licensed or has previously operated in this or another municipality or state under license; the names and locations of such businesses; whether the applicant has had such license suspended or revoked; the dates of and reasons for such suspension or revocation; and the business entity or trade name under which the applicant operated that was subject to the suspension or revocation. Such history shall include any entity of which the applicant was a partner, member, officer, director or shareholder;
9. Any criminal convictions of the applicant, operator, employees and other persons directly involved in the management or control of the sexually oriented business, to any crime involving moral turpitude, prostitution, obscenity or other sex-related crimes in any jurisdiction within three (3) years of the date of filing of the application. Such crimes include, but are not limited to, obscenity, child pornography, prostitution, patronizing a prostitute, promoting or permitting prostitution and sexual assault, in the state, being state statutes §§ 53a-194, 53a-196, 53a-196a, and 53a-196b (obscenity); state statutes §§ 53a-196c and 53a-196d (child pornography); state statutes §§ 53a-82, 53a-83 and 53a-83a (prostitution, patronizing a prostitute, and patronizing a prostitute from a motor vehicle); state statutes §§ 53a-86, 53a-87, 53a-

- 88 and 53a-89 (promoting or permitting prostitution); and state statutes §§ 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a, 53a-72b and 53a-73a (sexual assault);
10. The location of the sexually oriented business to be operated by the applicant, including the street address, legal description of the property, and telephone number, if any;
 11. The exact nature of the entertainment to be conducted at the sexually oriented business;
 12. A sketch or diagram showing the configuration of the premises drawn to a designated scale and with marked dimensions of the interior of the premises, including a statement of total floor space occupied by the business. Such sketch or diagram shall include, without limitation, all doors, windows, bars, stages, manager's stations, restrooms, dressing rooms, booths, cubicles, rooms, studios, compartments, stalls, overhead lighting fixtures and any areas where patrons are not permitted; and
 13. A statement by the applicant that he is familiar with the provisions of this article, is in compliance with them, and consents to the authority of the town in licensing and regulating the proposed sexually oriented business.
- d. The town manager shall have the right to request additional information and documentation of the applicant and the proposed business to support or clarify any information previously provided.
 - e. If a license to operate a sexually oriented business is granted, the information furnished in the application, including employee information, shall be updated within thirty (30) days of any material changes. Such update shall be filed at the office of the town clerk, who shall promptly forward such update to the town manager.
(Ord. No. 5-00, § 9, 6-20-2000, Ord. of 9-6-2005; Ord. of 10-5-2006; ordinance rescinded 02-03-2009; Ord. No. 01-09, 02-03-2009)

Sec. 5-45. Licensing procedure.

- a. The town manager shall be responsible for investigating, granting, denying, renewing, suspending and revoking all sexually oriented business applications and licenses pursuant to this article. Upon receipt of a properly completed application with all required attachments, the town manager shall immediately forward copies of such application to the following town officials for their investigation:
 1. The chief of police shall investigate the criminal convictions, qualifications and suitability of the applicant to be licensed and shall inspect the premises for compliance with all laws and regulations.
 2. The fire marshal shall investigate the compliance of the proposed premises with all applicable fire codes and laws.
 3. The chief building official shall investigate the compliance of the proposed premises with all applicable building codes and laws.
 4. The director of health shall investigate the compliance of the proposed premises with all applicable public health codes and laws.
 5. The zoning enforcement officer shall investigate the compliance of the proposed premises with all applicable zoning regulations and laws and also compliance with all distance requirements set forth in § 5-49.
- b. Within thirty (30) days of the date the application was filed, all such investigations to be performed pursuant to § (a) of this section shall be completed. At the conclusion of each

investigation, each town official shall indicate on the photocopy of the application his approval or disapproval of the application, state the reasons for any disapproval, date it, sign it, and return it immediately to the town manager. A town official shall disapprove an application if he finds that the proposed sexually oriented business will be in violation of any provision of any statute, code, article, regulation or other law in effect in the town, including this article.

- c. Within forty-five (45) days of the date the application was filed, the town manager shall render a decision approving or denying such application and shall file such decision with the town clerk and mail such decision to the applicant by certified mail, return receipt requested. If the town manager denies the application, he shall state in writing the reasons for such denial. All copies of the investigations performed pursuant to § (b) of this section shall be attached to the town manager's decision.
- d. The town manager shall issue to the applicant a license to operate a sexually oriented business within forty-five (45) days of the date the application was filed if all requirements for a sexually oriented business described in this article are met, unless he finds that:
 1. The applicant is under eighteen (18) years of age.
 2. The applicant or any other person who will be directly engaged in the management and operation of the business has been convicted in this or any other state of any of the crimes specified in § 5-44(c)(9), regardless of the pendency of any appeal, within three (3) years of the date the application was filed.
 3. Within five (5) years of the date the application was filed, the applicant or his spouse has been denied a license by the town to operate a sexually oriented business, has had a license revoked by the town, or has failed to correct any material violation of this article for more than thirty (30) days, of which the licensee has received written notice.
 4. Within three (3) years of the date the application was filed, the applicant or his spouse has had a license to operate a sexually oriented business denied or revoked by another municipality or state.
 5. The applicant or his spouse is overdue on payment to the town of any taxes, fees, fines or other penalties relating to the sexually oriented business or the licensed premises.
 6. The business as proposed by the applicant, if permitted, would not have complied with all applicable statutes, codes, ordinances, laws and regulations including, but not limited to, the fire, building, health, and zoning codes of the town, and this article. If the premises are not in compliance, the applicant shall be advised of the reasons in writing and what, if any measures the applicant can take to bring the premises into compliance for a license to issue.
 7. The premises are not in compliance with all distance requirements set forth in § 5-49.
 8. The applicant has failed to complete the license application as specified in § 5-44(c), has failed to provide any supporting or clarifying documentation when requested by the town manager, or has provided materially false or misleading information in the application.
 9. The application fee has not been paid.
 10. The granting of the application would violate a statute, ordinance or court order.

11. The applicant, if a limited partnership, limited liability company or corporation, is not in good standing under the laws of the state.
- e. Any failure of the license to issue within forty-five (45) days of the date the application was filed shall constitute a denial subject to appeal.
 - f. If the sexually oriented business application is denied, the town shall retain one-half (½) of the permit fee for expenses incurred in the investigation of the application and shall return the remainder to the applicant.
 - g. When an application is denied solely for reasons stated in § (d)(6) of this section and such violation is correctable, the applicant shall be given an additional thirty (30) days from the date of such notification of denial to bring the premises into compliance. Upon verification by inspection that the correction has been made, which shall be determined no later than forty-eight (48) hours after receipt by the town manager of written notice of such correction, a license shall be issued to the applicant so long as no new violations or other disqualifying factors have occurred within such thirty (30) days.
 - h. As a condition of the license, the entire licensed premises shall be open to random physical inspections for compliance with this article by any inspector during all hours when the premises are open for business. Any refusal to allow such inspection shall constitute a violation of this article.
 - i. The license, if granted, shall state on its face the name and residence address of the person to whom it is granted, the expiration date, the address of the sexually oriented business, and the department or public official and telephone number to report any violation of this article. The license shall also include a notice that the subject premises are subject to random inspections by inspectors of the town for compliance with this article.
 - j. The license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at all times.

(Ord. No. 5-00, § 10, 6-20-2000, Ord. of 9-6-2005; Ord. of 10-5-2006; ordinance rescinded 02-03-2009; Ord. No. 01-09, 02-03-2009)

Sec. 5-46. Expiration and renewal.

- a. Each license issued to a licensee shall expire one (1) year from the date it is issued, unless it is renewed upon application of the licensee accompanied by payment of a renewal fee as listed in the town fee schedule. Such application and application fee shall be submitted by the licensee to the town clerk at least thirty (30) days before the expiration date of the license, but not more than ninety (90) days before. Provided the application is filed within such time and the renewal fee paid, the town manager shall, prior to the expiration of the previous license, renew the license for the same licensee at the same location for an additional one (1) year, unless the random inspection reports in the licensee's file reveal uncorrected violations of this article or uncorrected violations of any fire, building, health or zoning codes or regulations, of which the licensee has received written notice, or any condition under § 5-45(d) that could have been grounds for denial of the original application has since become true. If renewed, the town manager shall mail the renewed license to the licensee prior to the expiration date of the previous license. If not renewed, the town manager shall mail a notice of nonrenewal to the licensee by certified mail, return receipt requested, prior to the expiration date of the

previous license, stating the reasons for such nonrenewal. No sexually oriented business shall continue operations without a renewed license.

- b. If there are uncorrected violations of this article or uncorrected violations of any fire, building, health or zoning codes or regulations, of which the licensee has received written notice, the license renewal shall be delayed for a maximum of thirty (30) days beyond the original expiration date in order for all corrections to be completed and inspections done to determine compliance. If the licensee does not make such corrections of violations within such thirty (30) days, no license renewal shall be issued. The town manager shall mail a notice of nonrenewal to the licensee by certified mail, return receipt requested, within five (5) days after the extended thirty (30)-day period, stating the reasons for such nonrenewal.
- c. Notwithstanding the provisions in § (b) of this section, in no instance shall a renewal be issued to a licensee who, within the one (1)-year period of the previous license has had two (2) or more material violations of this article, to which the licensee has received written notice, or has had one (1) or more uncorrected material violations of this article pending for over thirty (30) days.
- d. Should a license not be renewed for any violation of this article, no license shall issue for the same licensee for five (5) years from the expiration of the previous license.

(Ord. No. 5-00, § 11, 6-20-2000, Ord. of 9-6-2005; Ord. of 10-5-2006; ordinance rescinded 02-03-2009; Ord. No. 01-09, 02-03-2009)

Sec. 5-47. Suspension and revocation.

- a. The town manager may suspend a sexually oriented business license for a period not to exceed thirty (30) days upon his determination that a licensee, operator or employee has materially violated any part of this article. The town manager shall issue such suspension in writing stating the reasons therefor and shall notify the licensee by certified mail, return receipt requested, addressed to the licensee at his business or residence address, or by service by any process server at the usual place of abode of the licensee or at the licensed premises. If a suspension is issued for a correctable violation, the town manager, within forty-eight (48) hours of his receipt of written notice that the correction has been made, shall terminate such suspension upon verification by inspection. No sexually oriented business shall continue operations while under suspension.
- b. The town manager shall revoke any license where any of the following occur:
 1. It is discovered that materially false or misleading information or data was given on, or material facts were omitted from, any application for sexually oriented business license.
 2. Any taxes, fees, fines or other penalties relating to the licensed premises or required to be paid by this article become more than thirty (30) days delinquent.
 3. A licensee, operator, employee or other person directly involved in the management or control of the sexually oriented business has been convicted of any crime specified in § 5-44(c)(9).
 4. A licensee has had within a one (1)-year period two (2) or more material violations of this article, to which the licensee has received written notice.
 5. A licensee has one (1) or more uncorrected material violations of this article pending for over thirty (30) days, to which the licensee has received written notice.

6. A licensee has failed to correct within thirty (30) days any violation for which his licensee was suspended pursuant to § (a) of this section.
 7. The license or any interest therein is transferred in any way.
 8. A licensee, operator or employee has knowingly allowed any live performance or conduct featuring any specified sexual activities to occur on the licensed premises.
 9. A licensee, operator or employee has knowingly allowed any illegal activity to occur on the licensed premises including, but not limited to, prostitution, gambling, or the possession, use or sale of controlled substances.
 10. A licensee, operator or employee has knowingly operated the sexually oriented business while the business's license was under suspension.
- c. At least ten (10) days prior to the revocation of any license, the town manager shall issue such revocation in writing stating the reasons therefor and shall notify the licensee by certified mail, return receipt requested, addressed to the licensee at his business or residence address, or by service by any process server at the usual place of abode of the licensee or at the licensed premises.
 - d. Subject to § 5-48(f), no sexually oriented business shall continue operations after its license has been revoked, and no new license shall be issued for the same licensee for five (5) years from the date of revocation.

(Ord. No. 5-00, § 12, 6-20-2000, Ord. of 9-6-2005; Ord. of 10-5-2006; ordinance rescinded 02-03-2009; Ord. No. 01-09, 02-03-2009)

Sec. 5-48. Appeal.

- a. Within five (5) days of receipt of notification of a denial, nonrenewal, suspension or revocation of a license, the licensee may contest such decision by submitting a written application to the town clerk requesting a public hearing before the town council.
- b. The public hearing shall be scheduled to take place no later than twenty (20) days from the date of the application for such hearing. Not less than ten (10) days before the date of such hearing, a notice of hearing shall be sent to the licensee by certified mail, return receipt requested, and posted in a conspicuous place on the proposed or licensed premises.
- c. In such application the licensee may request that the town manager or any other town official who investigated the application or inspected the premises shall be present at the public hearing. At such hearing, the licensee shall have the opportunity to present evidence on his behalf and shall have the right to cross examine all town officials and witnesses. The town council shall conduct the hearing in order and form and with such methods of proof as it deems fair and appropriate. The rules regarding the admissibility of evidence shall not be strictly applied, but all testimony shall be given under oath or affirmation.
- d. Immediately following such hearing, the town council shall enter its vote to either sustain or overrule the denial, nonrenewal, suspension or revocation. Within five (5) days after such hearing, the town council shall issue written notice of its final decision, stating the reasons therefor, and shall forward such decision to the licensee by certified mail, return receipt requested. If the denial, nonrenewal, suspension or revocation is overruled, the town manager shall immediately issue such license or renewal of license, or revoke the suspension or revocation, as the case may be.

- e. The decision of the town council may be appealed to the superior court within twenty (20) days of such written notice of such decision.
 - f. During the pendency of any appeal of a nonrenewal, suspension or revocation, the operations of the sexually oriented business may be maintained by the licensee, unless otherwise ordered by the superior court.
- (Ord. No. 5-00, § 13, 6-20-2000, Ord. of 9-6-2005; Ord. of 10-5-2006; ordinance rescinded 02-03-2009; Ord. No. 01-09, 02-03-2009)

Part C. - Regulations

Sec. 5-49. Location.

- a. No sexually oriented business shall be permitted on a site that is less than one thousand and five hundred (1,500) feet from any other site containing a sexually oriented business.
- b. No sexually oriented business shall be permitted on a site that is less than one thousand (1,000) feet from any site containing a church, school, public building, public park or recreation area.
- c. No sexually oriented business shall be permitted on a site that is less than two hundred and fifty (250) feet from any residentially zoned land as defined in the town zoning regulations.
- d. No sexually oriented business shall be permitted within the same building, structure or portion thereof that is used for residential purposes or that contains another sexually oriented business.
- e. All distances contained in this section shall be measured by taking the nearest straight line between the respective lot boundaries of each site.
- f. Section X1, chapter Y, of the town zoning regulations, as may be amended from time to time, are hereby incorporated by reference as a part of this article, and any violation of such regulations shall be deemed a violation of this article.

(Ord. No. 5-00, § 3, 6-20-2000, Ord. of 9-6-2005; Ord. of 10-5-2006; ordinance rescinded 02-03-2009; Ord. No. 01-09, 02-03-2009)

Sec. 5-50. Existing businesses.

- a. Any sexually oriented business lawfully operating on the effective date of the ordinance from which the article is derived but in violation of § 5-49 shall be deemed a nonconforming use. No nonconforming use shall be increased, enlarged, extended or altered except to make it a conforming use.
- b. Any sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the subsequent location of any church, school, public building, public park or recreation area within one thousand (1,000) feet of such business, or of any residentially zoned land within two hundred and fifty (250) feet of such business. However, this subsection applies only to the renewal of a valid license and does not apply to a license application submitted after a license has expired or has been revoked.

- c. Any existing sexually oriented business on the effective date of the ordinance from which this article is derived shall submit an application for a license pursuant to § 5-43 and shall comply with all regulations herein within sixty (60) days of the effective date of the ordinance from which this article is derived. Otherwise, such existing sexually oriented business shall cease operations.

(Ord. No. 5-00, § 7, 6-20-2000, Ord. of 9-6-2005; Ord. of 10-5-2006; ordinance rescinded 02-03-2009; Ord. No. 01-09, 02-03-2009)

Sec. 5-51. Operating requirements.

The following requirements shall apply to all sexually oriented businesses within the town:

(1) Generally.

- a. No licensee, operator or employee of a sexually oriented business shall perform or permit to be performed, offer to perform, or allow patrons to perform any live performance or conduct featuring any specified sexual activities on the licensed premises.
- b. Every sexually oriented business shall comply with all applicable statutes, codes, ordinances, laws and regulations including, but not limited to, the fire, building, health, and zoning codes of the town and state.
- c. Every sexually oriented business shall be physically arranged in such a manner that the entire interior portion of any room or other area used for the purpose of viewing Adult Books, Adult Videos or Adult Novelties or other types of adult entertainment shall be clearly visible from the common areas of the premises. Visibility into such areas shall not be blocked or obscured by doors, curtains, partitions, drapes or any other obstruction whatsoever. Such areas shall be readily accessible at all times to employees and shall be continuously open to view in their entirety. It shall be a violation of this article to install enclosed booths, cubicles, rooms or stalls within sexually oriented businesses, for whatever purpose, but especially for the purpose of providing for the secluded viewing of adult-oriented motion pictures or other types of adult entertainment.
- d. Every sexually oriented business, including common areas, entryways, parking areas, restrooms, and any room or other area used for the purpose of viewing adult-oriented motion pictures or other types of adult entertainment, shall be well-lighted. The entire premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted to access at an illumination of not less than one (1) footcandle as measured at the floor or ground level. It shall be the duty of the operator and his agents to ensure that such illumination is maintained at all times that any patron is present on the premises.
- e. No booths, cubicles, rooms or stalls used for the purpose of viewing adult-oriented motion pictures or other types of adult entertainment shall be occupied by more than one person at any one time. No holes shall be allowed in the walls or partitions that separate each such room from any adjoining room.
- f. No sexually oriented business shall be conducted in such a manner that permits the observation of any material depicting specified anatomical areas or specified sexual activities from outside of the building that houses the sexually oriented business.
- g. No sexually oriented business shall advertise the availability at such business of any activity that would be in violation of this article or any state or federal law. Nor shall

any exterior sign, display, decoration, show window or other advertising of such business contain any material depicting, describing or relating to specified anatomical areas or specified sexual activities.

- h. No alcoholic beverage or other intoxicant shall be displayed, served, ingested or sold on the premises of any sexually oriented business unless permitted by the state. No licensee, operator or employee shall be under the influence of any alcoholic beverage or other intoxicant while working at a sexually oriented business. No patron who is under the influence of any alcoholic beverage or other intoxicant shall be allowed to enter any sexually oriented business.
- i. No gambling shall be permitted by any person in any sexually oriented business.

(2) Employees.

- a. The licensee and operator shall be responsible for the conduct of all employees while on the licensed premises. Any act or omission of any employee constituting a violation of the provisions of this article shall be deemed the act or omission of the licensee and operator, when such licensee or operator knew or should have known of such act or omission, for purposes of determining whether the operating license shall be renewed, suspended or revoked and whether the licensee and operator shall be subject to the penalties imposed by this article.
- b. No licensee or operator shall knowingly employ in any sexually oriented business any person who, within three (3) years of the commencement of such employment, has been convicted in this or any other state of any of the crimes specified in § 5-44(c)(9), regardless of the pendency of any appeal.

(3) Minors.

- a. No licensee, operator or employee of a sexually oriented business shall allow or permit any minor to enter into or in any way loiter in or on any part of the licensed premises, purchase goods or services at the licensed premises, or work at the licensed premises as an employee.
- b. Every sexually oriented business shall display a sign outside each entrance of such business bearing the words "Sexually Oriented Business. Persons Under 18 Not Admitted" in legible letters between two (2) and six (6) inches tall.

(4) Hours of business. No sexually oriented business shall open to do business before 10:00 a.m., Monday through Saturday, nor shall it remain open after 1:00 a.m. Tuesday through Friday, nor after 2:00 a.m. Saturday, Sunday or any legal holiday as designated in state statute § 1-4.

(Ord. No. 5-00, § 4, 6-20-2000, Ord. of 9-6-2005; Ord. of 10-5-2006; ordinance rescinded 02-03-2009; Ord. No. 01-09, 02-03-2009)

Sec. 5-52. Live adult entertainment.

In addition to the requirements contained in § 5-51, the following requirements shall apply to all sexually oriented businesses within the town containing live adult entertainment:

- 1. No person shall perform live adult entertainment for patrons of a sexually oriented business except upon a stage at least eighteen (18) inches above floor level and separated from any and all such patrons by a minimum distance of four (4) feet or as approved by the liquor division of the state department of consumer protection.
- 2. Separate dressing room facilities for male and female entertainers shall be provided that shall not be occupied or used in any way by any one other than such entertainers.

3. No entertainer shall expose any specified anatomical areas to any patron of a sexually oriented business either before or after a performance including, but not limited to, when such entertainer is entering or exiting the stage.
 4. No entertainer, either before, during or after a performance, shall have physical contact with any patron of a sexually oriented business while on the licensed premises.
 5. No employee of any sexually oriented business shall engage in any live adult entertainment while acting as a waiter, host or bartender for such business.
- (Ord. No. 5-00, § 5, 6-20-2000, Ord. of 9-6-2005; Ord. of 10-5-2006; ordinance rescinded 02-03-2009; Ord. No. 01-09, 02-03-2009)

Sec. 5-53. Massage parlors.

In addition to the requirements contained in § 5-51, the following requirements shall apply to all massage parlors within the town:

1. Facility requirements.
 - a. Construction of rooms used for toilets, tubs, steam baths and showers shall be waterproofed with approved waterproof materials.
 - b. Toilet facilities shall be provided in convenient locations. When five (5) or more persons of different sexes are on the premises at the same time, separate toilet facilities shall be provided. Toilets shall be designed as to the sex accommodated therein.
 - c. Lavatories or wash basins provided with both hot and cold running water shall be installed in either the toilet room or vestibule. Lavatories or wash basins shall be provided with soap in a dispenser and with sanitary towels.
2. Operating requirements.
 - a. Every portion of the massage parlor, including appliances and apparatus, shall be kept clean and operated in a sanitary condition. Adequate lighting shall be provided, and each room or enclosure where a massage is administered shall have an illumination of not less than one (1) footcandle as measured at the floor level while such room or enclosure is occupied.
 - b. All employees of the massage parlor shall be clean and wear clean outer garments, which use is restricted to the massage parlor. Provisions for a separate dressing room for each sex must be available on the licensed premises with individual lockers for each employee. Doors to such dressing rooms shall open inward and shall be self-closing.
 - c. All employees and masseurs shall be modestly attired. Diaphanous, flimsy, transparent, form-fitting, or tight clothing is prohibited. Clothing must cover the employee's or masseur's chest at all times. Hemlines of skirts, dresses or other attire may be no higher than three (3) inches above the top of the knee.
 - d. All specified anatomical areas of patrons must be covered by towels, cloth or undergarments when in the presence of any employee or masseur. It shall be unlawful for any person in a massage parlor to expose his specified anatomical areas to any other person or for any person to expose the specified anatomical areas of another person.
 - e. It shall be unlawful for any person in a massage parlor to engage in any specified sexual activities or to place his hand upon, to touch with any part of his body, to

- fondle in any manner, or to massage any specified anatomical areas of any other person.
- f. All massage parlors shall be provided with clean, laundered sheets and towels in sufficient quantity and shall be laundered after each use thereof and stored in an approved sanitary manner.
 - g. Wet and dry heat rooms, shower compartments and toilet rooms shall be thoroughly cleaned each day business is in operation. Bathtubs shall be thoroughly cleaned after each use.
 - h. No massage parlor shall place, publish, or distribute or cause to be placed, published, or distributed any advertising material that depicts any portion of the human body or contains any written text that would reasonably suggest to prospective patrons that any services are available other than those services described in § 5-41, or that employees or masseurs are dressed in any manner other than described in § (2)c of this section.
 - i. All services enumerated in § 5-41 shall be performed in a cubicle, room, booth or area within the massage parlor, which cubicle, room, booth or area shall have transparent doors or walls that all activity therein shall be visible from outside the same.
 - j. No massage parlor shall carry on, engage in, or conduct business on Sunday nor on any other day before 8:00 a.m. or after 9:00 p.m.
 - k. A full schedule of service rates shall be posted in a prominent place within the massage parlor in such a manner as to come to the attention of all patrons. No charges other than the specified rates for specified services shall be allowed and all patrons shall be notified of the full cost of services prior to the rendering of any service.

(Ord. No. 5-00, § 6, 6-20-2000, Ord. of 9-6-2005; Ord. of 10-5-2006; ordinance rescinded 02-03-2009; Ord. No. 01-09, 02-03-2009)

Secs. 5-54—5-69. Reserved.

Article 5. - Disqualification of Certain Contractors from Municipal Work

Sec. 5-70. Disqualification of contractors.

- (a) As used in this article, the term "contractor" means any person, firm, partnership or corporation which has contracted or seeks to contract with a municipality, or to participate in such a contract, directly or indirectly, in connection with any public works of the municipality, including professional consultants.
- (b) The town manager shall have the authority to disqualify any contractor, for a period up to two (2) years, from bidding on, applying for, or participating as a subcontractor under, contracts with the municipality for one (1) or more of the causes set forth in § (c) of this article. The town manager shall notify such contractor of the disqualification by certified mail indicating the reasons for such disqualification and the length of such disqualification. The contractor shall have ten (10) days from receipt of such notice to request a hearing to contest the disqualification. If a hearing is requested then the town manager shall appoint a hearing officer to conduct a hearing. At the hearing the town and the contractor subject to the disqualification shall be provided the opportunity to present evidence or testimony as to whether or not the disqualification shall be upheld. The hearing officer shall issue a written decision within ninety (90) days of the last date of such hearing and state in the decision the reasons for the action

taken, and, if the contractor is disqualified, the period of such disqualification. The existence of one (1) or more of the causes for disqualification set forth in § (c) shall not be the sole factor in determining whether the contractor shall be disqualified. The hearing officer shall consider the seriousness of the contractor's acts or omissions and any mitigating factors. The hearing officer shall send a copy of the written decision to the town manager and the contractor by certified mail, return receipt requested.

(c) The reasons for disqualification of a contractor from participating in municipal work are as follows:

- (1) Conviction or entry of a plea of guilty or nolo contendere for or admission to commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- (2) Conviction or entry of a plea of guilty or nolo contendere or admission to the violation of any state or federal law for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which affects responsibility as a municipal contractor;
- (3) Conviction or entry of a plea of guilty or nolo contendere or admission to the violation of any state or federal antitrust, collusion or conspiracy law arising out of the submission of bids or proposals on a public or private contract or subcontract;
- (4) A willful failure to perform in accordance with the terms of one (1) or more public contracts, agreements or transactions;
- (5) A history of failure to perform or of unsatisfactory performance of one (1) or more public contracts, agreements or transactions; or
- (6) A willful violation of a statutory or regulatory provision or requirement applicable to a public contract, agreement or transaction.

(d) For purposes of a disqualification, conduct may be imputed as follows:

- (1) The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor and the contractor knew of or had reason to know of such conduct. The term "other seriously improper conduct" does not include advice from an attorney, accountant or other paid consultant if it was reasonable for the contractor to rely on such advice.
- (2) The fraudulent, criminal or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee or other individual associated with the contractor who participated in, knew of or had reason to know of the contractor's conduct.
- (3) The fraudulent, criminal or other seriously improper conduct of one (1) contractor participating in a joint venture or similar arrangement may be imputed to other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangement and these contractors knew of or had reason to know of such conduct.

(e) The town manager may reduce the period or extent of disqualification, upon the contractor's request, supported by documentation, for one (1) or more of the following reasons:

- (1) Newly discovered material evidence;
 - (2) Reversal of the conviction upon which the disqualification was based;
 - (3) Bona fide change in ownership or management;
 - (4) Elimination of other causes for which the disqualification was imposed; or
 - (5) Other reasons the municipality deems appropriate.
- (f) The town council may grant an exception permitting a disqualified contractor to participate in a particular contract or subcontract upon a written recommendation by the head of the contract awarding agency that there is good cause, in the best interest of the town, for such action.
(Ord. No. 03-09, 05-19-2009)

Secs. 5-71—5-79. Reserved.

Article 6. Preferential Bidding Procedures

Sec. 5 – 80. Definition. For the purpose of this section town-based business means a business with a principle place of business located within the town. A business shall not be considered a town-based business unless satisfactory evidence has been produced to the town manager whereby the business establishes that it owns real property which has its principle place of business and pays taxes on real and personal property to the town.

Such evidence may include proof of ownership of real estate by copy of deed and copies of paid tax bills for real and personal property. The personal property shall be used by the business in the performance of the bid.

Sec. 5-81. Low Bidder. On any project, which shall be defined as all contracts to be made or let for work to be done or for supplies to be purchased for the town which is ten thousand dollars (\$10,000) or more, the lowest bidder shall be determined in the following manner:

a. Any town-based bidder which has submitted a bid of no more than five percent (5 %) higher than the low bid, when such bid is between ten thousand dollars (\$10,000) and five hundred thousand dollars (\$500,000), provided such town-based bidder agrees to accept the award of the bid in the amount of the low bid. If more than one (1) town-based bidder has submitted a bid no more than five percent (5%) higher than the low bid and has agreed to accept the award at the amount of the low bid, the lowest responsible bidder shall be that one (1) of such town-based bidder which has submitted the lowest bid.

b. Any town-based bidder which has submitted a bid of no more than three and one-half percent (3.5%) higher than the low bid, when such bid is between five hundred thousand and one million dollars (\$500,001) and one million dollars (\$1,000,000), provided such town-based bidder agrees to accept the award of the bid in the amount of the low bid. If more than one town-based bidder has submitted a bid no more than three and one-half percent (3.5%) higher than the low bid and has agreed to accept the award at the amount of the low bid, the lowest responsible bidder shall be that one of such town-based bidder which has submitted the lowest bid.

c. Any town-based bidder which has submitted a bid of no more than two percent (2%) higher than the low bid, when such bid is one million and one dollars (\$1,000,001) or higher, provided such town-based bidder agrees to accept the award of the bid in the amount of the low bid. If more than one (1) town-based bidder has submitted a bid no more than two percent (2%)

higher than the low bid and has agreed to accept the award at the amount of the low bid, the lowest responsible bidder shall be that one (1) of such town-based bidder which has submitted the lowest bid.

d. The low bidder.

(Ord. No. 04-09, 05-19-2009)

Sec. 5-82. State and federally funded projects. The provisions of this section shall not apply to any projects which prohibit preferential bidding procedures which may include but may not be limited to state and federally funded projects.

(Ord. No. 04-09, 05-19-2009)

CHAPTER VI - EMERGENCY SERVICES

Article 1. - General

Secs. 6-1—6-9. Reserved.

Article 2. - Alarm Systems⁶

Sec. 6-10. Purpose of article.

The purpose of this article is to set forth regulations governing burglary, robbery, fire, medical assistance and/or any other emergency or alarm systems, businesses and agents within the town, to require permits therefore, to provide the authority to establish fees, and to provide for punishment of violations of provisions of this article.

(Ord. No. 04-02, § 1, 4-1-2002)

Sec. 6-11. Definitions.

For the purpose of this article, certain words and phrases shall be construed herein as set forth in this section unless it is apparent from the context that a different meaning is intended.

Alarm agent means any person who is employed by an alarm business, either directly or indirectly, whose duties include any of the following: selling, maintaining, leasing, servicing, repairing, altering, replacing, removing, responding to, monitoring of, or installing on or in any building, structure or facility, any alarm system.

Alarm business means the occupation by any person of selling, leasing, maintaining, servicing, repairing, altering, replacing, moving, monitoring of, responding to, or installing any alarm system or causing to be sold, leased, maintained, serviced, repaired, altered, replaced, moved, monitored, responded to, or installed any alarm system in or on any building, structure or facility. Provided, however, that alarm business shall not include a business that engages in the manufacture or sale of an alarm system unless such business services, installs, monitors or responds to alarm systems.

Alarm device means any component incorporated into an alarm system.

Alarm system means any mechanical or electrical device that is designed or used for the detection of burglary, robbery, fire, medical assistance and/or any other emergency within a building, structure or facility or for altering others of the commission of any unlawful act, hazard or emergency within a building, structure or facility, or both, which emits a sound or transmits a signal or message when activated. Devices that are not designed or used to register alarms that

⁶ **Editor's note**—Ord. No. 04-02, adopted April 1, 2002, repealed the former Art. II, §§ 18-31 to 18-41, and enacted a new Art. II as set out herein. The former Art. II pertained to similar subject matter and was derived from Ord. No. 3-88, §§ 1, 2, 4 to 12, adopted March 14, 1988; Ord. No. 290, adopted May 31, 1990; and Ord. No. 5-92, adopted Aug. 18, 1992. Art. II is now Art. 2 in new code book.

are audible, visible or perceptible outside of the protected building, structure or facility are not included within this definition.

Chief fire marshal means the chief fire marshal of the town.

Chief of police means the chief of police of the town.

Communications center means any location in the town used to receive and/or dispatch requests for emergency service.

False alarm means:

- (1) The activation of an alarm system through mechanical failure, malfunction, improper installation or the negligence of the owner or lessee of an alarm system or his employees or agents; or
- (2) Use of an alarm system to summon police or fire department personnel for reasons other than those listed on alarm system user permits.

A false alarm shall not include alarm activation caused by the malfunction of telephone company equipment or by an act of God.

It shall be a rebuttable presumption that a false alarm has occurred when an alarm system is activated and no evidence of attempted entry or fire emergency to warrant activation exists. In such instances, the chief of police shall determine whether a false alarm has occurred, with the exception that the chief fire marshal shall determine whether a false alarm has occurred to any fire alarm system.

Fire alarm system means any alarm system regulated by state statute § 29-292 and/or the Connecticut Fire Safety Code. Devices that are not designed or used to register alarms that are audible, visible or perceptible outside of the protected building, structure or facility are not included within this definition.

Intentional false alarm means knowingly engaging an alarm system with intent to produce a false alarm.

Permittee means any person who shall be granted a permit as provided in this article, including agents and representatives thereof.

Person means any natural person, firm, partnership, association, corporation, limited liability company or entity of any nature.

(Ord. No. 04-02, § 2, 4-1-2002)

Cross reference—Definitions generally, chapter I § 1-2 of this code book.

Sec. 6-12. Permits required; term; liability of town; penalty for violation.

- (a) No person shall possess or use an alarm system within the town without first applying for and receiving an alarm user permit.
- (b) Any permit issued hereunder shall be valid for one (1) year from the date of issuance.

- (c) Any permit issued hereunder shall be predicated upon the express condition that the permittee shall indemnify and hold the town harmless from any and all damages arising out of the activities of any permittee.
- (d) Any person who violates any of the provisions of this section shall be subject to a penalty as listed in the town fee schedule.

(Ord. No. 04-02, §, 4-1-2002; Deletions made when new Code was adopted)

Sec. 6-13. Permit applications.

- (a) All applications for alarm user permits shall be accompanied by an application fee as listed in the town fee schedule and filed with the communications center. The application must state the address where the alarm device or alarm system will be located, the name of the installer, the name of the monitoring company, the type of device or system, a list of persons to be contacted in the event of an alarm, and other information as may be required for the public's health and safety.
- (b) All applications for permits under this section shall be forwarded by the communications center to the chief of police, who shall be the authority with power to grant or deny such applications, with the exception that the chief fire marshal shall be the authority with power to grant or deny such applications that involve any fire alarm system.
- (c) All alarm devices and alarm systems are subject to approval by the chief of police prior to installation, with the exception of any fire alarm system, which shall be subject to approval by the chief fire marshal.

(Ord. No. 04-02, § 4, 4-1-2002; Deletion made when new code was adopted.)

Sec. 6-14. Alarm system connected to communications center.

- (a) No alarm device or alarm system shall be connected, directly or indirectly, to or use any telephone line in the communications center unless authorized by the chief of police, provided that such connection is not required by state statute § 29-292 or the Connecticut Fire Safety Code.
- (b) Any person who violates any of the provisions of this section shall be subject to a penalty as listed in the town fee schedule.

(Ord. No. 04-02, § 5, 4-1-2002)

Sec. 6-15. Alarm systems to be in good working order.

The installation or maintenance of alarm devices or alarm systems permitted by this article, including any connection to the communications center, shall be at no cost to the town. Each permittee shall maintain each alarm system in good working order so as to prevent malfunctions and false alarms.

(Ord. No. 04-02, § 6, 4-1-2002)

Sec. 6-16. Notification prior to service.

A permittee shall notify the communications center fifteen (15) minutes prior to any service, test, repair, maintenance, adjustment or alteration on the alarm device or alarm system. Any alarm device or alarm system activated by virtue of any such service, test, repair, maintenance, adjustment or alteration without such prior notice shall constitute a false alarm.

(Ord. No. 04-02, § 7, 4-1-2002)

Sec. 6-17. Suspension and revocation of permit.

The chief of police may suspend or revoke any permit issued under this article for violation of the terms of this article or other good cause, provided that the alarm system is not required by state statute § 29-292 or the Connecticut Fire Safety Code. The chief of police may remove any alarm system connection from the communications center for violation of this article or for false alarms in excess of two (2) in any calendar year, provided that such connection is not required by state statute § 29-292 or the Connecticut Fire Safety Code.

(Ord. No. 04-02, § 8, 4-1-2002)

Sec. 6-18. Penalty for intentional false alarm.

Any person who causes an intentional false alarm within the town shall be subject to a penalty as listed in the town fee schedule.

(Ord. No. 04-02, § 9, 4-1-2002)

Sec. 6-19. Penalties for false alarms.

Any person whose property is protected by an alarm system shall, for false alarms activated on such property, be penalized as follows:

- (1) For the first two (2) false alarms in any one (1) calendar year, written warning.
- (2) For the third (3rd) false alarm in any one (1) calendar year, as listed in the town fee schedule.

(Ord. No. 04-02, § 10, 4-1-2002)

Sec. 6-20. Appeals procedure.

The denial of a permit, the suspension or revocation of a permit, the assessment of any penalties, or any other action taken by the chief of police or chief fire marshal pursuant to this article, may be appealed to the town manager or his designee within thirty (30) days of the date of such action, and then, if necessary, to the superior court.

(Ord. No. 04-02, § 11, 4-1-2002)

Sec. 6-21. No duty to maintain communications center.

The town shall be under no duty or obligation to any permittee or any other person to maintain a communications center receiving module or other specialized equipment for the monitoring of any alarm system.

(Ord. No. 04-02, § 12, 4-1-2002)

Sec. 6-22. Enforcement.

- (a) All fines or penalties paid pursuant to this article shall be payable to the treasurer of the town. The chief of police shall have the option of issuing an infraction or summons for violation of this ordinance.
- (b) Failure to pay any penalty imposed under this article in full within thirty (30) days of notice to the penalized person shall constitute a separate and distinct violation of this article and such penalty shall immediately double. Each month thereafter that the penalty remains unpaid shall constitute a separate violation and the penalty shall be increased by the original penalty amount.
- (c) The town may institute civil proceedings and take such further action as it deems necessary to enforce the provisions of this article.

Rev.3/06/2012

(Ord. No. 04-02, § 13, 4-1-2002; Wording added in (a) concerning the chief of police when new code was adopted.)

CHAPTER VII - ENVIRONMENT

Article 1. – General

Secs. 7-1—7-9. Reserved.

Article 2. - Litter⁷

Sec. 7-10. Prohibited acts; penalty.

The throwing or placing of waste material or paper in any highway in the town, except in receptacles provided for such waste, is prohibited, and any person violating the provisions of this section shall, upon conviction, be fined as provided in the town fee schedule.

(Ord. No. 4-99, § 1, 3-2-1999)

Secs. 7-11—7-19. Reserved.

Article 3. - Junked, Wrecked, Abandoned Property

Part A. - Generally

Sec. 7-20. Legislative intent.

It is found and declared that junked or abandoned vehicles, junked or abandoned appliances and other unsightly materials upon any property in town:

- (a) Are considered a public nuisance and have an adverse effect upon the public landscape and surrounding property values;
- (b) Are detrimental to public health, safety and welfare;
- (c) Are or may become harborage of rodents and insects; and
- (d) Constitute a potential source of contamination to the environment;

The preservation of the public health, safety and welfare, protection of the environment and the maintenance of property values are proper concerns for the town.

(Ord. No. 03-11, 6-21-2011)

Secs. 7-21—7-29. Reserved.

Part B. - Vehicles⁸ And Unsightly Materials

Sec. 7-30. Definitions.

The following words, terms and phrases, when used in this part, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

⁷ **Cross reference**—Solid waste, chapter XV of this code book.

State law reference—Litter control, state statutes §§ 22a-250, 22a-251.

⁸ **Cross reference**—Traffic and vehicles, chapter XVII of this code book.

Inoperable means inherently incapable of performing the function for which designed by virtue of parts missing, essential components broken or severely damaged or incapable of being registered with the state department of motor vehicles.

Junk equipment, machinery or appliances means residentially or commercially used equipment, machinery and appliances that are in an inoperable condition or abandoned. Equipment and machinery includes power equipment such as lawn mowers and construction equipment that is self-propelled, pushed manually or pulled by a motor vehicle or vehicle as defined herein.

Junk vehicle means any motor vehicle or vehicle, or part thereof, which is not currently registered with the department of motor vehicles for lawful operation on the highways of this state or is in an inoperable condition or abandoned.

Motor vehicle means automobiles, cars, trucks, camp trailers, boat trailers, house trailers, mobile homes, motorcycles or any other wheeled vehicle designed or used for highway use and required to be registered by the state department of motor vehicles.

Vehicle means any device suitable for the conveyance of people or property, whether operated on wheels, runners, blades, tracks, a cushion of air or any other means. This includes tractors, bulldozers, asphalt rollers and other construction equipment not designed for highway use and not required to be registered by the state department of motor vehicles.

Unightly material means junk vehicles or parts thereof, junk equipment, machinery or appliances or parts thereof as well as, but not limited to, unusable, unused or discarded furniture, unused or discarded building materials, unused fuel or chemical tanks, garbage, debris and refuse, as well as any other material which the enforcement official deems to be unsanitary or a nuisance.

(Ord. No. 2-68, § 1, 5-27-1968; Ord. No. 03-11, 6-21-2011)

Cross reference—Definitions generally, chapter I § 1-2 of this code book.

Sec. 7-31. Prohibited acts.

1. No person shall store, park or keep on his own land, or shall permit to remain on his own land or land that is in his custody or under his care, any junk motor vehicle, junk vehicle, or junk equipment, machinery or appliance for a period exceeding twenty (20) days, unless such material is enclosed in an authorized building or container.
2. No person shall store or deposit on his own land, or shall permit to remain on his own land, or land that is in his custody or under his care any unsightly material for a period exceeding twenty (20) days, unless such material is enclosed in an authorized building or container.

(Ord. No. 2-68, § 2, 5-27-1968; Ord. No. 03-11, 6-21-2011)

Sec. 7-32. Notice of violation; Abatement of nuisance by owners.

1. If the provisions of the foregoing sections are violated, the enforcement official shall serve written notice, either personally or by certified mail, upon the owner and any tenant or occupant or person having custody or charge of any such property where such violation exists, stating the nature of the violation and ordering compliance with the

provisions of this chapter. The owner, tenant or occupant, or person in charge of said property shall have fifteen (15) days from being notified of any violations to comply with this chapter.

2. The owners, tenants, lessees and/or occupants of any lot within the corporate limits of this town upon which such storage is made, and also the owners and/or lessees of such personally involved in such storage (all of whom are referred to collectively in this section as "owners"), shall jointly and severally abate such nuisance by the prompt removal of such personally into completely enclosed buildings *authorized* to be used for storage purposes, if within the corporate limits of the town, or otherwise to remove the nuisance to a location outside the corporate limits not later than fifteen (15) days after notice is given to the owner by the official designated to enforce these sections.
3. The notice of violation shall be substantially in the following form:

NOTICE OF VIOLATION

TO: _____
(Name and address of all owners, tenants or occupants)

As the owner, tenant, occupant or person in custody of: _____ *(Exact address where violation exists)* in the Town of Berlin you are hereby notified that you are in violation of chapter VII, article 3 of the Town of Berlin Code Book which is entitled "Junked, Wrecked, Abandoned Property" and a **copy of which is attached hereto**. The nature of the violation is as follows:

(List with as much specificity as possible all items of junk or unsightly material)

You are hereby ordered to remove said items within fifteen (15) days from the date of this notice. Failure to comply with this notice within the time stated will subject you to a fine of up to \$100.00 per day of noncompliance.

In addition to possible fines, the town may also take action to abate said violation or file a legal action in the Superior Court to obtain injunctive relief or abatement of this violation. The costs and expenses incurred by the town to abate or enjoin this violation shall be chargeable to you and shall constitute a lien against your property, and may be collected in the manner provided by law for the collection of delinquent taxes.

TOWN OF BERLIN

Dated:

By: _____
(Authorized signature)

(Ord. No. 2-68, § 3, 5-27-1968; Ord. No. 03-11, 6-21-2011)

Sec. 7-33. Exceptions.

This ordinance shall apply equally to residential and commercial properties except as follows:

- (a) This ordinance shall not apply to farm equipment used by a person, including on a seasonal basis, whose principal occupation is the cultivation, operation, or management of a farm (as defined in § 1-1q of state statutes) for gain or profit, either as owner or

tenant. The term "farm equipment" does not include any type of motor vehicle licensed by the state for travel on the public highways except vehicles bearing farm plates. "Farm equipment" does not include junk vehicles, junk equipment, machines and appliances or unsightly materials as defined herein;

- (b) This ordinance shall not apply to licensed junkyards when operated in conformance with all zoning regulations of the town and all applicable state statutes;
- (c) This ordinance shall not apply to inoperable or junk vehicles in the possession of a person or business that sells, repairs, reconditions, remodels or transports such vehicles provided such use of the property is in conformance with the town zoning regulations and all applicable state statutes; and
- (d) This ordinance shall not apply to construction vehicles, equipment and machinery that are operable and not in a junk condition as defined herein.

(Ord. No. 2-68, § 4, 5-27-1968; Ord. No. 03-11, 6-21-2011)

Sec. 7-34. Penalties for violations.

- 1. Fifteen (15) days after receiving a notice of violation as contained in § 7-32 any person, corporation or entity that fails to abate or remedy the violation or otherwise conform to the orders of the enforcement official shall be subject to a fine as set forth in the town fee schedule.
- 2. All fines paid pursuant to this section shall be payable to the treasurer of the town.
- 3. In addition to said fines, the town may pursue other remedies such as injunctive relief, abatement of the nuisance or other remedies permitted under state and municipal law.

(Ord. No. 03-11, 6-21-2011)

Sec. 7-35. Administration and enforcement.

The chief zoning official or his designee is charged with the administration and enforcement of this ordinance and may issue such orders, including waiver of requirements to conform in exceptional cases and extensions of time to conform, as he deems necessary and appropriate under the circumstances.

(Ord. No. 2-68, § 6, 5-27-1968; Ord. No. 03-11, 6-21-2011)

Sec. 7-36. Appeals procedure.

Any person, corporation or entity aggrieved by an order or fine of the chief zoning official pursuant to this chapter may appeal such order or fine to the town manager or the town manager's designee within fifteen (15) days of issuance of such order or fine. An appeal may be filed in person or in writing within said time period. The town manager or his designee shall deliver his decision by hand, or by certified or registered mail to the appellant, which decision may be appealed to the Superior Court within fifteen (15) days of receipt of the town manager's written decision.

(Ord. No. 03-11, 6-21-2011)

Secs. 7-37—7-39. Reserved

Article 4. - Noise

Part A. -Generally

Secs. 7-40—7-49. Reserved

Part B. -Construction Activity

Sec. 7-50. Intent.

This part is intended to protect, preserve and promote the public health, safety and welfare of the residents of the town through the regulation of noise generated by construction activity as defined herein.

(Ord. No. 02-02, § 1, 3-12-2002)

Sec. 7-51. Construction activity defined.

Construction activity shall mean any and all physical activity at a site necessary or incidental to the erection, placement, demolition, assembling, altering, blasting, cleaning, repairing, installing or equipping of buildings or other structures, roads, driveways, premises, parks, utility lines or other property, and shall include excavating, filling and paving, provided any such activity is being performed by a person or entity for profit.

(Ord. No. 02-02, § 2, 3-12-2002)

Sec. 7-52. Construction activity regulated.

Construction activity accompanied by noise that may tend to disturb the peace and quiet of the residents is hereby prohibited in the town before 7:00 a.m. and after 8:00 p.m., Monday through Saturday, and before noon and after 6:00 p.m. on Sunday and any legal holiday as per state statute § 1-4.

(Ord. No. 02-02, § 3, 3-12-2002)

Sec. 7-53. Exemptions.

The following activities shall be exempt from the provisions of this part:

- 1) Snow removal;
- 2) Refuse and solid waste collection;
- 3) Farming activity.

(Ord. No. 02-02, § 4, 3-12-2002)

Sec. 7-54. Enforcement.

The chief of police or any member of the police department is charged with enforcing the provisions of this part. No police officer shall issue a summons to enforce this part except upon complaint.

(Ord. No. 02-02, § 5, 3-12-2002)

Sec. 7-55. Emergency.

Any person or entity may apply to the chief of police or, in his absence, the highest-ranking police officer on duty, for permission to perform such prohibited acts in the event of an

emergency. The chief of police or such highest-ranking police officer shall have the power and authority to determine whether an emergency exists and to grant such permission.
(Ord. No. 02-02, § 6, 3-12-2002)

Sec. 7-56. Violations and penalties.

- a) Any person, corporation or entity violating this part shall be subject to fines as provided in the town fee schedule.
 - b) All fines paid pursuant to this part shall be payable to the treasurer of the town.
- (Ord. No. 02-02, § 7, 3-12-2002)

Sec. 7-57. Appeals Procedure.

Any person, corporation or entity fined pursuant to this part may appeal such fine to the town manager or his designee within thirty (30) days of the issuance of such fine, and then, if necessary, to the superior court.
(Ord. No. 02-02, § 8, 3-12-2002)

CHAPTER VIII - FLOODPLAIN MANAGEMENT

Article 1. - General

Secs. 8-1—8-9. Reserved.

Article 2. - Authorization; Definitions; Purpose⁹

Part A. -Generally

Sec. 8-10. Statutory authorization.

In state statute § 7-148(c)(7), the Legislature of the State of Connecticut delegates to local governmental units the responsibility of adopting regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the town does ordain, as follows, [the following provisions.]
(Ord. 14-2008, 8-5-2008)

Sec. 8-11. Definitions.

Act means the statutes authorizing the National Flood Insurance Program that are incorporated in 42 U.S.C. 4001-4128.

Base flood means the flood having a one percent (1%) chance of being equaled or exceeded in any given year.

Base flood elevation (BFE) means the elevation of the crest of the base flood or one hundred (100)-year flood. The height in relation to mean sea level expected to be reached by the waters of the base flood at pertinent points in the floodplains of coastal and riverine areas.

Basement means the portion of a building having its floor subgrade (below ground level) on all sides.

Building: See Structure.

Building inspector means the building inspector of the town or his/her authorized agent.

Cost means, as related to substantial improvements, the cost of any reconstruction, rehabilitation, addition, alteration, repair or other improvement of a structure shall be established by a detailed written contractor's estimate. The estimate shall include, but not be limited to: the cost of materials (interior finishing components, structural components, utility and service equipment); sales tax on materials; building equipment and fixtures, including heating and air conditioning and utility meters; labor; built-in appliances; demolition and site preparation; repairs made to damaged parts of the building worked on at the same time; contractor's overhead; contractor's profit; and grand total. Items to be excluded include: cost of plans and specifications; survey

⁹ **State law reference**—Flood management, state statute § 25-68b et seq.

costs; permit fees; outside improvements such as septic systems, water supply wells, landscaping, sidewalks, fences, yard lights, irrigation systems, and detached structures such as garages, sheds, and gazebos.

Curvilinear line means the border on either a flood hazard boundary map or flood insurance rate map that delineates the special flood hazard areas and consists of a curved or contour line that follows the topography.

Development means any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, the construction of additions or substantial improvements to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials; and the storage, deposition, or extraction of materials, public or private sewage disposal systems or water supply facilities.

Erosion means the process of the gradual wearing away of land masses. This peril is not per se covered under the program.

Existing construction means for the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM. "Existing construction" may also be referred to as "existing structures".

Existing manufactured home park or manufactured home subdivision means a manufactured home park or subdivision for which the construction of facilities servicing the lots on which the manufactured home are to be affixed (including, as a minimum, the installation of utilities, the construction of streets, and either final grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

Existing structures: See Existing construction.

Expansion to an existing manufactured home park or manufactured home subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, either final site grading or pouring of concrete pads, or the construction of streets).

Federal Emergency Management Agency (FEMA) means the federal agency that administers the National Flood Insurance Program (NFIP).

Finished living space means space that can include, but is not limited to, a space that is heated and/or cooled, contains finished floors (tile, linoleum, hardwood, etc.) had sheetrock walls that may or may not be painted or wallpapered, and other amenities such as furniture, appliances, bathroom, fireplaces and other items that are easily damaged by floodwaters and expensive to clean, repair or replace.

Flood or flooding means:

- 1) A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - a) The overflow of inland or tidal waters.
 - b) The unusual and rapid accumulation or runoff of surface waters from any source.
- 2) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding.

Flood elevation study means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

Flood insurance means the insurance coverage provided under the program.

Flood insurance rate map (FIRM) means an official map of the town on which the administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

Flood insurance study (FIS) means the official study of a community in which the Federal Emergency Management Agency (FEMA) has conducted a technical engineering evaluation and determination of local flood hazards, flood profiles and water surface elevations. The flood insurance rate maps (FIRM), which accompany the FIS, provide both flood insurance rate zones and base flood elevations, and may provide the regulatory floodway limits.

Floodplain or flood-prone area means any land area susceptible to being inundated by water from any source (see definition of "flooding").

Floodplain management means the operation of an overall program of corrective and preventive measures of reducing flood damage, including, but not limited to, emergency preparedness plans, flood control works and floodplain management regulations.

Floodplain management regulations means zoning regulations, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, wetlands regulations, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Floodproofing means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents. To be floodproofed, a structure must be watertight with walls substantially impermeable to the passage of water and

with structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.

Floodway: See Regulatory floodway.

Freeboard means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

Functionally dependent use or facility means a use or facility that cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities. The term does not include seafood processing facilities, long-term storage, manufacturing, sales or service facilities.

Health director means the health director of the town or his authorized agent.

Highest adjacent grade (HAG) means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic structure means any structure that is:

- 1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior), or preliminarily determined by the Secretary of the Interior, as meeting the requirements of individual listing on the National Register;
- 2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historic significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- 3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- 4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - a) By an approved state program as determined by the Secretary of the Interior or
 - b) Directly by the Secretary of the Interior in states without approved programs.

Inland wetlands and water courses commission means inland wetlands and water courses commission of the town.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area is not considered a building's lowest floor, provided that such an area meets the design requirements specified in § 8-20(d)(3) of this chapter.

Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term also includes park trailers, travel trailers, recreational vehicles and other similar vehicles or transportable structures placed on a site for one hundred and eighty (180) consecutive days or longer and intended to be improved property.

Manufactured home park or subdivision means a parcel or contiguous parcels of land divided into two (2) or more manufactured home lots for rent or sale.

Market value means a market value of the structure shall be determined by the appraised value of the structure using the cost approach to value prior to the start of the initial repair or improvement, or in the case of damage, the value of the structure prior to the damage occurring.

Mean sea level means for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations on the flood insurance rate map are referenced.

New construction means, for the purpose of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of the initial floodplain management ordinance and includes any subsequent improvements to such structures.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) is completed on or after the effective date of floodplain management regulations adopted by a community.

One Hundred (100)-year flood: See Base flood.

Planning and zoning commission means the planning and zoning commission of the town.

Recreational vehicle includes travel trailers and means a vehicle which is: (i) built on a single chassis; (ii) four hundred (400) square feet or less when measured at the longest horizontal projections; (iii) designed to be self-propelled or permanently towable by a light-duty truck; and (iv) designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory floodway means a channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot, or a designated height. For the purpose of these regulations, the term "regulatory floodway" is synonymous in meaning with the term "floodway".

Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Special flood hazard area (SFHA) means the land in the floodplain within a community subject to a one percent (1%) or greater chance of flooding in any given year. SFHA's are determined utilizing the base flood elevations (BFE) provided on the flood profiles in the flood insurance study (FIS) for a community. BFEs provided on the flood insurance rate map (FIRM) are only approximate (rounded up or down) and should be verified with the BFEs published in the FIS for a specific location. SFHAs include, but are not necessarily limited to, the land shown as zones A, AE, AO, and AH. The SFHA is also called the area of special flood hazard.

Start of construction includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred and eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure (other than a manufactured home) on a site, such as the pouring of slabs or footings or any work beyond the state of excavation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not as part of the main structure. For a structure (other than a manufactured home) without a basement or poured footings, the "start of construction" includes the first permanent framing or assembly of the structure, or any part thereof on its piling or foundation. For manufactured homes not within a manufactured home park or manufactured home subdivision, "start of construction" is the date on which the construction of facilities for servicing the site on which the manufactured home is to be affixed (including, at a minimum, the construction of streets, either final site grading or the pouring of concrete pads, and installation of utilities) is completed. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

State means the State of Connecticut.

State coordinating agency means the Department of Environmental Protection, Water Management Bureau, Inland Water Resources Division. The state coordinating agency is to assist in the implementation of the National Flood Insurance Program in Connecticut.

Structure means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground as well as a manufactured home. "Structure" for insurance coverage purposes, means a walled and roofed building, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a manufactured home on foundation. For the latter purpose, the term includes a building while in the course of construction, alteration or repair, but does not include building materials or supplies intended for use in such construction, alteration or repair, unless such materials or supplies are within an enclosed building on the premises.

Substantial damage means damage of any origin sustained by a structure, whereby the cost of restoring the structure to its predamaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.

Substantial improvement means any combination of repairs, reconstruction, alteration, or improvements to a structure taking place over a one (1)-year period, in which the cumulative cost equals or exceeds fifty percent (50%) of the market value of the structure. The market value of the structure should be:

- 1) The appraised value of the structure using the cost approach to value, prior to the start of the initial repair or improvement; or
- 2) In the case of damage, the value of the structure prior to the damage occurring. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include any improvement project required to comply with existing health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions. This term includes structures that have incurred "substantial damage", regardless of the actual repair work performed.

Town means the Town of Berlin.

Town engineer means the town engineer for the town or his/her authorized agent.

Variance means a grant of relief from the requirements of this chapter which permits development in a manner that would otherwise be prohibited by this chapter.

Violation means a failure of a structure or other development to be fully compliant with the community's floodplain management ordinance. A structure or other development without required permits, lowest floor elevation documentation, floodproofing certificates or required floodway encroachment calculations is assumed to be in violation until such time as that documentation is provided.

Water control commission means the water control commission of the town or its authorized agent.

Water surface elevation means the projected heights in relation to the National Geodetic Vertical Datum (NGVD) of 1929, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

Zone A means the area of special flood hazard without water surface elevations determined as identified on the town Flood Insurance Rate Map.

Zone AE means the areas of special flood hazard with base flood elevations and flood hazard factors determined, as identified on the town Flood Insurance Rate Map.

(Ord. 14-2008, 8-5-2008)

Cross reference—Definitions generally, chapter I § 1-2 of this code book.

Sec. 8-12. Purpose.

The town is a participating community in the National Flood Insurance Program as a regular program community. Certain areas of the town are subject to periodic flooding from streams, rivers, lakes, ponds, etc. causing serious damages to properties within these areas and hinders the health and welfare of the rest of the town. These areas are designated as special flood hazard areas (unnumbered zone A, zone AE) by the Federal Emergency Management Agency and are illustrated on a flood insurance rate map (FIRM) issued to the town by Federal Emergency Management Agency. Being a participating community in the national flood insurance program requires the town to adopt floodplain regulations that meet the Federal Emergency Management Agency's criteria as specified in 44 CFR Parts 59, 60, 65, and 70 as amended. The purpose of this chapter is to establish the aforementioned floodplain management regulations in the town. (Ord. 14-2008, 8-5-2008)

Sec. 8-13. General Provisions.

- a) This chapter shall apply to all areas of special flood hazards within the jurisdiction of the town.
- b) The special flood hazard areas (SFHA) identified by the Federal Emergency Management Agency (FEMA) in its flood insurance study (FIS) for the town, dated September 26, 2008, and accompanying flood insurance rate maps (FIRM), dated September 26, 2008, and other supporting data, and any subsequent revisions thereto, are adopted by reference and declared to be a part of this chapter. Since mapping is legally adopted by reference into this chapter it must take precedence when more restrictive until such time as a map amendment or map revision is obtained from FEMA.

The SFHA includes any area shown on the FIRM as zones A and AE, including areas designated as a floodway on a FIRM. SFHAs are determined utilizing the base flood elevations (BFE) provided on the flood profiles in the flood insurance study (FIS) for a community. BFEs provided on flood insurance rate map (FIRM) are only approximate (rounded up or down) and should be verified with the BFEs published in the FIS for a specific location. Also included are areas of potential, demonstrable or historical flooding, including any area contiguous with but outside the SFHA identified by FEMA, and where the land surface elevation is lower than the base flood elevation (BFE) as shown in the FIS, and the area is not protected from flooding by a natural or manmade feature. The FIRM and FIS are on file at the office of the town engineer.

- c) A structure or development already in compliance with this chapter shall not be made noncompliant by any alteration, modification, repair, reconstruction or improvement, and must also comply with other applicable local, state, and federal regulations. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations.
- d) This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- e) The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger

floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the town or any officer or employee thereof, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

(Ord. 14-2008, 8-5-2008)

Secs. 8-14—8-19. Reserved.

Part B. - Regulations

Sec. 8-20. Special flood hazard areas.

- a) The inland wetlands and water courses commission shall review applications and require permits on forms provided by the town, for all proposed construction or other development (see definition) including the placement of manufactured homes, within zone A and/or zone AE on the town's flood insurance rate map (FIRM).
- b) The inland wetlands and water courses commission shall review proposed development within zone A and/or zone AE on the FIRM to assure that all necessary permits have been received by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
- c) The building inspector with the assistance of the town engineer shall review all building permit applications to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in zone A and/or zone AE on the FIRM, all new construction and substantial improvements (including the placement of prefabricated buildings and manufactured homes) shall be:
 - 1) Designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure;
 - 2) Constructed with materials resistant to flood damage;
 - 3) Constructed by methods and practices that minimize flood damage; and
 - 4) Constructed with electrical, heating, ventilation, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- d) The building inspector with the assistance of the town engineer shall obtain, review, and reasonably utilize the information provided on the FIRM, and other base flood elevation data available from a federal, state, or other source, as criteria for requiring that:
 - 1) All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated to, or above, the base flood level; and
 - 2) All new construction and substantial improvements of nonresidential structures have the lowest floor (including basement) elevated or floodproofed to, or above, the base flood level. Where floodproofing is used in lieu of elevation, the structure, together with attendant utility and sanitary facilities, shall:

- a) Be floodproofed so that to a height of one (1) foot above the base flood level, the structure is watertight with walls substantially impermeable to the passage of water;
 - b) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
 - c) Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certification shall be maintained by the building inspector.
- 3) All new construction, substantial improvements, or repair of substantial damage to residential or nonresidential structures that include fully enclosed areas formed by a foundation and other exterior walls below the base flood elevation (BFE) of an elevated building, shall be designed to preclude finished living space and be designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls (wet floodproofing). Designs for complying with this requirement, must either be certified by a Connecticut registered professional engineer or architect, or meet the following minimum criteria listed in §§ a.-g., below:
- a) Provide a minimum of two (2) openings (hydraulic flood vents) having a total net area of not less than one (1) square inch for every one (1) square foot of enclosed area subject to flooding. These hydraulic openings must be located on at least two (2) different walls. Only the area (square footage) that lies below the BFE can be used in the calculation of net area of vents required. If the structure has more than one (1) enclosed area, openings must be installed in the exterior walls of each enclosed area so that floodwaters can enter directly from the outside.
 - b) The bottom of all openings shall be no higher than one (1) foot above grade. At least one (1) side of the structure's fully enclosed area must be at or above grade. Fill placed around the foundation walls must be graded so that the elevation inside the enclosed area is equal to, or higher than, the adjacent outside elevation on at least one (1) side of the building. The finished floor of the enclosed area shall be no lower than the bottom of the foundation openings. The foundation slab of a residential structure, including the slab of a crawlspace, must be set equal to the outside finished grade on at least one (1) side of the building.
 - c) The openings may be equipped with screens, louvers, valves or other coverings or devices, provided they permit the automatic entry and exit of floodwaters in both directions without any external influence or control such as human intervention, including the use of electrical and other nonautomatic mechanical means. Other coverings may be designed and certified by an engineer, or approved by the town engineer.
 - d) The area cannot be used as finished living space. Use of the enclosed area shall be the minimum necessary, and shall only be used for the parking of vehicles, building access or limited storage. Access to the enclosed area shall be the minimum necessary to allow for the parking of vehicles (garage door), or limited storage of maintenance equipment used in connection with the premises (standard exterior door), or entry to the living area (stairway or

- elevator). The enclosed area shall not be used for human habitation, or partitioned into separate rooms.
- e) All interior walls, floor, and ceiling materials located below the BFE shall be unfinished and resistant to flood damage.
 - f) Electrical, plumbing, HVAC ductwork, machinery or other utility equipment and connections that service the structure (including, but not limited to: furnaces, oil or propane tanks, air conditioners, heat pumps, hot water heaters, ventilation, washers, dryers, electrical junction boxes, circuit breaker boxes and food freezers) are prohibited in the fully enclosed area below the BFE. Utilities or service equipment located in this enclosed area, even if elevated above the BFE in the space, will subject the structure to increased flood insurance rates.
 - g) A residential building with a structurally attached garage having the floor slab below the BFE is considered an enclosed area below the BFE, and must meet the standards of §§ 8-20(d)(3)a.-f. A garage attached to a residential structure, constructed with the garage floor slab below the BFE, must be designed to allow for the automatic entry and exit of floodwaters in both directions. Flood openings or vents are required in the exterior walls of the garage or in the garage doors. The human intervention necessary to open garage doors when flooding occurs is not an acceptable means of meeting the openings requirements. In addition to the automatic entry of floodwaters, the areas of the garage below BFE must be constructed with flood-resistant materials. Garages attached to nonresidential structures must also meet the aforementioned requirements, or be dry flood-proofed, as per the requirements of § 8-20(b).
- e) Within zone A and/or zone AE on the FIRM, the building inspector shall require:
 - 1) The as built elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, whether or not such structure contain a basement;
 - 2) The as built elevation (in relation to mean sea level) to which the structure was floodproofed; and
 - 3) Maintain a record of all such information.
 - f) The building inspector shall require that all manufactured homes be placed within zone A and/or zone AE on the FIRM shall be anchored to resist flotation, collapse, or lateral movement by providing over-the-top and frame ties to ground anchors. Specific requirements shall be that:
 - 1) Over-the-top ties be provided at each of the four (4) corners of the manufactured home with two (2) additional ties per side, at intermediate locations and manufactured homes less than fifty (50) feet long, requiring one (1) additional tie per side;
 - 2) Frame ties be provided at each corner of the home with five (5) additional ties per side, at intermediate points and manufactured homes less than fifty (50) feet long, requiring four (4) additional ties per side;
 - 3) All components of the anchoring system be capable of carrying a force of four thousand and eight hundred (4,800) pounds; and

- 4) Any additions to the manufactured home be similarly anchored. For new manufactured home parks and manufactured home subdivisions; for expansions to existing manufactured home parks and manufactured home subdivisions; for existing manufactured home parks and manufactured home subdivisions where the repair, reconstruction or improvement of the streets, utilities and pads equals or exceeds fifty percent (50%) of value of the streets, utilities and pads before the repair, reconstruction or improvement has commenced; and for manufactured homes not placed in a manufactured home park or manufactured home subdivision:
 - a) Stands or lots shall be elevated on compacted fill or on pilings so that the lowest floor of the manufactured home will be at or above the base flood level;
 - b) Adequate surface drainage and access for a hauler shall be provided; and
 - c) In the instance of elevation on pilings:
 - 1) Lots shall be large enough to permit steps;
 - 2) Piling foundations shall be placed in stable soil no more than ten (10) feet apart; and
 - 3) Reinforcement shall be provided for pilings more than six (6) feet above the ground level.
 - d) No manufactured home shall be placed in a floodway.
- g) Recreational vehicles placed on-sites within zones A, and/or zone AE on the flood insurance rate map shall either:
 - 1) Be on-site for fewer than one hundred and eighty (180) consecutive days;
 - 2) Be fully licensed and ready for highway use, (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect-type utilities and security devices, and has no permanently attached additions); or
 - 3) Meet the permit requirements of § 8-20 and the elevation and anchoring requirements for "manufactured homes" in § (f) of this section.
- h) The building inspector shall require that an excavation plan indicating alternate vehicular access and escape routes be filed with appropriate disaster preparedness authorities for manufactured home parks and manufactured home subdivisions located within zone A and/or zone AE on the FIRM.
- i) The planning and zoning commission shall review subdivision proposals to determine whether such proposals will be reasonably safe from flooding. If a subdivision proposal is in zone A and/or zone AE on the FIRM, the proposal shall be reviewed to assure that:
 - 1) The proposal is consistent with the need to minimize flood damage within zone A and/or zone AE on the FIRM;
 - 2) All public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage; and
 - 3) Adequate drainage is provided to reduce exposure to, and damage from, flood hazards.
- j) The planning and zoning commission shall require all subdivision proposals greater than fifty (50) lots or five (5) acres, whichever is lesser, include within such proposals, base flood elevation data for those portions which lie within zone A and/or zone AE on the FIRM.

- k) The water control commission shall require new and replacement water supply systems within zone A and/or zone AE on the FIRM to be designed to minimize or eliminate infiltration of floodwaters into the systems.
- l) The water control commission shall require new and replacement sanitary sewage systems within zone A and/or zone AE to be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.
- m) The health director shall require on-site waste disposal systems within zone A and/or zone AE on the FIRM to be located to avoid impairment to them or contamination from them during flooding.
- n) The inland wetlands and water courses commission shall notify, in riverine situations, adjacent communities if appropriate and the state coordinating office prior to any alteration or relocation of a watercourse, and submit copies of such notifications to the administrator.
- o) The inland wetlands and water courses commission shall require that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained.
- p) Located within areas of special flood hazards established in § 8-13(b), are areas designated as floodways. Floodways are identified on the flood insurance rate maps. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:
 - 1) Encroachments, including fill, new construction, substantial improvements, and other development is prohibited unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any (0.00) increase in flood levels during the occurrence of the base flood discharge. Such certification shall be maintained by the building inspector.
 - 2) If § (p)(1), above is satisfied, all new construction and substantial improvements shall comply with all provisions of § 8-20.
 - 3) The placement of any manufactured homes within the floodway is prohibited.
- q) For watercourses without regulatory floodways designated, no new construction, substantial improvements, or other developments (including fill) shall be permitted within zone AE on the FIRM unless it can be demonstrated that the cumulative effect of the proposed development, when combined with all other existing and proposed development, will not increase the water surface elevation of the base flood more than one (1) foot at any point along the watercourse.
- r) The town may request floodway data of an applicant for watercourses without FEMA-published floodways. When such data is provided by an applicant or whenever such data is available from any other source (in response to the town's request or not), the town shall adopt a regulatory floodway based on the principle that the floodway must be able to convey the waters of the base flood without increasing the water surface elevation more than one (1) foot at any point along the watercourse.
- s) The building inspector, with the assistance of the town engineer, shall make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the

boundary shall be given a reasonable opportunity to appeal the interpretation as provided in § 8-21.

- t) *Aboveground storage tanks.* Aboveground storage tanks (oil, propane, etc.) which are located outside or inside of the structure, must either be elevated above the base flood elevation (BFE) on a concrete pad, or be securely anchored with tie-down straps to prevent flotation or lateral movement, have the top of the fill pipe extended above the BFE, and have a screw fill cap that does not allow for the infiltration of floodwater.
- u) *Portion of structure in flood zone.* If any portion of a structure lies within the special flood hazard area (SFHA), the entire structure is considered to be in the SFHA. The entire structure must meet the construction requirements of the flood zone. The structure includes any attached additions, garages, deck attached to the main structure. Decks or porches that extend into a more restrictive flood zone will require the entire structure to meet the standards of the more restrictive zone.
- v) *Structures in two (2) flood zones.* If a structure lies within two (2) or more flood zones, the construction standards of the most restrictive zone apply to the entire structure (i.e. V zone is more restrictive than A zone; structure must be built to the highest BFE). The structure includes any attached additions, garages, decks, sunrooms, or any other structure attached to the main structure. (Decks or porches that extend into a more restrictive zone will require the entire structure to meet the requirements of the more restrictive zone.)
- w) *No structures entirely or partially over water.* New construction, substantial improvements and repair to structures that have sustained substantial damage cannot be constructed or located entirely or partially over water.
- x) *Compensatory storage.* The water-holding capacity of the floodplain, except those areas that are tidally influenced, shall not be reduced. Any reduction caused by filling, new construction, or substantial improvements involving an increase in footprint to the structure, shall be compensated for by deepening and/or widening of the floodplain. Storage shall be provided on-site, unless easements have been gained from adjacent property owners; it shall be provided within the same hydraulic reach and a volume not previously used for flood storage; it shall be hydraulically comparable and incrementally equal to the theoretical volume of floodwater at each elevation, up to and including the one hundred (100)-year flood elevation, which would be displaced by the proposed project. Such compensatory volume shall have an unrestricted hydraulic connection to the same waterway or water body. Compensatory storage can be provided off-site if approved by the municipality.
- y) *Equal conveyance.* Within the floodplain, except those areas which are tidally influenced, as designated on the flood insurance rate map (FIRM) for the community, encroachments resulting from filling, new construction or substantial improvements involving an increase in footprint of the structure, are prohibited unless the applicant provides certification by a registered professional engineer demonstrating, with supporting hydrologic and hydraulic analyses performed in accordance with standard engineering practice, that such encroachments shall not result in any (0.00 feet) increase in flood levels (base flood elevation). Work within the floodplain and the land adjacent to the floodplain, including work to provide compensatory storage shall not be constructed in such a way so as to cause an increase in flood stage or flood velocity.

(Ord. 14-2008, 8-5-2008)

Sec. 8-21. Appeals.

- a) The inland wetlands and water courses commission, of the town, (inland wetlands commission) shall hear and decide appeals and requests for variances from the requirements, decisions or determinations made by the building inspector in the enforcement or administration of this chapter.
- b) In passing upon such applications, the inland wetlands commission shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and, as applicable, the following:
 - 1) The danger that materials may be swept onto other lands to the injury of others;
 - 2) The danger of life and property due to flooding or erosion damage;
 - 3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - 4) The importance of the services provided by the proposed facility to the community;
 - 5) The necessity to the facility of a waterfront location, where applicable;
 - 6) The availability of alternative locations, for the proposed use which are not subject to flooding or erosion damage;
 - 7) The compatibility of the proposed use with existing and anticipated development;
 - 8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - 9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - 10) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - 11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- c) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half (1/2) acre or less in size contiguous to, and surrounded by lots with existing structures constructed below the base flood level, providing items in § (b), above, have been fully considered. As the lot size increases beyond the one-half (1/2) acre, the technical justification required for issuing the variance increases.
- d) Upon consideration of the factors of § (b), above, and the purposes of this chapter, the inland wetlands and water courses commission may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.
- e) The inland wetlands and water courses commission shall maintain the records of all appeal actions, and report any variances to the federal insurance administration upon request.
- f) Conditions for variances:
 - 1) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the state inventory of historic places, without regard to the procedures set forth in the remainder of this section.
 - 2) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

- 3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - 4) Variances shall only be issued upon:
 - a. A showing of good and sufficient cause;
 - b. A determination that failure to grant the variance would result in exceptional hardship to the applicant;
 - c. Thorough consideration of § (b), above; and
 - d. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on, or victimization of the public or conflict with existing local laws or ordinances.
 - g) Notice of decisions of the inland wetlands and water courses commission shall be given as provided in state statute § 22a-42a(d). Any applicant to whom a variance is granted shall be given, when applicable, written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
 - h) Those aggrieved by the decision of the inland wetlands and water courses commission related to the provisions of this chapter may, within fifteen (15) days of the publication of such decision, appeal to the superior court, as provided in state statute § 22a-42.
- (Ord. 14-2008, 8-5-2008)

Sec. 8-22. Penalty; court orders.

The provisions of state statute §§ 22a-44(a) and (b).
(Ord. 14-2008, 8-5-2008)

CHAPTER IX - HEALTH

Article 1. - General

Secs. 9-1—9-9. Reserved.

Note: Public Pools ordinance repealed in its entirety by town council 2-26-2008.

Article 2. - Subsurface Sewage Disposal Systems¹⁰

Sec. 9-10. Permit required for certain systems.

No subsurface sewage disposal system shall be constructed, installed, altered or repaired in the town unless a permit has been issued by the director of health or his designee for such work. Application for such permit shall be made on a form approved by the director of health and shall be filed with the Central Connecticut Health District, together with a fee as listed in the town fee schedule for a repair or as listed in the town fee schedule for a new system. Such permit shall be obtained before a building permit is issued for the construction of any dwelling, apartment, boardinghouse, hotel, business, commercial or other structure which is to be provided with any such subsurface sewage disposal system. The director of health of the Central Connecticut Health District shall set such standards as he deems necessary for the protection of the health, safety and welfare of the public but in no case shall such standards be less than the minimum standard as required by the state public health code as required by the state.

(Ord. No. 11-99, § 1, 9-14-1999)

¹⁰ **State law reference**—Municipal sewerage, state statute § 7-245 et seq.

CHAPTER X – HISTORIC DISTRICT

Article 1. – General

Sec. 10-1. General.

The ordinance adopted at the Town Meeting on March 14, 1974 concerning a Historic District Commission exclusively, for the Town of Berlin is hereby repealed, except for the boundaries of said district as delineated on a certain map entitled Map #1251A PROPOSED BOUNDARIES OF BERLIN HISTORIC DISTRICT; Adopted at Town Meeting on March 14, 1974, Joanne G. Ward, Town Clerk; Received for filing March 15, 1974, Town Clerk's Office Berlin, Conn., Joanne G. Ward, Town Clerk.
(Ord. of 8-29-1978, Ord. No. 07-08, 2-26-2008)

Sec. 10-2. Court Order. Removed from the town charter.

Secs. 10-3—10-9. Reserved.

Article 2. – Historic District

Sec. 10-10. Purpose: Establishment of a Historic District.

In order to promote the educational, cultural, economic and general welfare of the town through the preservation and protection of buildings and places of historic interest, a historic district, as shown on the map and in the detailed description referred to in § 10-1, is hereby established pursuant to Chapter 97, §§ 7-147(a) to 7-147(l) inclusive, as amended by the state statutes.
(Ord. of 8-29-1978, Ord. No. 07-08, 2-26-2008)

Secs. 10-11—10-19. Reserved.

Article 3. – Historic District Commission

Sec. 10-20. Establishment of a Historic District Commission.

A historic district commission of the town, hereinafter referred to as the commission, is hereby established. It shall consist of five (5) members and three (3) alternates who shall be electors of the town holding no salaried town office. In addition to being electors, at least three (3) members and one (1) alternate member of the commission shall also be residents and property owners within the historic district, if any persons reside in the district and are willing to serve on such commission. It shall be the purpose of the commission to perform the duties and functions of a historic district commission as provided in Chapter 97, §§ 7-147(a) to 7-147(l) inclusive, as amended by the state statutes.
(Ord. of 8-29-1978, Ord. No. 07-08, 2-26-2008)

Sec. 10-21. Organization of Commission.

The Executive Board of the town shall, within sixty (60) calendar days after adoption of this ordinance, appoint five (5) members and three (3) alternate members to the commission in such

manner that the terms of one (1) member shall expire on the last day of January in each year commencing in 1975 and continuing to 1979 inclusive, and the terms of one (1) alternate member shall expire on the last day of January commencing in 1975 and continuing to 1979 inclusive. All subsequent appointments shall be made by the town council for a term of five (5) years except that an appointment to fill an unexpired term shall be for the duration of the unexpired term only. Within a period of thirty (30) calendar days after the appointment of members to the first commission, said members shall meet, organize, and elect a chairman, vice chairman, and clerk from its membership. Within a period not exceeding thirty (30) calendar days after the last day of January of each succeeding year, commencing in 1975, the members of the commission shall elect a chairman, vice chairman, and clerk from its own membership. Alternate members shall not participate in any election of officers of the commission. In all other matters, when a member of the commission is unable to act at a particular time because of absence, illness, self-interest, or other good reason, he shall notify the chairman who shall then designate an alternate member to serve in the place of the regular members. All members and alternate members shall serve without compensation. The commission shall fix the time and place of its regular meetings and provide a method of calling special meetings. A quorum shall consist of three (3) members, whether regular or alternate, and no resolution or vote shall be adopted by fewer than three (3) affirmative votes. The commission may adopt regulations, rules of procedure, and orders, and may, subject to appropriation, employ clerical and technical assistance and purchase supplies or such other material to carry out the purposes of this chapter. (Ord. of 8-29-1978, Ord. No. 07-08, 2-26-2008)

Sec. 10-22. Certificate of Appropriateness.

No exterior portion of any building or structure shall be erected, altered, restored, moved or demolished within the historic district and no building permit shall be issued by the town for exterior modifications open to view from a public street, way, or place within the district until after an application for a certificate of appropriateness as to exterior architectural features has been submitted to the commission and approved by said commission. "Exterior architectural features" shall include such portion of the exterior of a structure as is open to view from the street line. In its deliberations the commission shall not take into consideration the color or paint used on the exterior of any building or structure nor shall it consider interior arrangements or use. (Ord. of 8-29-1978, Ord. No. 07-08, 2-26-2008)

Sec. 10-23. Procedure on Receipt of Application for Certificate.

The commission shall hold a public hearing upon each application for certificate of appropriateness. Notice of time and place of such hearing shall be given by publication in the form of a legal advertisement appearing in a newspaper having a substantial circulation in the town at least five (5) calendar days before such hearing. Within not more than sixty-five (65) calendar days after filing of an application as required by § 10-22, the commission shall pass upon such application and shall give written notice of its decision to the applicant. Failure of the commission to act within said sixty-five (65) calendar days shall constitute approval and no other evidence of approval shall be needed. The commission shall keep a record of all applications for certificates of appropriateness and of all its actions. (Ord. of 8-29-1978, Ord. No. 07-08, 2-26-2008)

Sec. 10-24. Exempted Acts.

Nothing in this chapter shall be construed to prevent the ordinary maintenance or repair of any exterior feature in the historic district which does not involve a change of design thereof; nor to prevent the construction, reconstruction, alteration or demolition of any such feature which the building inspector certifies is required by the public safety because of an unsafe or dangerous condition; nor prevent the construction, reconstruction, alteration or demolition of any such feature under a permit issued by the building inspector prior to the effective date or establishment of the district.

(Ord. of 8-29-1978, Ord. No. 07-08, 2-26-2008)

Sec. 10-25. Boundaries.

The boundaries of the historic district shall be as depicted on Map #1251A PROPOSED BOUNDARIES OF BERLIN HISTORIC DISTRICT; Adopted at Town Meeting on March 14, 1974, Joanne G. Ward, Town Clerk; Received for filing March 15, 1974, Town Clerk's Office Berlin, Conn., Joanne G. Ward, Town Clerk.

(Ord. of 8-29-1978, Ord. No. 07-08, 2-26-2008)

Sec. 10-26. Enforcement.

The historic district commission shall have all the powers of enforcement regarding its rules, policies, regulations, orders and decisions as set forth in § 7-147h of the state statutes.

(Ord. of 8-29-1978, Ord. No. 07-08, 2-26-2008)

Sec. 10-27. Budget.

Budget proposals by the historic district commission shall be submitted through the town council.

(Ord. of 8-29-1978, Ord. No. 07-08, 2-26-2008)

CHAPTER XI - LIBRARY

Article 1. - General¹¹

Secs. 11-1—11-9. Reserved.

Article 2. - Berlin-Peck Memorial Library

Sec. 11-10. Establishment of library and library board.

There is established a public library in the town known as the Berlin-Peck Memorial Library in accordance with state statute chapter 190, as amended. There shall be a library board consisting of nine (9) members to be appointed by the town council. The Berlin-Peck Memorial Library is designated the principal public library for the town.

(Ord. of 7-29-1986, § 2)

Sec. 11-11. Terms of members of board.

Members shall serve for terms of three (3) years. Members shall be electors of the town and shall serve without compensation.

(Ord. of 7-29-1986, § 3)

Sec. 11-12. Organization of board.

The members shall elect a chairperson and a vice chairperson from among its members and shall meet at such times as the library board may determine.

(Ord. of 7-29-1986, § 4)

Sec. 11-13. Duties and functions of board.

The library board shall have charge of the operation of the library and may expend such sums of money as are available and necessary for the operation and maintenance of the library facilities. The library board shall file annually with the town council an itemized statement of the anticipated expenses for the ensuing year and shall report its doings for the present year.

(Ord. of 7-29-1986, § 5)

Sec. 11-14. Rules and regulations.

The library board may adopt reasonable rules and regulations for the conduct of its affairs and for the use of the library facilities, subject to the approval of the town council. Decisions of the board shall be made by majority vote of those present and voting and no business shall be transacted without five (5) members present. The board shall keep accurate records of its meetings and actions.

(Ord. of 7-29-1986, § 6)

¹¹ History: The Kensington Library Society made a restricted gift of its assets, including its real, personal and mixed property, all of its banking and checking accounts, building fund, books, periodicals, films, furniture, furnishings, equipment, and all of its state grants to the town when this ordinance was originally adopted for the administration of the library.

(Ord. of 7-29-1986, § 1)

Sec. 11-15. Building facilities and staff.

The town shall provide and maintain a suitable building or buildings for the library. The town manager, with consultation of the library board, shall hire the library director. Appointment of the library director shall be made on the basis of professional experience and educational background. The library director is responsible for the management of the library including selection and evaluation of library staff members.

(Ord. of 7-29-1986, § 7)

Sec. 11-16. Powers of board.

The library board shall have all of the powers and authorities granted to public libraries under the state statutes as may be amended from time to time.

(Ord. of 7-29-1986, § 8)

CHAPTER XII - MISCELLANEOUS OFFENSES

Article 1. - Weapons

Sec. 12-1. Discharge of weapons.

- (a) No person under the age of twelve (12) years shall carry, use or discharge, within the limits of the town, any air gun, air rifle or similar device for discharge of a shot, bullet or projectile by compressed air, or any bow or similar device for the use of discharging arrows or similar projectiles, unless such person is accompanied by a parent or an adult.
 - (b) The discharge or use of the weapons described in § (a) of this section shall not be permitted within five hundred (500) feet of any building or public highway, except for such areas that may be approved by the chief of police, and which special areas shall be used only in accordance with the rules and regulations established by the chief of police.
- (Ord. No. 1-56, §§ 1, 2, 5-14-1956)

Secs. 12-2—12-9. Reserved.

Article 2. - Possession of alcohol by a minor

Sec. 12-10. Possession of alcohol by persons under twenty-one (21) years of age.

- a) *Intent.* The town council finds that the unregulated possession of alcoholic liquor by persons under the age of twenty-one (21) is detrimental to the general welfare, health and safety of the citizens of Berlin, and especially its youth.
- b) *Definitions.*
 - 1) *Alcoholic liquor* shall have the same meaning as the term is defined in state statute § 30-1(3), as it may be amended from time to time.
 - 2) *Host* shall mean to organize a gathering of two (2) or more persons, or to allow the premises under one's control to be used with one's knowledge for a gathering of two (2) or more persons, for personal, social or business interaction.
- c) *Possession of alcoholic liquor restricted.* No person under the age of twenty-one (21) shall possess any container of alcoholic liquor, whether opened or unopened, within the town except when accompanied by or in the presence of his parent, guardian, or spouse who has attained the age of twenty-one (21) years. This restriction shall apply to both public and private property.
- d) *Hosting an event or gathering restricted.* No person shall host an event or gathering at which alcoholic liquor is consumed by or dispensed to any person who has not attained the age of twenty-one (21) years unless such person who has not attained the age of twenty-one (21) years is accompanied by or in the presence of his parent, guardian, or spouse who has attained the age of twenty-one (21) years. This prohibition shall apply to any event or gathering within the town, whether conducted on public or private property.
- e) *Possession otherwise permitted by law.* Notwithstanding the above, nothing herein shall prohibit the serving or selling of alcoholic liquor by a minor if otherwise permitted by the state statutes.

- f) *Enforcement.* The chief of police or any member of the police department is charged with enforcing the provisions of this section.
- g) *Violations and penalties.*
 - 1) Any person violating § (c) of this section shall be subject to a fine as provided in the town fee schedule.
 - 2) Any person violating § (d) of this section shall be subject to a fine as provided in the town fee schedule.
 - 3) All fines paid pursuant to this section shall be payable to the treasurer of the town.
 - 4) Failure to pay any penalty imposed under this section in full within thirty (30) days of notice to the penalized person or within thirty (30) days of issuance of a final decision in the event of an appeal pursuant to § (h), whichever is later, shall constitute a separate and distinct violation of this section and such penalty shall immediately double. Each month thereafter that the penalty remains unpaid shall constitute a separate violation and the penalty shall be increased by the original penalty amount.
 - 5) The town may institute civil proceedings and take such further action as it deems necessary to enforce the provisions of this section.
- h) *Appeals procedure.* Any person fined pursuant to this section may appeal such fine to the town manager or his designee within thirty (30) days of the issuance of such fine, and then, if necessary, to the superior court.

(Ord. No. 06-03, §§ 16 9, 7-15-2003)

Cross reference—Definitions generally, chapter 1 § 1-2 in this code book.

CHAPTER XIII - PARKS AND RECREATION AND OPEN SPACES

Article 1. - General

Secs. 13-1—13-10. Reserved.

Article 2. - Parks and Open Space Lands

Part A. - Generally

Sec. 13-11. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Open space land means any undeveloped or unimproved piece of property or any portion thereof, owned by the town, that requires little or no active maintenance. The definition of open space land shall include, but not be limited to, land left in its natural, undisturbed state, agricultural land for which development rights have been alienated in perpetuity, land areas for wildlife habitat, passive recreation, groundwater recharge and scenic preservation, and land acquired by the town from subdividers of land pursuant to the town's zoning regulations.

Park means any developed or improved piece of real property, or any portion thereof, owned by the town, that is used primarily for active recreational, sporting or ceremonial activity and that requires active maintenance. The definition of a park shall include, but not be limited to, ballfields, golf courses, tennis and basketball courts, pools, playgrounds, schoolyards, civic and military monuments, picnic pavilions, and recreational ponds.

(Ord. No. 07-01, §§ 1.1, 1.2, 7-10-2001)

Cross reference— Definitions generally, chapter 1 § 1-2 in this code book.

Sec. 13-12. Classification of property.

- a) The classification of a piece of property as either a park or open space land shall depend on such property's actual use at the time of the classification and not its intended use.
- b) It is the intent of this article that different portions of the same piece of property may be classified differently pursuant to the definitions stated in this article.
- c) The town council shall differentiate, when necessary, those properties, or portions thereof, that shall be considered parks and those properties, or portions thereof, that shall be considered open space lands, in accordance with this article. The town council shall change the classification of any property, or portion thereof, whose classification no longer complies with such property's actual use.

- d) This article shall not apply to any property owned by the town that is neither a park nor open space land, including, but not limited to, the town hall complex, the physical services complex, and the Mattabeset gun range, all of which shall be under the general jurisdiction of the town council.

(Ord. No. 07-01, §§ 1.3-1.6, 7-10-2001)

Sec. 13-13. Insurance.

Groups or organizations, other than town and board of education groups and others receiving waivers recommended by the recreational service department, wishing to utilize park or open space land facilities must provide the town manager with proof of adequate public liability insurance, naming the town as an additional insured, and must further provide an indemnity agreement indemnifying the town against all loss for personal injury or property damage resulting from the use of such facilities.

(Ord. No. 07-01, § 11, 7-10-2001)

Sec. 13-14. Liability and penalty.

- a) The town shall not be liable for the loss of property or the damage to property of persons using any parks or open space lands.
- b) Failure to abide by the rules and regulations of this article, or rules established under § 13-21, shall subject the violator to immediate removal from such park or open space land. In addition, any person who shall violate any provision of this article, or who shall aid, assist or encourage the violation thereof, shall be fined as listed in the town fee schedule. The violation of any section of this article shall be considered a separate offense. All fines pursuant to this article shall be enforced and collected by the police department, payable to the town's general fund.
- c) Pursuant to state statute § 52-572, the parents or guardians of any unemancipated minor who willfully or maliciously causes damage to any property or appointments within any park or open space land shall be liable for such damage.

(Ord. No. 07-01, § 16, 7-10-2001)

Secs. 13-15—13-20. Reserved.

Part B. - Rules and Regulations

Sec. 13-21. Additional rules and regulations.

- a) *Parks.* Pursuant to § 8-13-2 of the charter of the town, the park and recreation commission may from time to time establish further rules and regulations for the use of such parks and the facilities therein, which rules shall be consistent with the ordinances of the town and the statutes of the state, and which rules shall have the force of law.
- b) *Open space lands.* Pursuant to § 8-12-2 of the charter of the town, the conservation commission may from time to time establish further rules and regulations for the use of such open space lands, which rules shall be consistent with the ordinances of the town and the statutes of the state, and which rules shall have the force of law.

(Ord. No. 07-01, §§ 17, 18, 7-10-2001)

Charter reference—Parks and recreation commission, §§ 8-13-1 - 8-13-3.

Sec. 13-22. Prohibited activities generally.

The following activities are expressly prohibited in all parks and open space lands:

- 1) To pick flowers or foliage, or to cut, break, dig up, trample or walk upon, or in any way mutilate or injure, any tree, shrub, or other plantings. However, the park and recreation commission or the conservation commission, respectively, may approve specific maintenance for improvement activities that impact vegetation.
- 2) To mutilate, deface, paint or mark any structure or appointments of any character.
- 3) To post on any tree, stone, fence, post, wall, building, monument or other object therein, any bill, advertisement or inscription of any character unless authorized by the park and recreation commission or the conservation commission, respectively.
- 4) To sell articles or goods of any kind unless authorized by the park and recreation commission or the conservation commission, respectively, and the town council.
- 5) To light, kindle or use any fire, except in facilities provided therefor by the town, unless authorized by the park and recreation commission or the conservation commission, respectively.
- 6) To injure or disturb any animal or any bird, bird's nest or eggs. Hunting or trapping within parks or open space lands is expressly prohibited without the approval of the park and recreation commission or the conservation commission, respectively.
- 7) To discharge any fireworks or firearms without the approval of the park and recreation commission or the conservation commission, respectively.
- 8) To discard or leave waste paper, bottles, cans, or any other trash or litter of any kind, except in receptacles provided therefor. To discard household trash in any receptacle is prohibited.
- 9) To dump any material of any type at any location.
- 10) To loiter in restrooms or other shelter facilities.
- 11) To play or practice golf, except at Timberlin Golf Course.
- 12) To use, consume, dispense, sell, drink or have in one's possession beer, wine, liquors or other alcoholic beverages, or illegal drugs. The park and recreation commission or the conservation commission, respectively, and the town council may issue permits for such legal activities to individuals or organizations for designated town facilities. Organizations obtaining permits must also obtain permission from the liquor control commission if selling alcoholic beverages or if including alcohol in the purchase of the admission ticket.
- 13) To enter or leave such park or open space land except by designated approaches, paths, roads or trails.
- 14) To use threatening, abusive, insulting or indecent language or gestures.
- 15) To publicly demonstrate, except by prior permit of the park and recreation commission or conservation commission, respectively, and the town council. If such commissions and the town council are unable to meet prior to such demonstration, the mayor, and in his absence the deputy mayor, shall be authorized to issue such permit.

(Ord. No. 07-01, § 12, 7-10-2001)

Sec. 13-23. Hours of operation.

All parks and open space lands shall be open dawn to dusk, seven (7) days a week, except at other times designated by the park and recreation commission or the conservation commission,

respectively. All parks and open space lands shall be closed to the public other than during these hours, and persons found within such parks and open space lands when closed shall be subject to arrest as provided by §13-14(b).

(Ord. No. 07-01, § 2, 7-10-2001)

Sec. 13-24. Motor vehicles and bicycles.

- a) Motor vehicles of every kind, including, but not limited to, automobiles, trucks, motorcycles, bicycles and scooters, may be driven or parked in parks and open space lands, only in areas designated and posted for such purposes, except that town vehicles in service to the town shall have access to other areas.
- b) No commercial or industrial vehicle above the capacity of two (2) tons may be operated or parked in any park or open space land, except in service to the town, unless exception to this regulation is granted by the town manager.
- c) No motor vehicle as defined in § (a) of this section may be operated within any park or open space land at speeds in excess of fifteen (15) miles per hour or in any manner that endangers park occupants.
- d) Off-road motorized vehicles including but not limited to go-carts, minibikes, all-terrain vehicles (ATVs), trail bikes and snowmobiles are prohibited from all parks and open space lands.
- e) The riding of bicycles or skateboards, or the use of roller skates or inline skates, is prohibited on baseball diamonds, tennis and basketball courts, pool areas and picnic areas except those areas designated.

(Ord. No. 07-01, § 3, 7-10-2001)

Cross reference—Traffic and vehicles, chapter XVII of this code book.

Sec. 13-25. Swimming.

Swimming shall be permitted in parks and open space lands only in those areas designated for that purpose and only at such times as a lifeguard is on duty.

(Ord. No. 07-01, § 4, 7-10-2001)

Sec. 13-26. Boating.

Use of boats is prohibited from all parks and open space lands except those areas designated.

(Ord. No. 07-01, § 5, 7-10-2001)

Sec. 13-27. Fishing.

Fishing is permitted in parks and open space lands, except in those areas otherwise posted. All permitted fishing shall be subject to the provisions of §§13-14 and 13-23, and subject further to the statutes and regulations of the state pertaining to fishing.

(Ord. No. 07-01, § 6, 7-10-2001)

Sec. 13-28. Waterfowl.

No person shall feed waterfowl in any park or open space land.

(Ord. No. 07-01, § 7, 7-10-2001)

Sec. 13-29. Winter sports.

Ice skating, sledding, tobogganing, skiing and other winter sports are permitted at parks and open space lands designated for such use and illuminated for such purposes.

(Ord. No. 07-01, § 8, 7-10-2001)

Sec. 13-30. Ballfields.

All ballfields must be reserved in advance of scheduled games. Baseball shall be played only in parks or open space lands designated for such use. Softball may be played in other park areas where adequate and safe space is available. Softball shall not be played on Sage Baseball Field or Percival Baseball Field.

(Ord. No. 07-01, § 9, 7-10-2001)

Sec. 13-31. Timberlin Park picnic areas.

The lower picnic areas at Timberlin Park are open on a first come, first served basis and must be shared with other people or groups when necessary. Reservations for the pavilion picnic area must be made through the town's recreational service department.

(Ord. No. 07-01, § 10, 7-10-2001)

Sec. 13-32. Dogs.

Dogs are not allowed on playing fields, playgrounds, golf courses, tracks or outdoor courts. Dogs are allowed on all other ground areas, provided they are on a leash or otherwise under the control of their owner or keeper, and their excrement must be picked up, wrapped and disposed of.

(Ord. No. 07-01, § 13, 7-10-2001)

Cross reference—Animals, chapter III of this code book.

Sec. 13-33. Horses.

Horses and horseback riding are only allowed on designated trails in parks and open space lands.

(Ord. No. 07-01, § 14, 7-10-2001)

Cross reference—Animals, chapter III of this code book.

Sec. 13-34. Camping.

Camping is permitted in designated areas of parks and open space lands with prior approval from the park and recreation commission or the conservation commission, respectively.

(Ord. No. 07-01, § 15, 7-10-2001)

Secs. 13-35—13-40. Reserved.

Article 3. - Preservation of Timberlin Park

Sec. 13-41. Purpose and intent of article.

- a) The purpose of this article is to preserve and maintain Timberlin Park, as defined in § 13-42, as a forested park for recreational activities other than golf.
- b) It is the intent of this article to ensure that activities including, but not limited to, walking, hiking, jogging, bicycling, playground activities, nature study, picnicking, soapbox derbies, and Fall Foliage Festivals can continue to take place in the area defined as

Timberlin Park in § 13-42. Such activities shall be consistent with all existing ordinances.

(Ord. No. 6-00, § 1, ref. of 11-7-2000)

Sec. 13-42. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Timberlin Park means all town-owned land in Timberlin Park not presently used for golf course functions. This includes the town-owned land north of and including the access road that runs east to west from the Chamberlain Highway to the Timberlin Golf Course parking lot; the Sam DiPietro Grove area, including Marjorie Moore Road; the picnic pavilion area; and all undeveloped town-owned land surrounding DiPietro Grove.

(Ord. No. 6-00, § 2, ref. of 11-7-2000)

Cross reference—Definitions generally, chapter I § 1-2 in this code book.

Sec. 13-43. Use for activities other than golf.

It is established that Timberlin Park shall be preserved and maintained for recreational activities other than golf.

(Ord. No. 6-00, § 3, ref. of 11-7-2000)

CHAPTER XIV - PUBLIC PROPERTY

Article 1. - General

Secs. 14-1—14-10. Reserved.

Article 2. - Streets, Sidewalks and Other Rights-Of-Way¹²

Part A. - Generally

Sec. 14-11. Removal of snow and ice.

- a) *Responsibility of owner; fine; abatement; lien.* The owner or designated agent having the care of land or buildings fronting on any street or public place in such town where there is any sidewalk shall, within twelve (12) hours of daylight, or not to exceed twenty-four (24) hours of elapsed time immediately following the cessation of a storm of snow, ice or sleet, or the accumulation of ice or snow thereon, cause the same to be removed from such sidewalk. If such accumulation cannot be completely removed sand or other proper substance shall be applied to make such sidewalk safe for travel. The provisions of this section shall apply to the falling of snow from any building and also to any footway or sidewalk of any bridge spanning any railroad in the town.
- b) *Throwing ice or snow in the streets from private property.* No person shall throw or place, or cause to be thrown or placed, any ice or snow into the public street or right-of-way within the town from private land or property without the authority or permission of the town council or its agent.
- c) *Penalties.*
 - 1) Any person who violates the provisions of § (a), above, shall pay a fine as set forth in the town fee schedule. In addition, the town shall have the right to remove or treat such ice or snow which any owner or designated agent responsible for the maintenance of land fails to remove in a timely manner from a public sidewalk and charge the expense of such removal or treatment to the owner or designated agent. The town shall also have the right to place a certificate of lien upon the land records against said property for any expense incurred which remains unpaid.
 - 2) Any person who violates the provisions of § (b), above, shall receive a written warning for the first offense and shall pay a fine as set forth in the town fee schedule for each offense that occurs within six (6) months after receipt of the written warning.

(Ord. of 2-4-1957, §§ 1, 2; Ord. No. 05-08, 2-26-2008)

State law reference—Municipal liability for snow and ice on sidewalks, state statute § 7-163a.

Sec. 14-12. Construction specifications.

All materials, methods of construction, and details of structures and appurtenances will be in compliance, as determined by the town engineer, with the following:

¹² **Cross references**—Peddlers and solicitors, § 5-30 et seq.; sledding on streets, § 17-1 of this code book.

- 1) State department of transportation standard specifications for roads, bridges and incidental construction as from time to time amended; and/or
 - 2) Town specifications on file in the office of the town engineer.
- (Ord. No. 6-91, § VIII, 8-27-1991)

Sec. 14-13. Liability for snow and ice on public sidewalks.

- a) Pursuant to the provisions of state statute § 7-163a, notwithstanding the provisions of state statute § 13a-149, or any other general statute or special act, the town shall not be liable to any person injured in person or property caused by the presence of ice or snow on a public sidewalk unless the town is the owner and exercises control of land abutting such sidewalk; other than land used as a highway or street, provided the town shall be liable for its affirmative acts with respect to such sidewalk.
 - b) The owner or person in possession and control of land abutting a public sidewalk shall have the same duty of care, with respect to the presence of ice and snow on such sidewalk, toward the portion of the sidewalk abutting his property as the municipality had prior to the effective date of the ordinance [from which this section derives] and shall be liable to persons injured in person or property where a breach of said duty is the proximate cause of said injury.
 - c) No action to recover damages for injury to the person or to property caused by the presence of ice and snow on a public sidewalk against a person who owns or is in possession and control of land abutting a public sidewalk shall be brought but within two (2) years from the date when the injury is first sustained.
- (Ord. No. 04-08, 2-26-2008)

Secs. 14-14—14-20. Reserved.

Part B. - Regulations for Performance of Work by Contractors

Subdivision I. General

Sec. 14-21. Work to be done by licensed contractors.

No one but a contractor, duly licensed by the town engineer or his designated agent as provided in this chapter, or governmental agency or public service company, shall do any work upon any public right-of-way in the town, but this section shall not prevent the making, without such license, of temporary or minor repairs by the owner of the abutting property, or such owner's agent, provided that a permit is obtained for such repairs.

(Ord. No. 6-91, § I(G), 8-27-1991)

Sec. 14-22. None but competent persons to be employed.

No person employed by any licensed contractor under his license shall be allowed to perform any work whatsoever if, in the opinion of the town engineer, such employee shall have shown himself incompetent to perform such work as he is expected to do. The licensed contractor shall provide supervision over the work at all times.

(Ord. No. 6-91, § I(I), 8-27-1991)

Sec. 14-23. Notice before starting work.

Notice must be given at the office of the town engineer not less than forty-eight (48) hours, excepting weekends and holidays, before starting any work for which line, grade, or the location of buried utilities, or any other pertinent information is required to be obtained prior to commencing work. No permittee shall commence work on a public right-of-way until such line and grade or the location of buried utilities has been marked. Should any stakes or marks be moved or lost, the permittee shall not proceed without them but shall notify the office of the town engineer and request their replacement. Any work which is not true to line and grade shall be ordered removed and replaced to the proper line and grade at the expense of the permittee. (Ord. No. 6-91, § I(K), 8-27-1991)

Sec. 14-24. Test pits.

- a) *Generally.* Where in the opinion of the town engineer test pits are required to ascertain subsurface conditions, they shall be provided by the permittee prior to performing the permitted work at no expense to the town. The excavation, backfill, and restoration for test pits shall be in accordance with part C of this article, as applicable.
- b) *Inspections; correcting unsatisfactory work.*
 - 1) The town engineer, or his designated agent, is empowered to inspect, or cause to have inspected, at any time, any or all work being performed under a permit issued under this chapter.
 - 2) Inspection services are required at each stage of construction of permitted activities including, but not limited to, before backfilling of trenches, during compaction of trenches, before permanent pavement restoration, and before driveways and sidewalk surfaces are installed. The permittee shall request necessary inspections at least four (4) working hours before commencing the work to be inspected.
 - 3) If, in the opinion of the inspector, the work being performed does not meet the specifications and conditions approved or required, the permittee shall correct such condition, commencing work within twenty-four (24) hours of notification to make such correction, unless a longer period of time is allowed by the town engineer or his designated agent. Work that has been completed and from which equipment and material have been removed will be subject to the same conditions as those cited in subsection (2) of this section, except that at least five (5) days shall elapse before the permittee shall be required to commence work. If the permittee fails to comply with the requirements of this section, the town engineer may cause such work to be done, and the permittee shall be liable for the full expense of such work, such expense to be paid within thirty (30) days of billing.
 - 4) If, in the opinion of the town engineer or his designated agent, any conditions resulting from activities of the permittee presents a hazard, the permittee will be ordered to immediately eliminate the hazard. If the permittee cannot be contacted, or if the hazard requires correction before the permittee could be expected to respond, the town may take corrective action, with the permittee liable for the costs thereof.
 - 5) If the permittee fails to comply with the requirements of this section, the town engineer or his designated agent may cause such work to be done by town forces or others, and the permittee shall be liable for the full expense of such work.

- 6) All expenses incurred by the town as provided in this section shall be reimbursed by the permittee within thirty (30) days of billing.

(Ord. No. 6-91, § I(L), 8-27-1991)

Sec. 14-25. Period of responsibility.

- (a) Unless the period of responsibility is waived in writing, in whole or in part by the town engineer, the permittee shall guarantee his work for a period of eighteen (18) months from the date of completion of such work, during which period insurance and bond as provided in subdivision II of this part shall remain in full force and effect. Where the work consists of buried utilities or services thereto, the owner of the utility shall be permanently responsible for any settlement, cracking, or other failure of road surfaces, caused by the work performed and shall restore the roads where required by the town engineer.
- (b) Where failure of the completed work presents a hazard to the public, the permittee, or responsible utility company or agency, shall initiate necessary repairs or restoration within twenty-four (24) hours of notice by the town. Where a hazard is not immediate, unless otherwise allowed by the town engineer, restoration shall be commenced within five (5) days of the notice. Should the permittee or responsible utility fail to comply with the provisions of this section, the town engineer may cause such work to be done, and the permittee and/or applicable utility shall be liable for the full expense of such work, such expense to be paid within thirty (30) days of billing.

(Ord. No. 6-91, § I(N), 8-27-1991)

Sec. 14-26. Exceptions to chapter provisions.

- (a) The town engineer, or his designated agent, shall waive all requirements concerning licensing, bond, and insurance where work is to be performed by the employees of any governmental agency or public service company. Nothing contained in this section, however, shall be deemed to waive permits. Any such agency or company excepted under this subsection shall be considered a licensed contractor for the purpose of this chapter.
- (b) None of the provisions of this chapter shall apply to any work performed by the employees of any public service company in connection with the installation, maintenance, repair, replacement or relocation of utility poles owned by any public service company, nor to the erection of any temporary protective warning signs or devices.
- (c) Nothing in this chapter shall be construed to prevent excavation or work related thereto by a public service company, or its authorized agent/contractor, in the event of an emergency.

(Ord. No. 6-91, § I(O), 8-27-1991)

Secs. 14-27—14-30. Reserved.

Subdivision II. License

Sec. 14-31. To whom issued; fee.

A license to perform specific work within the public rights-of-way will be issued by the town engineer or his designated agent to any person or corporation who shall make proper application thereof, file a satisfactory bond, show evidence of liability insurance as specified in this subdivision, and satisfy the town manager of the town or his designated agent that he is competent and intends to perform his work in accordance with all applicable conditions, rules, regulations and specifications contained or hereafter adopted in this chapter. A fee as listed in the town fee schedule will be charged for each license issued.

(Ord. No. 6-91, § I(A), 8-27-1991)

Sec. 14-32. Bond.

Before a license is granted the applicant therefor must file with the town engineer's office a surety bond in the sum of one thousand dollars (\$1,000.00) made out on a form provided by such office for the purpose, by a regular indemnity or surety company authorized to transact business in the state and approved by the town manager of the town or his designated agent.

(Ord. No. 6-91, § I(B), 8-27-1991)

Sec. 14-33. Insurance.

- (a) The contractor applying for a license shall furnish to the town a valid insurance certificate completed by his agent or insurer for the amounts described as follows: Liability, with bodily injury limits of five hundred thousand dollars (\$500,000.00) each person; one million dollars (\$1,000,000.00), each accident; with property damage limits of one hundred thousand dollars (\$100,000.00), each accident.
- (b) The insurance shall cover the entire contract period as well as the maintenance period of eighteen (18) months, and if the insurance expires during this time, the contractor shall furnish the town with a renewal certificate at least ten (10) days prior to its expiration, or the license and any permits pursuant to it shall be null and void. The property damage insurance shall specifically cover damage to underground pipes and conduits damaged while using mechanical equipment to excavate in the public right-of-way. The insurance shall specifically name the town as additional insured.
- (c) If a licensee shall fail to renew an insurance policy which expires during such maintenance period, the town engineer or his designated agent may renew such policy after a written notice to the licensee and to his surety company and, upon their failure to furnish a renewal certificate, charge the cost thereof to the surety company.

(Ord. No. 6-91, § I(C), 8-27-1991)

Sec. 14-34. Applicant's business address and telephone.

The applicant for a license shall file his business address and the telephone number at which he may be reached in case of emergency with the town engineer's office, and shall notify such office promptly of any change therein. Any orders or notices which the town engineer's office or its authorized agent may have to give to such applicant, if mailed to the address as filed, shall be considered as due notice delivered to him personally; and shall relieve the town of further obligation in the matter.

(Ord. No. 6-91, § I(D), 8-27-1991)

Sec. 14-35. Expiration date.

All licenses will expire on January 1 next following their date of issue, unless sooner revoked, and a new application must be made in all respects like the first and a new license obtained before any work can be performed thereafter by the licensee.
(Ord. No. 6-91, § I(E), 8-27-1991)

Sec. 14-36. Revocation.

The town engineer or his designated agent may at any time revoke or suspend any license for cause. Sufficient cause for revocation or suspension includes, but is not limited to, failure of the licensee or his agents to comply with any section of this chapter. Cancellation of insurance or bond of a licensee automatically suspends such license. No work or activity may be conducted by a licensee, other than emergency work ordered by the town, while such license is revoked or suspended.
(Ord. No. 6-91, § I(F), 8-27-1991)

Sec. 14-37. Transfer.

No licensed contractor or abutting property owner shall transfer his license or permit to any other person for any purpose whatsoever.
(Ord. No. 6-91, § I(H), 8-27-1991)

Sec. 14-38. Permits.

No work within the public rights-of-way shall be performed without a permit issued by the town engineer or his designated agent. Application for permits to perform any work within the public rights-of-way in the town must be submitted in writing by a licensed contractor or governmental agency or public service company or their authorized agent on forms provided for the purpose by the town engineer. No permit for excavation shall be issued until the applicant provides a ticket number issued by the state "Call Before You Dig" agency. No work shall be commenced or be continued unless the permit is in possession of the permittee or his agent at the location of the work. Permit fees shall be in accordance with the following schedule:

- (1) Any work requiring excavation within a public right-of-way: a fee as listed in the town fee schedule for each opening of twenty-five (25) feet or less in length plus a fee as listed in the town fee schedule per linear foot of openings longer than twenty-five (25) feet.
- (2) For all other permits a fee as listed in the town fee schedule.
- (3) Failure to obtain a permit prior to commencing work for which a permit is required under the provisions of this chapter, excluding any emergency work, shall result in the imposition of a late fee in the amount listed in the town fee schedule in addition to the fees described in this section.

(Ord. No. 6-91, § I(J), 8-27-1991)

Secs. 14-39—14-40. Reserved.

Part C. - Excavations and Construction

Sec. 14-41. Permits; to whom issued.

No person other than a contractor licensed under this chapter, or governmental agency or public service company, shall be issued a permit to excavate in any town-owned right-of-way. (Ord. No. 6-91, § II(A), 8-27-1991)

Sec. 14-42. Notification of police and fire department.

The permittee shall notify the police department and the fire department by calling the police department, twenty-four (24) hours prior to making any excavation which requires blocking more than fifty percent (50%) of the width of the street. If the excavation or other repair work planned shall cause the traffic in the highways of the town to be reduced to one-way traffic, then in that event, the permittee during working hours shall be required to have at least one (1) or more flagmen, as determined by the town engineer, to control such traffic while one-way traffic is in effect.

(Ord. No. 6-91, § II(B), 8-27-1991)

Sec. 14-43. Tunneling and bracing.

Excavation shall be made in open cut and no tunneling will be allowed except by special permission of the town engineer or his designated agent and under such additional conditions as he may impose. Trenches shall be braced and sheeted as required by federal and state regulations or whenever, in the opinion of the town engineer, such bracing and sheeting are necessary.

(Ord. No. 6-91, § II(C), 8-27-1991)

Sec. 14-44. Maximum width of cut.

No permittee shall make a trench cut of over thirty (30) inches in width without first obtaining permission from the town engineer or his designated agent.

(Ord. No. 6-91, § II(D), 8-27-1991)

Sec. 14-45. Public safeguards and traffic control during construction within public rights-of-way.

- (a) When any excavation, construction or repair of any highway, road, street, sidewalk, or other work such as overhead utility lines, tree trimming, etc., creates or may create a hazard to vehicular or pedestrian traffic, or in any way causes or may cause a hazard to public safety, the person engaged in any such activity must provide at his expense adequate protection as the board of police commissioners, or its designee, hereafter referred to as the "traffic authority," may require after consultation with the town engineer.
- (b) All excavated material shall be compactly piled and shall not interfere with public travel to any greater extent than necessary. Adequate protection of such excavated material shall be provided by the permittee/contractor in accordance with this chapter.
- (c) If the traffic authority determines that the site may be adequately protected by placement of barricades, the person engaged in any such work shall provide such barricades and barricade warning lights as the traffic authority shall require. All barricades and

barricade warning lights shall comply with the standards of the most recent edition of the Manual on Uniform Traffic Safety Control Devices for Streets and Highways.

- (d) If the traffic authority determines that the public safety requires the use of a flagman, the permittee/contractor shall provide a flagman, who must be equipped as directed by the traffic authority, whose sole function shall be to control vehicular and pedestrian traffic during all hours when work is being done or when a hazard to such traffic or public safety exists.
- (e) If the traffic authority determines that the site creates such a hazard as to require the use of a police officer, the person engaged in such work shall utilize members of the town police department, and the expense of such officer shall be paid by the person engaged in such work.
- (f) If no member of the town police department or those other police departments with which the town has mutual aid agreements are available to provide traffic control at such work sites, the permittee/contractor shall provide a flagman in accordance with this chapter.
- (g) When a flagman has not been provided and a hazard to pedestrian and vehicular traffic does exist, the traffic authority shall order the excavation or construction closed and made safe until adequate police protection or a flagman has been provided.
- (h) The provisions of this part shall not apply to the town which shall utilize trained town employees in all such instances.
- (i) Any persons(s), firm, corporations, partnership, limited liability company or other entity which violates any provision of this section shall be fined as listed in the town fee schedule and each day that the violation exists or continues shall be deemed a separate offense.

(Ord. No. 6-91, § II(E), 8-27-1991; Ord. No. 5-97, 8-19-1997)

Sec. 14-46. Backfill of trenches.

- (a) All trenches in hard-surfaced or paved areas will be carefully backfilled, well-compacted and then provided with a temporary surface consisting of four (4) inches of processed aggregate and capped with two (2) inches of bituminous concrete. Acceptable bank run gravel shall be used for all backfilling of trenches or other excavation subjected to vehicular traffic loadings. In areas where trenches or other excavations are not subject to vehicular traffic, excavated material may be used as backfill if, in the opinion of the town engineer, the material is suitable for such purpose.
- (b) All backfill shall be thoroughly compacted by means of mechanical rammers, vibrators, or by pneumatic tampers, which equipment and method will be approved by the town engineer prior to backfilling. Compaction of trench backfill by puddling in lieu of mechanical compaction is permissible only upon specific approval of the town engineer. The trench surface will be maintained for a period of six (6) months minimum, with a temporary patch of Connecticut Highway class bituminous concrete. If class two (2) bituminous concrete is not available Connecticut Highway class five (5) mix shall be used. The bituminous material shall be placed and compacted to provide a smooth surface across the trench matching the adjoining road grade and elevation.

(Ord. No. 6-91, § II(F), 8-27-1991)

Sec. 14-47. Maintenance.

Upon completion of trench backfill and temporary treatment, the permittee will be required to maintain the trench for a minimum period of six (6) months. During this period the permittee shall inspect the trench at such regular intervals as may be necessary to maintain the trench in satisfactory condition. The permittee shall make necessary repairs to maintain the trench in satisfactory condition, and, if the permittee fails to make such repairs, the town may make such repairs as are deemed necessary and the permittee shall pay the cost of this work. Failure on the part of the town to give notice that repairs are needed shall not relieve the permittee of any of the duties set forth in this section.

(Ord. No. 6-91, § II(G), 8-27-1991)

Sec. 14-48. Pavement replacement.

- (a) At the completion of the six (6)-month (minimum) maintenance period, the permittee shall replace the temporary pavement with a permanent base and surface course. This permanent patch will consist of a three (3) inch thick class two (2) bituminous concrete surface, placed in two (2) courses over a four (4)-inch processed aggregate base. If the existing base and pavement are of a greater depth than the minimum specified, the permittee shall restore them to the actual depths encountered.
- (b) Prior to resurfacing, the permittee will square cut the existing pavement and base to a line six (6) inches from the excavated area and remove temporary surfacing and unsuitable base material from this area. Cut edges will be thoroughly coated with bituminous emulsion prior to paving to provide an adequate seal. Where the existing road surface consists of pavements installed within five (5) years prior to the date of the permit, the permanent surface restoration shall be by capping the full roadway width or by use of infrared heating, as directed by the town engineer, so that no visible seam will result.
- (c) All placement of surfacing and base shall be to the satisfaction of the engineer with regard to material and method of construction.
- (d) All improvements and ground surfaces such as lawns, sidewalks, curbs, merestones, signs, mailboxes, unpaved crosswalks, driveways, walls, fences, guardrails, and similar structures which are in any way disturbed by the work shall be replaced by the permittee to as good a condition as existed when the work began. The permittee shall supply new material to replace that which is lost or damaged. Curbs and sidewalks rebuilt or relaid by the permittee shall conform in all respects to the requirements and specifications of the town.

(Ord. No. 6-91, § II(H), 8-27-1991)

Secs. 14-49—14-50. Reserved.

Part D. - Driveways

Sec. 14-51. Permits; to whom issued.

Except as exempted in § 14-57, no person other than a contractor licensed under this chapter shall be issued a permit to construct, surface, or resurface a driveway, paved or otherwise, or to install, regrade, or repair lawns, walks and other surfaces, or to install or repair walls or fences

within the public rights-of-way of the town. Minor repairs and improvements by a property owner are exempt from licensing requirements; however, a permit shall be required.
(Ord. No. 6-91, § III(A), 8-27-1991)

Sec. 14-52. Grade.

After obtaining a permit and before commencing operation in the public right-of-way, a grade line shall be obtained from the town engineer or his designated agent.
(Ord. No. 6-91, § III(B), 8-27-1991)

Sec. 14-53. Width.

No residential driveway over twenty-five (25) feet exclusive of flares shall be constructed and no public or commercial driveway of over thirty (30) feet shall be constructed without prior approval from the town engineer.
(Ord. No. 6-91, § III(C), 8-27-1991)

Sec. 14-54. Number and separation distance.

Approval must be obtained from the town engineer to install more than two (2) driveways on one (1) piece of property. No two (2) driveways either on the same or adjoining property shall be closer than eight (8) feet, except where approved by the town engineer.
(Ord. No. 6-91, § III(D), 8-27-1991)

Sec. 14-55. Location.

No driveway shall be authorized within twenty (20) feet of the nearest street line of an intersecting road, or within ten (10) feet of a public crosswalk. No driveway apron shall extend into the street further than the gutter line.
(Ord. No. 6-91, § III(E), 8-27-1991)

Sec. 14-56. Waiver.

Where a driveway, or other improvements within a public right-of-way, are to be permitted at other than the standard location or grade, prior to issuance of the permit, the property owner shall sign a waiver form provided by the town engineer concerning the nonstandard improvements. The waiver form shall be recorded in the town land records.
(Ord. No. 6-91, § III(F), 8-27-1991)

Sec. 14-57. Drainage.

Where, in the opinion of the town engineer or his designated agent, roadside drainage conditions require a culvert under a proposed driveway, sidewalk, or other improvements, or requires modifications to all existing drainage systems, such culvert and/or modifications shall be installed to town standards by the permittee where and as approved by the town engineer or his agent, at no cost to the town.
(Ord. No. 6-91, § III(G), 8-27-1991)

Secs. 14-58—14-60. Reserved.

Part E. - Moving Buildings¹³

Sec. 14-61. Permits; to whom issued.

No person other than a contractor licensed under this chapter, shall be issued a permit to move a building or structure weighing more than two thousand (2,000) pounds over a public right-of-way. Such contractor shall be an approved contractor regularly engaged in the business of moving buildings and structures.

(Ord. No. 6-91, § V(A), 8-27-1991)

Sec. 14-62. Responsibility.

The moving contractor will be responsible for all damages to street pavement, curbs, gutters, drains, culverts, traffic signs, guardrails, bridge structures and any other town-owned property in the public right-of-way, caused by such moving. Any such damage shall be repaired or replaced, work therein to commence within twenty-four (24) hours from the time of damage and to be prosecuted expeditiously. If the town engineer so deems it necessary in the interest of public safety, the repair work shall be commenced before such twenty-four (24) hours. Any repair work not commenced within the time limit or not diligently pursued may be completed by the town and the contractor shall be liable for the entire cost.

(Ord. No. 6-91, § V(B), 8-27-1991)

Sec. 14-63. Trees.

Any trees in the public right-of-way that must be removed or trimmed to make way for the building or structure shall be removed or trimmed in accordance with the instructions outlined in part F of this article.

(Ord. No. 6-91, § V(C), 8-27-1991)

Sec. 14-64. Removal of public property.

The superintendent of the highway department shall be notified a minimum of forty-eight (48) hours in advance of moving such structure if it becomes necessary to remove any public property, and the work of removal of any public property shall be performed by the highway department of the town, and the entire expense shall be paid by the contractor.

(Ord. No. 6-91, § V(D), 8-27-1991)

Sec. 14-65. Notification of fire department.

The fire department shall be notified through the chief, or his authorized representative, of the particular fire zone within which the move is taking place at least forty-eight (48) hours before the contemplated removal. If a traffic director is required he shall be provided by the town police department at the expense of the contractor.

(Ord. No. 6-91, § V(E), 8-27-1991)

¹³ **Cross references**—Buildings and building regulations, chapter IV; environment, chapter VII of this code book.

Sec. 14-66. On highway at night.

No building or structure being moved shall be left on the street overnight except in an extreme emergency and then only with the permission of the town engineer and under such conditions as he may impose.

(Ord. No. 6-91, § V(F), 8-27-1991)

Secs. 14-67—14-70. Reserved.

Part F. -Trees

Sec. 14-71. Permits; to whom issued.

No person other than a licensed contractor shall be issued a permit to remove or trim trees in any public right-of-way. Such contractor shall be an approved contractor regularly engaged in the business of removing or trimming trees. Trees may be removed or trimmed by the town highway department without a permit. No permit shall be required by any property owner to do any minor trimming of any trees abutting his property, provided that he first secures permission of the tree warden, or his designated agent.

(Ord. No. 6-91, § VI(A), 8-27-1991)

Sec. 14-72. Responsibility.

No tree in any public way shall be removed or trimmed unless approved by the tree warden, or his designated agent. The tree warden, or his designated agent, at that time will also decide whether such work will be at the expense of the town or at the expense of any individual or company requesting such work. In general, any trees removed or trimmed for public safety or due to the condition of the trees will be at the expense of the town whereas trees removed or trimmed for the convenience of individuals or companies will be at the expense of that individual or company. The tree warden, or his designated agent, shall determine whether the town highway department or a licensed contractor shall do the work.

(Ord. No. 6-91, § VI(B), 8-27-1991)

Sec. 14-73. Public safeguards.

All possible precautions shall be taken to protect the public from harm during operations under this part, particularly, but not limited to, in the placing of warning signs during the day and the use of lights on fallen tree sections lying in the public way at night.

(Ord. No. 6-91, § VI(C), 8-27-1991)

Sec. 14-74. Disposition of trees, limbs and branches.

Any tree cut in the public way whether by licensed contractor or town highway department may be disposed of in the town dump. Elm trees having dutch elm disease must be disposed of according to the regulations established by state statutes.

(Ord. No. 6-91, § VI(D), 8-27-1991)

Sec. 14-75. Exemptions.

Public service companies or their employees shall be governed by appropriate sections of state statutes chapter 451, and are specifically exempt from the provisions of this part.

(Ord. No. 6-91, § VI(E), 8-27-1991)

Secs. 14-76—14-80. Reserved.

Part G. - Sidewalks

Sec. 14-81. Permits; to whom issued.

No person other than a contractor licensed under this chapter shall be issued a permit to construct or repair a sidewalk within the public rights-of-way in and out of the town, except nothing in this section shall prohibit a property owner from making a minor or temporary repair.

(Ord. No. 6-91, § VII(A), 8-27-1991)

Sec. 14-82. Specifications.

After obtaining a permit and before commencing operations, specifications shall be obtained from the town engineer, or his designated agent, and all work must be performed in strict conformity to such specifications, which shall set forth the location, type of materials, width and thickness of the sidewalk and method of construction.

(Ord. No. 6-91, § VII(B), 8-27-1991)

Sec. 14-83. Grade.

After obtaining a permit and before commencing operations in the public right-of-way, a grade line shall be obtained from or approved by the town engineer or his designated agent.

(Ord. No. 6-91, § VII(C), 8-27-1991)

Sec. 14-84. Inspection and supervision.

All phases of the work involved in the construction or repair of the sidewalk shall be subject to the inspection and supervision of the town engineer, or his designated agent. Each stage of the construction must be inspected before the next stage is started.

(Ord. No. 6-91, § VII(D), 8-27-1991)

Secs. 14-85—14-90. Reserved.

Article 3. - Drainage

Sec. 14-91. Connection to town drainage system.

- (a) Connections of foundation, cellar or basement drains, roof leaders, or any other surface or subsurface drains, to any storm sewer or drainage system presently under the jurisdiction of the town, or to any system which is proposed to be accepted by the town, shall be made only after approval is granted and a permit is issued by the town engineer or his designated agent.
- (b) Failure to obtain a permit prior to connecting private drains to a storm drainage system within a street or right-of-way proposed for acceptance by the town, shall cause such system, street and/or right-of-way to be unacceptable until such permits are obtained and related waivers provided to the satisfaction of the town engineer.

(Ord. No. 6-91, § IV(A), 8-27-1991)

Sec. 14-92. Permit; to whom issued.

No person other than a contractor licensed under this chapter shall be issued a permit to do any type of surface or cellar drainage work which connects into a storm drainage system maintained by the town, either surface or underground.

(Ord. No. 6-91 § IV(B), 8-27-1991)

Sec. 14-93. Waiver of claim.

No permit shall be issued until the property owner shall have signed a waiver of claim on a form provided by the town engineer relieving the town of all responsibility for any damage resulting from such connection and specifically relinquishing any claim such property owner may otherwise have against the town caused by the backing up of surface water through such storm drainage system. Such waiver shall be recorded in the town land records.

(Ord. No. 6-91, § IV(C), 8-27-1991)

Sec. 14-94. Drainage system to be used.

No permits shall be issued to drain water into an open gutter if an underground drainage system exists in the street abutting the property to be drained, within one hundred (100) feet of such property.

(Ord. No. 6-91, § IV(D), 8-27-1991)

Sec. 14-95. Location of connection.

The location at which a permittee may connect into a public storm drainage system and the details of the connection shall be subject to the approval of the town engineer. No work shall be commenced in any public right-of-way until such approval is granted. Where possible connections shall be made at catchbasins or manholes either existing or, where the connection is larger than eight (8) inches in diameter, to be installed by the permittee.

(Ord. No. 6-91, § IV(E), 8-27-1991)

Sec. 14-96. Street excavation.

If it is necessary to cut any street pavement to make a connection, the backfill and resurfacing will conform to all specifications and regulations as outlined in section 14-41.

(Ord. No. 6-91, § IV(F), 8-27-1991)

Sec. 14-97. Existing connections.

Any private drain emptying into an open gutter where an underground storm drainage system exists, upon order by the town engineer, shall be changed to connect into such underground system; and any property owner shall cease to drain into an open gutter after receiving written notice from the town engineer to discontinue using such open drain.

(Ord. No. 6-91, § IV(G), 8-27-1991)

Sec. 14-98. Foundation cellar and roof leader connections to storm sewers.

- (a) *Application and approval.* Connections to any storm sewers presently under the jurisdiction of the town, or any system which may fall under the jurisdiction of the town, shall be made only after application is made to and approval granted by the town engineer. In the case of a new street, failure to make application to, and gain approval

from the town engineer prior to making connections to the storm sewer, will make such street unacceptable for inclusion in the highway system of the town.

- (b) *Design of the outlet.* The connection for any outlet shall be made into a structure or at the top of the storm sewer pipe. If the connection is made at the top of the pipe it shall be by means of a ninety (90°) degree elbow.
- (c) *Design of the inlet.* The inlet shall meet with the approval of the town engineer and shall conform with the following:
 - (1) The inlet shall be constructed in such a manner that no foreign material, capable of causing an obstruction in the storm sewer, can pass through it.
 - (2) A one-way valve, capable of preventing any liquid in the storm sewer from flowing into the building being drained, shall be installed in a suitable location in the inlet structure.
 - (3) The town engineer may waive §§ (c)(1) and (c)(2) of this section in the case of a drain used solely for a foundation drain or roof leaders.

(Ord. No. 6-91, § IV(H), 8-27-1991)

Sec. 14-99. Noncompliance of property owner.

Any person who shall make any connection into the town drainage system, or to a system proposed to be accepted by the town, without a permit, shall be in violation of this chapter. Any connection made not in compliance with the terms of this chapter shall be corrected within ten (10) days after receiving written notice ordering such correction from the town engineer. If such correction is not made within ten (10) days of notification, the change may be made by the town highway department, and the expense shall remain until paid in full with interest at the rate of one and one-half percent (1½%) per month. A lien upon the property shall be enforced and collected as other liens of the town, provided that the town council shall cause a certificate of lien to be recorded in the town clerk's office within sixty (60) days after the determination of such expense.

(Ord. No. 6-91, § IV(I), 8-27-1991)

Sec. 14-100. Penalties.

Any persons(s), firm, corporations, partnership, limited liability company or other entity which violates any other provision of this chapter shall be fined as listed in the town fee schedule and each day that the violation exists or continues shall be deemed a separate offense.

Secs. 14-101—14-109. Reserved.

Article 4. - Exemption of Municipal Land from Zoning Regulations

Sec. 14-110. Exemption of municipal land from zoning regulations.

Property owned by the town which is utilized to provide or improve emergency or public safety communication services by police, ambulance or fire department personnel shall be exempt from operation of the zoning regulations; however, all structures or uses utilized to provide or improve emergency or public communication safety services by police, ambulance or fire department personnel which do not conform to the zoning regulations must be approved by the town council of the town.

(Ord. No. 17-08, 12-16-2008)

CHAPTER XV - SOLID WASTE

Article 1. - General

Sec. 15-1. Payment for refuse collection at residential condominiums.

(a) Subject to annual appropriation by the Town Council through the annual budgetary process and upon application made to the Town Manager by any association of unit owners of residential condominiums located within the town's territorial limits, the town, on September 1 of each year, may pay to each association, which is paying a private contractor for solid waste and recycling collection and disposal, an amount up to, but not to exceed, the town's per unit cost for providing solid waste and recycling collection and disposal to existing residential units as determined by the department of public works at the end of the prior fiscal year. The amount of reimbursement to each eligible association shall be determined by multiplying the per unit appropriation authorized in the annual town budget each year by the number of condominium units which, on October 1 of the prior fiscal year, had been conveyed by the declarant of such condominium pursuant to G.S. §§ 47-72, 47-220 or 47-223. The amount of reimbursement per unit authorized by the Town Council through the budgetary process may increase or decrease annually and shall not exceed the town's per unit cost for existing residential units regardless of the actual cost to the condominium association for private collection and disposal.

(Ord. No. 1-98, 1-6-1998; Ord. No. 06-08, 2-26-2008; Ord. No. 01-14, 2-25-2014)

Sec. 15-2. Penalties for violation of chapter.

Any person, business, firm, group or organization that fails within seven (7) days to comply with a written citation of violation of any provision of this chapter, issued by the town manager or his designee, shall, upon conviction, be subject to a fine as provided in the town fee schedule.

(Ord. No. 5-99, § 8, 3-30-1999)

Sec. 15-3. Appeals procedure.

Any person, business, firm, group or organization fined pursuant to this chapter may appeal such fine to the town manager within thirty (30) days of the issuance of such citation, and then, if necessary, to the superior court.

(Ord. No. 5-99, § 9, 3-30-1999)

Secs. 15-4—15-10. Reserved.

Article 2. - Collection

Sec. 15-11. Rubbish and garbage.

All residents and owners of property within the town shall maintain at all times safe and sanitary conditions associated with all rubbish, garbage, refuse and other wastes while stored or kept on or within their respective properties until properly removed or disposed of. It shall be the responsibility of each resident or owner to place rubbish, garbage, refuse and other wastes in proper containers and to ensure that such material remains within such containers. All containers for the storage and disposal of rubbish, garbage, refuse and other wastes shall:

- (1) Be waterproof containers and made of metal, plastic or other similar type of durable, sanitary material, or shall be heavy duty waterproof trash or rubbish bags;
 - (2) Be of such size and weight as can be handled by one (1) individual;
 - (3) Except for trash or rubbish bags, have covers and two (2) handles, provided that the bolts or rivets securing such handles, if any, do not protrude more than one quarter (¼) of an inch from either the inside or outside surface of the container; and
 - (4) Not be filled to cause excessive weight or spillage for proper disposal.
- (Ord. No. 5-99, § 1, 3-30-1999)

Sec. 15-12. By town.

Residents and owners eligible for weekly town collection of such rubbish, garbage, refuse and other wastes shall put all such waste in proper containers as specified in §15-11 and place such containers near the street or curb locations of their respective streets. In addition, residents and owners shall:

- (1) Put out all containers and waste in as neat and orderly a manner as possible;
 - (2) Put out no more than a reasonable number of containers and amount of waste per week;
 - (3) Not place such containers and waste more than three (3) feet from the street or curb, terrain permitting;
 - (4) Put out all such containers and waste no earlier than the day before their regular collection day; and
 - (5) Remove such empty containers from the street or curb before the end of their regular collection day.
- (Ord. No. 5-99, § 2, 3-30-1999)

Sec. 15-13. Cleanup.

Should any such rubbish, garbage, refuse or other wastes or materials be dislodged from their containers by animals or by other means, the owner or resident shall within a reasonable period of time clean up and remove such materials from the area so as to avoid them being strewn on or about the property or another's property, or the streets and sidewalks of the town. Failure to clean up and remove strewn materials shall constitute a violation of this chapter.

(Ord. No. 5-99, § 3, 3-30-1999)

Sec. 15-14. Permitted garbage and household refuse.

The following are permitted items of garbage and household refuse that will be collected weekly by the town on regular collection days, subject to the town's contract with its refuse collector:

- (1) Putrescible animal and vegetable waste resulting from the handling, preparation or cooking of foods;
- (2) Electric light bulbs, dust, sweepings, garden cleanings and similar waste materials ordinarily accumulated in and around a home or business;
- (3) Tree and shrub clippings, weeds and brush when compacted to reduce bulk and tied in bundles no longer than four (4) feet and not exceeding sixty (60) pounds in weight;
- (4) Small dead animals, not exceeding seventy-five (75) pounds each in weight, which die in the normal course of community activity, excluding condemned animals or animals from slaughterhouses or animals normally considered industrial refuse; and

- (5) Leaves, during the leaf season, provided that they are in paper bags, refuse containers or cardboard boxes.

(Ord. No. 5-99, § 4, 3-30-1999)

Sec. 15-15. Permitted bulk refuse.

The following are permitted items of bulk refuse that will be collected weekly by the town on regular collection days, subject to the town's contract with its refuse collector:

- (1) All combustible household refuse, upholstered and unupholstered furniture, mattresses and similar items, provided that sleeper couches must have all metal parts removed;
- (2) Cans and bottles (other than those that are to be recycled in accordance with this chapter), cold ashes, wire, glass, small metal items, kitchenware and similar items, provided that none of such items shall be heavier than that which two (2) workers could reasonably lift;
- (3) Trees and branches no larger than six (6) inches in diameter and no longer than four (4) feet in length;
- (4) Brush tied in bundles no longer than four (4) feet in length; and
- (5) Bulk waste resulting from repair or remodeling done personally by the respective property owner, except for sheet rock and roofing shingles, so long as there are no items longer than four (4) feet in length. Reasonable amounts of bulk waste may be placed in receptacles no heavier than that which two (2) workers could reasonably lift.

(Ord. No. 5-99, § 5, 3-30-1999)

Sec. 15-16. Nonpermitted refuse.

The following are nonpermitted items that will not be collected by the town:

- (1) Materials which have not been prepared for collection in accordance with this chapter;
- (2) Materials from the repair, excavation or construction of buildings or structures by contractors or others, other than the respective property owner, and materials from new building construction and major repairs, whether or not performed by the respective property owner;
- (3) Tree limbs larger than six (6) inches in diameter or longer than four (4) feet in length;
- (4) Automobile parts;
- (5) Dangerous materials or substances, such as cleaning fluids, crankcase oil, paints, explosives, acids, caustics, poisons, drugs, radioactive materials and refuse of similar nature;
- (6) Animals weighing more than seventy-five (75) pounds, condemned animals, diseased animals, and slaughterhouse or commercial food processing waste;
- (7) Hot ashes, sheet rock, roofing shingles, and porcelain items, including porcelain sinks, tubs, and toilets;
- (8) Refrigerators or freezers with doors on; and
- (9) Items mandated for recycling by this chapter.

(Ord. No. 5-99, § 6, 3-30-1999)

Sec. 15-17. Type of collection.

It shall be the public policy of the town that residents and owners of property within the town shall, on regular collection days, be allowed to place rubbish, garbage, refuse and other wastes in containers and trash bags for weekly town collection as currently permitted by this ordinance and

shall further be allowed to place items of bulk refuse at the street or curb as currently permitted by this ordinance, subject to all the conditions and requirements set forth in this ordinance.

The town council shall enter into no contract with any refuse collector for automated refuse collection requiring all rubbish, garbage, refuse and other wastes to be placed in a standardized container or containers, or otherwise requiring any special arrangement or action for the disposal of rubbish, garbage, refuse and other wastes not fitting within such standardized container or containers, or otherwise running counter to the public policy as stated above or the current terms of this ordinance. Any contract so entered shall be null and void unless such automated refuse collection is the only type of collection offered by all refuse collectors within a reasonable distance from the town or is the only reasonably priced refuse collection available after diligent search by the town council.

(Ord. adopted by referendum on June 23, 2009 by a vote of 1,964 to 1,716)

Secs. 15-18—15-20. Reserved.

Article 3. - Recycling

Sec. 15-21. Mandatory items.

- a) *Curbside pickup.* The following items must be recycled and will be collected biweekly by the town at the street or curb on the regular collection day, subject to the town's contract with its recycling collector:
 - 1) Clear or colored glass food or beverage containers with or without covers and labels, provided that they are emptied, rinsed, and placed in a pail or similar container;
 - 2) Metal food or beverage containers with or without labels, provided that they are emptied, rinsed, and placed in a pail or similar container;
 - 3) Newspapers, including inserts and supplements, provided that they are put in paper bags or boxes and not tied; and
 - 4) Corrugated cardboard, provided that it is put in paper bags or boxes.
- b) *Other.* The following items must be recycled and shall be disposed of in accordance with the town public works department policy:
 - 1) All heavy metal items, including metal appliances, provided that all appliances shall have their doors removed prior to being put out at the street or curb;
 - 2) Light metals, including, bicycles, pipes, small machinery, small appliances and similar items, provided that all fuel and oil has been removed from such items;
 - 3) Lead or acid batteries, including automobile and marine batteries, and excluding dry cell batteries;
 - 4) Used engine oil, not mixed with any other oil or fluid; and
 - 5) Leaves without any other yard waste included.

(Ord. No. 5-99, § 7(a), (b), 3-30-1999)

Sec. 15-22. Nonmandatory items.

The following items may be recycled and shall be disposed of in accordance with the town public works department policy:

(1) No. 1 and no. 2 plastics; and

(2) Magazines.

(Ord. No. 5-99, § 7(c), 3-30-1999)

Sec. 15-23. Miscellaneous items.

Any miscellaneous item not specifically mentioned in this article shall be disposed of in accordance with the town public works department policy, as amended from time to time.

(Ord. No. 5-99, § 7(d), 3-30-1999)

CHAPTER XVI - TAXATION AND FINANCE

Article 1. - General

Secs. 16-1—16-10. Reserved.

Article 2. - Ad Valorem Tax¹⁴

Part A. - Generally.

Sec. 16-11. Abatement of property tax; application.

The town council may abate the property taxes due for any year with respect to any residential dwelling occupied by the owner and for whom such dwelling is the primary place of residence, to the extent that such property taxes exceed ten percent (10%) of the total income from any source, adjusted for self-employed persons to reflect allowance for expenses in determining adjusted gross income for federal income tax purposes, of such owner and any other person for whom such dwelling is the primary place of residence, for the calendar year immediately preceding the beginning of the tax year for which such taxes are due. Application for such abatement shall be made not later than thirty (30) days preceding the tax due date for such tax year, provided that if the amount of such taxes have not been determined on such date, within ten (10) days following determination of the amount of such taxes.

(Ord. No. 5-78, § I, 10-30-1978)

Sec. 16-12. Abatement agreement; lien.

The owner shall deliver to the town tax collector, not later than ten (10) days following the tax due date for such taxes abated, an agreement, on a form executed and acknowledged in the form and manner required for the transfer of an interest in real property, to reimburse the town in the amount of the taxes abated, with interest at six percent (6%) per annum. Such agreement shall contain a legal description of the real property with respect to which such abatement is approved and shall be recorded in the town land records. Such agreement shall constitute a lien on such real property which shall remain valid until paid. Such lien shall be due and payable in full upon the sale or transfer of such real property or upon the death of the owner, or if owned by more than one (1) person at the time such lien is created, upon the death of the last of such owners surviving. Such lien shall be released by the town tax collector when the taxes secured have thereby been paid. No lien recorded under the provisions of this article shall take precedence over any mortgage recorded in the land records prior to such certificate of lien.

(Ord. No. 5-78, § II, 10-30-1978)

State law reference—Authority to abate such taxes, state statute § 12-124a.

Sec. 16-13. Bills or claims.

If a person, including corporations, to whom a bill or claim is due and payable from the town also shall himself be indebted to the town for the payment of taxes, the director of finance or other official having an order in hand for payment of such bill or claim shall withhold the order

¹⁴ **State law reference**—Levy and collection of taxes, state statute § 12-122 et seq.

for payment, and shall deliver such order to the director of finance who shall present the matter to the next meeting of the town council for appropriate action.

(Ord. No. 1-79, § I, 2-5-1979)

Sec. 16-14. Crediting taxpayers; notice.

The town council shall have the authority to order the director of finance to credit the taxpayer's tax obligation with the amount due from the town and remit the balance to the taxpayer, if any, forthwith, and notification shall be sent to the taxpayer of these credits at the same time.

(Ord. No. 1-79, § II, 2-5-1979)

State law reference—Authority to withhold payments due delinquent taxpayer, state statute § 12-146b

Sec. 16-15. Exemption from personal property taxation of vehicles for the handicapped.

- (a) There is established, pursuant to state statute § 12-81c, an exemption from personal property taxation for any motor vehicle which has been specially equipped or modified for the exclusive purpose of transporting handicapped or medically incapacitated persons except when such vehicle is used to transport persons for payment. For purposes of this section, vehicles owned by private nursing homes or similar health organizations are not exempt on the grounds that such organizations are paid for such services.
- (b) A vehicle is deemed to have been specially equipped or modified for transporting handicapped or medically incapacitated persons if the vehicle is registered in the name of a person with a state handicapped parking permit and alterations to the vehicle include one or more of the following: special hand controls, lifts, ramps, special seating or stretchers, significant modifications to accommodate medical equipment such as oxygen or mechanical respirators, and other similar significant alterations.
- (c) A vehicle is deemed to be used exclusively for transporting handicapped or medically incapacitated persons when use of the vehicle is for no other purpose except for transporting handicapped or medically incapacitated persons.
- (d) Persons desiring such exemption shall make application to the town assessor for determination whether an exemption is permitted. Applications must be filed annually not later than thirty (30) days following the October 1 assessment date for the year in which the exemption is claimed; provided, however, that persons purchasing a specially equipped motor vehicle between October 2 and September 30 of any assessment year shall make application to the town assessor for such specially equipped motor vehicle exemption within thirty (30) days of the date the supplemental motor vehicle tax bill is due. Failure to file such application in the manner prescribed shall constitute a waiver of the right to an exemption for that assessment year.
- (e) If the town assessor determines that an exemption is not permitted, the applicant may appeal that decision to the town board of assessment appeals by filing a notice of appeal with the town clerk on or before the thirtieth (30th) day following the date of notice that the exemption has been denied. The board of assessment appeals shall, within thirty (30) days of receipt of the notice appeal, consider the appeal and render a decision. A

majority vote of the board in favor of the exemption serves to overturn the decision of the assessor and grant the exemption.

(Ord. No. 1-91, §§ 16 5, 3-7-1991)

State law reference—Authority to exempt certain motor vehicles, state statute § 12-81c.

Sec. 16-16. Exemption from local property taxation for veterans.

- (a) Pursuant to the provisions of state statute § 12-81(21)(c), the dwelling house and the lot whereupon the house is erected, belonging to or held in trust for any citizen and resident of the town, occupied as his domicile, shall be fully exempt from local property taxation, if he is a veteran who served in the army, navy, marine corps, coast guard or air force of the United States and has received financial assistance for specially adapted housing under the provisions of § 801 of title 38 of the United States Code and has applied such assistance toward the acquisition of such dwelling house. This exemption terminates upon such veteran's death or ceasing to occupy the premises as his domicile.
- (b) Persons desiring such exemption shall make an application to the town assessor for a determination as to whether an exemption is permitted. Applications must be filed annually not later than thirty (30) days following the October 1 assessment date for the year in which the exemption is claimed. If a person purchases a dwelling house and lot after October 1 or makes improvements after October 1 which would qualify such house and lot for the exemption, then an application must be filed within thirty (30) days of purchase or completion of the improvements, whichever is applicable.

(Ord. No. 7-91, §§ I, II, 8-27-1991)

State law reference— Authority to allow exemption for certain veterans, state statute § 12-81(21)(c).

Sec. 16-17. Exemption for educational, religious, agricultural, horticultural, hospital and cemetery uses.

- (a) The property tax exemption authorized by state statute § 12-81(7) (16) shall be effective as of the date of acquisition of the property to which the tax exemption applies by the tax-exempt organization.
- (b) Upon the submission of satisfactory evidence by the tax-exempt organization to the tax assessor that such exemptions should apply, the tax assessor shall notify the tax collector to reimburse such tax-exempt organization for any tax paid by it for a period subsequent to such date for any tax paid by the prior owner for a period subsequent to such date for which such tax exempt organization reimburses such owner on the transfer of title to such property.

(Ord. No. 4-68, §§ A, B, 12-16-1968)

Sec. 16-18. Exemption for blind persons.

- (a) Any property owner who is entitled to the exemption from property tax applicable to the assessed value of property up to the amount of three thousand dollars (\$3,000.00), as provided under state statute § 12-81(17), shall be entitled to an additional exemption from such tax in an amount up to two thousand dollars (\$2,000.00) of such assessed value, provided the total of such person's adjusted gross income as determined for purposes of the federal income tax plus any other income of such person not included in such adjusted gross income, individually if unmarried, or jointly if married, in the

calendar year ending immediately preceding the assessment date with respect to which such additional exemption is allowed, is not more than fourteen thousand dollars (\$14,000.00) if such person is married or not more than twelve thousand dollars (\$12,000.00) if such person is not married.

- (b) Any person submitting a claim for the additional exemption as provided under § (a) shall be required to file an application, on a form prepared for such purpose by the assessor, not later than the date of the assessment list with respect to which such additional exemption is claimed. Each such application shall include a copy of such person's federal income tax return, or in the event a return is not filed, such evidence related to income as may be required by the assessor for the tax year of such person ending immediately prior to the approval of a claim for such additional exemption.

(Ord. No. 4-85, §§ I, II, 9-26-1985)

Sec. 16-19. Authority of property tax collector to retain overpayments of less than five dollars (\$5.00).

The tax collector of the town shall be authorized to retain payments of property tax in excess of the amount due from any person, firm or corporation in an amount less than five dollars (\$5.00), commencing with the property tax list of October 1, 2001. Said funds shall be transferred at the end of each fiscal year by the tax collector to the town's general fund.

(Ord. No. 05-03, 7-15-2003)

Sec. 16-20. Appointment of additional members to board of assessment appeals.

- (a) *Authorization.* Pursuant to state statute § 9-199(c), the town council shall be authorized, when it deems it necessary and appropriate, to appoint additional members to the board of assessment appeals of the town for any assessment year in which a revaluation becomes effective, for the assessment year prior to such year of revaluation and for the assessment year following such year of revaluation. Any such appointment shall be made by a simple majority vote of the town council.
- (b) *Members.* Any person appointed as an additional member to the board of assessment appeals pursuant to § (a) shall:
 - 1) Be a resident and an elector of the town;
 - 2) Take an oath of office from the town clerk prior to engaging in any official duties of the office; and
 - 3) Be subject to the requirements imposed generally on elected members of the board of assessment appeals by the state statutes and the town charter.
- (c) *Duties.* All members appointed to the board of assessment appeals pursuant to this section shall have those rights and duties as specified by the three (3) elected members of the board of assessment appeals acting by majority vote.
- (d) *Terms.* The term of any person appointed as an additional member to the board of assessment appeals pursuant to this section shall expire on the date of the assessment year that the board of assessment appeals completes the duties imposed upon it by state statutes.

(Ord. No. 01-03, 2-25-2003)

Sec. 16-21. Abatement of property taxes for spouses of firefighters and police officers who die on duty.

- (a) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Fire duties means duties performed while at fires, while answering alarms of fires, while answering calls for mutual aid assistance, while returning from calls for mutual aid assistance, while directly returning from fires, while at tests or trials of any apparatus or equipment normally used by the fire department, while going to or returning directly from such tests or trials, while instructing or being instructed in fire duties, and any other duty ordered to be performed by a superior or commanding officer in the fire department.

Firefighter means any person who is a duly employed member of a state or municipal fire department and paid for the purpose of performing fire duties on an average of not less than thirty-five (35) hours per week or any volunteer member of the town fire department.

Police officer means a duly sworn member of a state or municipal police department, serving in an official capacity, full-time or part-time, with compensation or a duly sworn member of the town police department serving the town in an official capacity, full-time or part-time, with or without compensation.

Police duties means any action which an officer is obligated or authorized by law, rule, regulation, or written condition of employment of service to perform during regularly scheduled hours, or other hours that qualify for compensation from a state or local police department.

Surviving spouse means the person who was a resident of the town and married to the police officer or firefighter at the time of the police officer's or firefighter's death.

- (b) In accordance with state statute § 12-81x, there is hereby established effective for the Grand List of October 1, 2005, an abatement of fifty percent (50%) of municipal real property taxes due with respect to real property owned by the surviving spouse of a police officer who has died as a result of the performance of police duties or a firefighter who has died as a result of the performance of fire duties.
- (c) The tax abatement will remain in effect so long as the surviving spouse occupies the residence as her primary residence or until the spouse conveys her fee interest in the subject residence. If the spouse subsequently purchases another residence in the town, and all qualifying criteria remain, then the tax abatement shall apply to the new residence.
- (d) Upon the death of any person entitled to tax relief pursuant to this section, the tax relief hereunder shall end the following June 30.
- (e) If any person who is entitled to a tax abatement hereunder conveys her fee title in the property with respect to which the tax abatement hereunder has been granted, the tax relief shall be suspended as of the date of conveyance and the nonqualifying grantee of

such property shall pay the town a prorated share of taxes thereby due and owing as provided by state statute § 12-81a.

- (f) The property tax relief provided for in this section shall, in any case where title to real property is recorded in the name of the qualifying surviving spouse and any other person or persons, be prorated to reflect the fractional portion of such qualifying spouse, or, if such property is a multiple family or multiple use dwelling, such relief be prorated to reflect the fractional portion of such property occupied by the qualifying spouse. A spouse desiring such abatement shall submit an application to the assessor requesting a determination as to whether such abatement is permitted.
- (g) The tax collector and assessor shall prescribe with regard to their respective duties under this section, such forms and procedures as may be necessary to implement this section. The assessor, in addition, shall take such steps necessary to satisfactorily establish the facts as to the qualifying surviving spouse's interest in the property, by requesting such documents as the assessor deems necessary.
- (h) The tax collector of the town shall maintain a record of all taxes abated in accordance with this section. Upon the request of the town council the tax collector shall detail the sum of the total monies abated as a result of this section.

(Ord. No. 07-05, 9-6-2005)

Cross reference—Definitions generally, chapter I § 1-2 of this code book.

Sec. 16-22. Exemptions for farm buildings.

Pursuant to the authority of state statute § 12-91(c), the town hereby provides an exemption from property tax for any building, to the extent of an assessed value of one hundred thousand dollars (\$100,000.00) used, actually and exclusively in farming, as defined in state statute § 1-1. Such exemption shall not apply to any residence of such farmer and shall be subject to the application and qualification process provided in state statute § 12-91(d).

(Ord. No. 05-06, 11-14-2006)

Sec. 16-23. Abatement of property tax and/or interest on delinquent tax for non-profit land conservation organizations.

In accordance with state statute § 12-8(dd), the town may, upon approval by the town council, abate the real or personal property taxes due for any portion of a tax year or the interest on delinquent taxes with respect to any tax paid by a nonprofit land conservation organization that were due for a period before the date of acquisition but which were paid subsequent to the date of acquisition. This section shall take effect upon its adoption and apply to assessment years commencing on or after October 1, 2007.

(Ord. No. 03-07, 10-16-2007)

Secs. 16-24—16-40. Reserved.

Part B. - Taxation of Open Space Property.

Sec. 16-41. Authorization.

The planning and zoning commission adopted a plan of conservation and development as of July 24, 2003, and subsequently amended said plan pursuant to state statute § 8-23. In the plan of conservation and development, as amended, there is a section pertaining to lands to be included

as eligible for classification as open space pursuant to state statute § 12-107e. The town council, as local legislative body of the town, has approved by majority vote the land designated as open space by the planning and zoning commission. The land described in the plan of conservation and development is hereby designated as open space by the town council for purposes of classification for property taxation or payments in lieu thereof. (Ord. No. 08-03, § 1, 9-23-2003)

Sec. 16-42. Designation of open space land.

Pursuant to the eligible land described in the plan of conservation and development adopted as of July 24, 2003, as amended, the town council designates lands meeting the following description as eligible and not eligible for classification as open space for property taxation purposes pursuant to state statute § 12-107e:

- (1) Land eligible for classification as open space.
 - a. For existing improved lots in residential zones, the portions of such lots in excess of the minimum lot area for lots in that zone provided that the parcel has at least three (3) times the minimum lot area required in the zone, and that the excess land area would meet the frontage, depth and other zoning requirements related to the subdivision; and
 - b. Unimproved lots in residential zones that are at least two (2) times the minimum lot area required in the zone and that meet the applicable frontage, depth and other zoning requirements related to subdivision into at least two (2) lots.
- (2) Land not eligible for classification as open space shall include but not be limited to the following.
 - a. Land in commercial zones or industrial zones per the town zoning regulations and map.
 - b. All vacant building lots in a subdivision of greater than two (2) lots that has been approved by the planning and zoning commission and recorded with the town clerk.

(Ord. No. 08-03, § 2, 9-23-2003)

Sec. 16-43. Applications for classification of open space for property tax purposes.

The owners of land designated as open space land as described in the plan of conservation and development and in § 16-42 of this part may apply for classification of the land as open space for taxation purposes pursuant to state statute § 12-107e by filing a written application to the assessor, on applications to be provided by the assessor in a form prescribed by the commissioner of agriculture, not earlier than thirty (30) days before nor later than thirty (30) days after the assessment date in any year, provided that in years in which a revaluation of all real property will be undertaken by the town in accordance with state statute § 12-62, the application may be filed not later than ninety (90) days after the assessment date.

(Ord. No. 08-03, § 3, 9-23-2003)

Sec. 16-44. Classification of land as open space on the grand list.

Upon receipt of the written application from a property owner, the assessor shall determine if the property meets the description of eligible open space as set forth in § 16-42 of this part. If the assessor determines that the property meets the description of eligible open space as set forth in § 16-42 of this part

then the land shall be classified as open space and included on the grand list as such. Failure to submit an application for open space designation within the designated time period shall be considered a waiver of the right to such classification on such assessment list.

(Ord. No. 08-03, § 4, 9-23-2003)

Sec. 16-45. Appeals.

Any person aggrieved by the denial of the assessor of any application for classification of land as open space shall have the same rights and remedies for appeal and relief as are provided in the state statutes for taxpayers claiming to be aggrieved by the doings of assessors or boards of assessment appeals.

(Ord. No. 08-03, § 5, 9-23-2003)

Sec. 16-46. Conveyance tax on land classified as open space.

Any land classified as open space for taxation purposes pursuant to this part shall be subject to a conveyance tax on sale as described in state statutes §§ 12-504a and 12-504b and to such other penalties on sale or change in use as provided for in state statutes as exist at the time of the sale or change in use.

(Ord. No. 08-03, § 6, 9-23-2003)

Sec. 16-47. Certificate of classification.

The tax assessor shall file annually, not later than sixty (60) days after the assessment date, with the town clerk a certificate for any land which has been classified as open space land pursuant to this part and state statute § 12-107e, which certificate shall set forth the date of the initial classification and the obligation to pay the conveyance tax imposed by § 16-46 of this part. Said certificate shall be recorded on the land records. Any classification of land shall be deemed personal to the particular owner who requests such classification and shall not run with the land.

(Ord. No. 08-03, § 7, 9-23-2003)

Secs. 16-48—16-60. Reserved.

Article 3. - Fees and Service Charges Generally

Part A. - Generally.

Sec. 16-61. Service charge for properties served by fire hydrants of other communities.

- (a) This section shall provide for the collection of a service charge for all properties served by fire hydrants owned by adjacent communities and not located within a fire district or the water control commission district within the town.
- (b) All owners of properties served by a fire hydrant owned and serviced by adjacent communities, which properties are not located within a fire district or the water control commission district within the town, shall pay annually during the month of November, commencing November 1, 1979, a fire hydrant service charge to the town tax collector for the fire hydrant service provided during the past year. The service charge for each property owner shall be determined by dividing the total service charge assessed against the town by the adjacent community, plus ten percent (10%) for administrative purposes,

by the number of properties served. Properties served shall be defined as all lands within one thousand (1,000) feet of a public hydrant, containing a building or other structure of determinable value.

(c) A separate bill for the service charge imposed shall be sent by the tax collector during the month of October of each year to each property owner so liable.

(Ord. No. 2-79, §§ Iô III, 9-24-1979)

State law reference—Municipal waterworks system, state statute § 7-234 et seq.

Sec. 16-62. Collection of fee from taxpayer delinquent in motor vehicle taxes.

The town hereby elects to implement the statutory authorization set forth in § 58 of House Bill No. 6806 amending state statute § 12-146 to collect a fee of five dollars (\$5.00) from any taxpayer delinquent in motor vehicle taxes where the town has notified the commissioner of motor vehicles of such delinquency pursuant to state statute § 14-33, as amended. The tax collector's office is hereby directed to collect the five dollars (\$5.00) fee authorized by § 58 of House Bill No. 6806 (and as may be amended in the future).

(Ord. No. 11-03, 10-21-2003)

Cross reference—Traffic and vehicles generally, chapter XVII of this code book.

Secs. 16-63—16-70. Reserved.

Part B. Land Use Fees.

Sec. 16-71. Purpose of part.

The purpose of this part shall be to provide for the processing of applications by the zoning commission, planning commission, inland wetlands and watercourses commission or zoning board of appeals and to meet the requirements of Public Act 88-359 pursuant to state statute § 8-1c.

(Ord. No. 2-87, § 1, 3-16-1987; Ord. No. 1-89, § 1, 1-26-1989)

Sec. 16-72. Special permit fee.

Whenever a special permit is sought in a planned shopping zone 3 and zone 4 pursuant to the zoning regulations, a fee as listed in the town fee schedule for each square foot of gross floor area shall be paid to the town at the time of such application. This special permit fee shall be in addition to all other required fees. The revenue from such fee shall be used by the town exclusively for payment of its costs of processing the application. Such costs shall include, but not be limited to, publication fees, printing costs, advertising fees, payment for staff costs and administrative expenses, the cost of obtaining outside or independent engineering, supervisory, environmental, architectural, traffic, fire safety, law enforcement, pollution and other similar studies or evaluations in connection with the special permit. Upon completion of the development requested in the application for a special permit or upon the final action of the zoning commission denying such special permit, any funds not expended by the town shall be returned to the applicant, together with a statement setting forth the town's expenditures in connection with such application.

(Ord. No. 2-87, § 2, 3-16-1987; Ord. No. 3-87, § 2, 12-15-1987)

Sec. 16-73. Other land use applications.

The fees for other land use applications shall be listed in the town fee schedule and shall apply for the activities described in this section:

- 1) Zone changes and/or amendments to article regulations;
- 2) Excavation permits;
- 3) Filling permits;
- 4) Zoning board of appeals application;
- 5) Zoning board of appeals from decisions of the enforcement officer;
- 6) Zoning board of appeals permit for sale of alcoholic beverages;
- 7) Motor vehicle location approval;
- 8) Subdivision or resubdivision;
- 9) Site plan review, excluding subdivision;
- 10) Modification to approval;
- 11) Wetlands, regulated activity and floodplain permits;
- 12) Wetlands, change in boundary;
- 13) Wetlands, public hearing (if required) in addition to § § (10) and (11) of this section;
- 14) Certificates of zoning compliance;
- 15) Minor site plan amendment.

(Ord. No. 2-87, § 3, 3-16-1987; Ord. No. 4-91, § 3, 6-18-1991; Ord. No. 1-92, 5-7-1992; Ord. No. 2-97, 8-19-1997)

Sec. 16-74. Site plan approval application fee.

In all zones other than planned shopping 3 and planned shopping 4, a fee as listed in the town fee schedule for each square foot of gross floor area shall be paid to the town at the time an application for site plan approval is filed when the development meets or exceeds the threshold limits established by state statute § 29-276b. This fee shall be used by the town exclusively for payment of a structural engineer as is required by state statute § 29-276b. Upon the issuance of a certificate of occupancy for such project, any funds not expended by the town shall be returned to the applicant, together with a statement setting forth the town's expenditures in connection with such application.

(Ord. No. 1-89, § 2.1, 1-26-1989)

Sec. 16-75. Waiving of fees; enumeration of circumstances.

The town council may, at its discretion, waive the fees specified in this part in the following circumstances:

- (1) Fees may be waived for land use applications if all the following circumstances are present:
 - a. The project has already been reviewed and approved.
 - b. There are no changes to the approved project.
 - c. A reapproval is required because of an error on the part of the town.
 - d. No additional or extraordinary costs from the project are incurred by the town.
- (2) A fee may be waived for private, nonprofit organizations which serve charitable interests in the town if the review of the application does not require a significant amount of staff time.

(Ord. No. 4-93, 12-7-1993; Ord. No. 2-97, 8-19-1997)

Secs. 16-76—16-80. Reserved.

Article 4. - Funds

Part A. - Generally.

Secs. 16-81—16-90. Reserved.

Part B. - Special Grants and Donations Fund.

Sec. 16-91. Established; title.

There is established a fund entitled, "The Special Grants and Donations Fund."
(Ord. No. 3-01, § 1, 2-27-2001)

Sec. 16-92. Use.

The special grants and donations fund shall be used to account for grants and donations received by the town to benefit the fund and are required to be accounted for in a special revenue fund.
(Ord. No. 3-01, § 2, 2-27-2001)

Sec. 16-93. Continuation.

The special grants and donations fund is to be continued from one (1) fiscal year to the next without being closed out at the end of each fiscal year.
(Ord. No. 3-01, § 3, 2-27-2001)

Sec. 16-94. Grants and donations authorized by vote of town council.

Grants and donations to the special grants and donations fund shall be authorized by a majority vote of the town council. The town council shall initially designate those existing funds that are to be included within the special grants and donations fund and thereafter shall authorize the inclusion of any new funds or the exclusion of any previously included funds.
(Ord. No. 3-01, § 4, 2-27-2001)

Sec. 16-95. Administration.

The special grants and donations fund shall be administered by the finance director of the town under the general supervision of the town manager, subject only to the limitations imposed by either the town charter or the state statutes.
(Ord. No. 3-01, § 5, 2-27-2001)

Sec. 16-96. Accounting procedure.

An accounting of the special grants and donations fund shall be included in the comprehensive annual financial report of the town.
(Ord. No. 3-01, § 6, 2-27-2001)

Secs. 16-97—16-110. Reserved.

Part C. - Recreation Program Special Revenue Fund.¹⁵

Sec. 16-111. Established; title.

There is established a fund entitled, "Recreation Program Special Revenue Fund."
(Ord. No. 2-01, § 1, 2-27-2001)

Sec. 16-112. Use.

The recreation program special revenue fund shall be used to establish and pay for recreation programs offered by the town on a self-funding basis. It is the intent that the recreation program special revenue fund pay for the direct costs of providing recreational programs, wherein the proceeds of one (1) program may be used to offset the costs of another program as long as the fund remains self-funding.
(Ord. No. 2-01, § 2, 2-27-2001)

Sec. 16-113. Continuation.

The recreation program special revenue fund is to be continued from one (1) fiscal year to the other without being closed out at the end of each fiscal year.
(Ord. No. 2-01, § 3, 2-27-2001)

Sec. 16-114. Contributions; collection.

Contributions to the recreation program special revenue fund shall be collected by the parks and recreation department and deposited with the town treasurer.
(Ord. No. 2-01, § 4, 2-27-2001)

Sec. 16-115. Authorization of included programs and expenditures; administration.

Programs to be included in the recreation program special revenue fund shall be authorized by the town council as recommended by the parks and recreation director. Expenditures from the recreation program special revenue fund shall be authorized by the parks and recreation director or deputy director in the absence of the director. Such fund shall be administered by the finance director under the general supervision of the town manager, subject only to the limitations imposed by either the town charter or the state statutes.
(Ord. No. 2-01, § 5, 2-27-2001)

Sec. 16-116. Accounting procedure.

An accounting of the recreation program special revenue fund shall be included in the comprehensive annual financial report of the town.
(Ord. No. 2-01, § 6, 2-27-2001)

Secs. 16-117—16-120. Reserved.

Part D. - Boundless Playgrounds Fund.

Sec. 16-121. Established; title.

There is established a fund entitled, "The Boundless Playgrounds Fund."
(Ord. No. 3-00, § 1, 4-11-2000)

¹⁵ **Cross reference**—Parks and recreation and open spaces, chapter XIII of this code book.

Sec. 16-122. Use.

The boundless playgrounds fund shall be used for the benefit of the Boundless Playground Children's Park Project and may be used for, but not limited to, such things as the design, construction, implementation, and restoration of such project.
(Ord. No. 3-00, § 2, 4-11-2000)

Sec. 16-123. Continuation.

The boundless playgrounds fund is to be continued from one (1) fiscal year to the other without being closed out at the end of each fiscal year.
(Ord. No. 3-00, § 3, 4-11-2000)

Sec. 16-124. Contributions.

Contributions to the boundless playgrounds fund shall be authorized by a majority vote by the town council.
(Ord. No. 3-00, § 4, 4-11-2000)

Sec. 16-125. Administration.

The boundless playgrounds fund shall be administered by the town finance director under the general supervision of the town manager, subject only to the limitations imposed by either the town charter or the state statutes.
(Ord. No. 3-00, § 5, 4-11-2000)

Sec. 16-126. Accounting procedure.

An accounting of the boundless playgrounds fund shall be included in the town comprehensive annual financial report.
(Ord. No. 3-00, § 6, 4-11-2000)

Secs. 16-127—16-130. Reserved

Part E. - General Insurance Fund.

Sec. 16-131. Established; title.

There is established a fund entitled, "General Insurance Fund."
(Ord. No. 4-83, § 1, 9-19-1983)

Sec. 16-132. Use.

The general insurance fund shall be used for the following insurance obligations of the town other than medical insurance; the insurance coverage may include, but not be limited to workers' compensation (employees), workers' compensation (volunteer fire department), malpractice insurance, nurses' inland marine, fidelity bonds, general liability, public employees bond, error and omissions, automobile, boiler insurance, umbrella property, fire insurance, theft, contractor equipment, excess indemnity, and vicarious liability insurance.
(Ord. No. 4-83, § 2, 9-19-1983)

Sec. 16-133. Continuation.

The general insurance fund is to be continued from one (1) fiscal year to the other, without being closed out at the end of each fiscal year.

(Ord. No. 4-83, § 3, 9-19-1983)

Sec. 16-134. Methods of coverage.

The general insurance fund is to provide insurance coverage by either the purchase of specific insurances or by self-insurance (where the town absorbs the risk without insurance) or by some combination of the two (2) methods. Nothing withstanding is to prevent the town from providing insurance coverage by another mechanism if one (1) becomes available.

(Ord. No. 4-83, § 4, 9-19-1983)

Sec. 16-135. Allocations and support.

The town annual budget should include allocations to the general insurance fund, and the general insurance fund may also be supported by contributions from the general fund and other town funds, interest on investments, any insurance dividends received and refunds of insurance costs and expenses.

(Ord. No. 4-83, § 5, 9-19-1983)

Sec. 16-136. Commencement date.

The general insurance fund is to commence on September 1, 1983, or as soon as possible thereafter.

(Ord. No. 4-83, § 6, 9-19-1983)

Sec. 16-137. Expenses.

Expenses from the general insurance fund can be made for all costs of providing insurances. These expenses include, but are not limited to, insurance premiums, administrative costs, insurance claims, medical examinations, legal costs, auditing expense, insurance claims incurred which are not covered due to deductible, claims service, actuarial expense, loss prevention costs (such as safety losses) and any other direct or indirect cost associated with the providers or administration of insurance coverage.

(Ord. No. 4-83, § 7, 9-19-1983)

Sec. 16-138. Review and evaluation.

The general insurance fund shall be reviewed and evaluated by a qualified outside insurance consultant a minimum of once every three (3) years. An annual loss analysis of the worker's compensation insurance shall be conducted. The finance director shall prepare a summary of the fiscal fund activity and submit it to the town council annually.

(Ord. No. 4-83, § 8, 9-19-1983; Ord. No. 2-89, 1-26-1989)

Sec. 16-139. Administration.

The general insurance fund shall be administered by the finance director, under the general supervision of the town manager, subject only to the limitations imposed by either the town charter or the state statutes.

(Ord. No. 4-83, § 1, 9-19-1983)

Secs. 16-140—16-150. Reserved.

Part F. - Medical and Health Insurance Fund.

Sec. 16-151. Established; title.

There is established a fund entitled, "Medical and Health Insurance Fund."
(Ord. No. 2-85, § 1, 5-13-1985)

Sec. 16-152. Use.

The medical and health insurance fund shall be used for medical and health insurance including, but not limited to, medical and dental insurance, major medical, medical insurance riders, payments in lieu of medical coverage, self-insurance payments or other health insurance.
(Ord. No. 2-85, § 2, 5-13-1985)

Sec. 16-153. Continuation.

The medical and health insurance fund is to be continued from one (1) fiscal year to the other, without being closed out at the end of each fiscal year.
(Ord. No. 2-85, § 3, 5-13-1985)

Sec. 16-154. Methods of coverage.

The medical and health insurance fund is to provide insurance coverage by either the purchase of specific insurances or by self-insurance (where the town absorbs the risk without insurance) or by some combination of the two (2) methods. Nothing withstanding is to prevent the town from providing insurance coverage by another mechanism, if one (1) becomes available.
(Ord. No. 2-85, § 4, 5-13-1985)

Sec. 16-155. Allocations and support.

The town annual budgets should include allocations to the medical and health insurance fund, and such fund may also be supported by contributions from the general fund and other town funds, interest on investments, any insurance dividends received and refunds of insurance costs and expenses.
(Ord. No. 2-85, § 5, 5-13-1985)

Sec. 16-156. Commencement date.

The medical and health insurance fund is to commence on June 1, 1985, or as soon as possible thereafter.
(Ord. No. 2-85, § 6, 5-13-1985)

Sec. 16-157. Expenses.

Expenses from the medical and health insurance fund can be made for all costs of providing insurances. These expenses include, but are not limited to, insurance premiums, administrative costs, insurance claims, medical examinations, legal costs, auditing expenses, insurance claims incurred which are not covered due to deductible, claims service, actuarial expense, loss prevention costs (such as safety losses) and any other direct or indirect cost associated with the providers or administration of insurance coverage.
(Ord. No. 2-85, § 7, 5-13-1985)

Sec. 16-158. Annual evaluation.

The medical and health insurance fund should be actuarially evaluated annually to ensure fiscal soundness, and the finance director shall report to the town council, annually, concerning the activities of the medical and health insurance fund. Such report shall contain a summary of the fund activity on an annual basis.

(Ord. No. 2-85, § 8, 5-13-1985)

Sec. 16-159. Administration.

The medical and health insurance fund shall be administered by the finance director, under the general supervision of the town manager, subject only to the limitations imposed by either the town charter or the state statutes.

(Ord. No. 2-85, § 9, 5-13-1985)

Secs. 16-160—16-180. Reserved.

Part G. – Reserved.

(Editor's note: Town-To-Town C.A.R.E.-A-VAN Bus Project Fund (Ord. No. 2-00, § 6, 1-25-2000) no longer used. Removed with new code book.

Part H. - Police Post Retirement Medical Insurance Fund.

Sec. 16-181. Established; title.

There is established a fund entitled, "Police Post Retirement Medical Insurance Fund."

(Ord. No. 8-00, § 1, 12-19-2000)

Sec. 16-182. Use.

The police post retirement medical insurance fund shall be to provide funding for a portion of the health insurance premiums for the retired police officers who have contributed to the fund. The insurance will be provided from the date of retirement until the police officer is eligible for Medicare on the officer's sixty-fifth (65th) birthday.

(Ord. No. 8-00, § 2, 12-19-2000)

Sec. 16-183. Continuation.

The police post retirement medical insurance fund is to be continued from one (1) fiscal year to the other without being closed out at the end of each fiscal year.

(Ord. No. 8-00, § 3, 12-19-2000)

Sec. 16-184. Contributions.

Contributions to the police post retirement medical insurance fund shall be made from a combination of police officer payroll health insurance deductions and actuarially determined contributions from the town.

(Ord. No. 8-00, § 4, 12-19-2000)

Sec. 16-185. Administration.

The police post retirement medical insurance fund shall be administered by the town finance director under the general supervision of the town manager, subject only to the limitations imposed by either the town charter or the state statutes.
(Ord. No. 8-00, § 5, 12-19-2000)

Sec. 16-186. Accounting procedures.

An accounting of the police post retirement medical insurance fund shall be included in the town comprehensive annual financial report.
(Ord. No. 8-00, § 6, 12-19-2000)

Secs. 16-187—16-190. Reserved.

Part I. Reserved.¹⁶

Secs. 16-191—16-200. Reserved.

Part J. Open Space and Recreational Land Acquisition Fund.

Sec. 16-201. Purpose of part.

- (a) Open space areas within the town have been, and continue to be, a diminishing resource, and such open space areas are considered a valuable asset to the community. It is recognized that there is a need to obtain additional open space areas in order to meet future recreational needs, to preserve agricultural lands, to protect natural resource areas and to maintain the town's quality of life. The establishment of an open space trust fund in accordance with state statutes §§ 7-131r and 8-25 will permit the acquisition of land and/or purchase of development rights for areas identified in the plan of development and other recreation and conservation planning documents.
- (b) It is the intent of this part that the funds of the open space trust fund shall be used for the voluntary purchase of property for the purpose of preserving open space or acquiring additional land for open space or for recreational or agricultural purposes.

(Ord. No. 1-97, § 1, 8-19-1997)

Sec. 16-202. Definitions.

The following words, terms and phrases, when used in this part, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Agricultural land means any land in the town suitable by reference to soil types, existing and past use of such land for agricultural purposes and other relevant factors for the cultivation of plants for production of human food and fiber or production of other useful and valuable plant products and for production of animals, livestock and poultry useful to man and the environment and land capable of providing economically profitable farm units, which may include adjacent pastures, wood land, natural drainage areas and other adjacent open areas.

¹⁶ **Editor's note**—Ord. No. 09-03, adopted Sept. 23, 2003, repealed part I, which pertained to the animal control agency fund and was derived from Ord. No. 7-99, §§ 16-6, adopted May 25, 1999.

Development rights means the right or combination of rights of fee simple owners of open, unimproved, forest and agricultural land to develop, construct on, sell, lease or otherwise develop or improve such land for uses that result in rendering such land no longer open, unimproved, forest or agricultural. The acquisition of development rights is not intended to prevent any development of the land to which the development rights relate, provided that such development is consistent with the public purpose for which such development rights are purchased and provided that such development is permitted, pursuant to a written document approved by the town council.

Greenway means any corridor of open space that protects natural resources and/or provides recreation. Greenways can be located along a waterway or other defining feature, such as a ridgeline, or along a manmade corridor, such as an abandoned right-of-way, abandoned town road, a woods road or a barge canal.

Open space land means any area of land, including forest land and open space land as defined in state statute § 7-131cô k inclusive, land designated as wetland under state statute § 22a-3 and farmland, the preservation or restriction of the use which would:

- 1) Maintain and enhance the conservation of natural or scenic resources;
- 2) Protect natural streams or water supply;
- 3) Promote conservation of soils, wetland, beaches or tidal marshes;
- 4) Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open spaces;
- 5) Enhance public recreation opportunities;
- 6) Preserve historic sites; or
- 7) Promote orderly urban or suburban development.

(Ord. No. 1-97, § 2, 8-19-1997)

Cross reference—Definitions generally, chapter I § 1-2 of this code book.

Sec. 16-203. Establishment and use.

- (a) *Established; funding.* There is established an open space fund to be funded by:
 - 1) Fees collected in lieu of open space dedications for subdivision, in accordance with the provisions of state statute § 8-24 and the town subdivision regulations;
 - 2) Voluntary donation;
 - 3) Grants from the federal or state governments, or a private entity for the purpose of purchase or preservation of open space; and
 - 4) Appropriations from the town.
- (b) *Use of funds.* The open space funds shall be utilized solely for the purchase of land or development rights, as specified in § 16-204.
- (c) *Acquisition of parcels of land; considerations.* The planning and zoning commission shall consider parcels of land to be purchased at a public hearing and make a recommendation to the town council. In the consideration of the acquisition of a particular parcel of land or certain development rights, the planning and zoning commission may obtain written recommendations from:
 - 1) The board of education as to the educational value of the land.
 - 2) The conservation commission as to the value of the land as for preservation of the natural environment.

- 3) The parks and recreation commission as to the value of land as for recreational purposes.
 - 4) The historic district commission as to the historical value of the land.
 - 5) Any other agency, committee or organization whose opinion is deemed appropriate.
- (d) *Purchase of property.* The town council shall decide to utilize the funds to purchase property in accordance with the town charter, state statutes and all other applicable regulations. All purchases of property shall be made from a seller acting on a voluntary basis. These funds shall not be used to condemn land or for any involuntary transaction.

(Ord. No. 1-97, § 3, 8-19-1997)

Sec. 16-204. Consideration of types of land and types of development rights.

- (a) The types of land to be considered for acquisition must be:
- 1) Land that is recommended for open space or conservation in the plan of development;
 - 2) Land that has recreational value;
 - 3) Land that has significant scenic, topographic, conservation or natural resource value based on the characteristics of the land;
 - 4) Land that has significant historical archeological value based on the character of the land and/or improvement thereon; or
 - 5) Land that may be used for a greenway.
- (b) The types of development rights to be considered for purchase must be consistent with the general purpose of this part and may include one (1) or more of the following:
- 1) Development rights which will tend to maintain and enhance the conservation of natural or scenic resources;
 - 2) Development rights which will tend to protect natural topography, streams or water supply;
 - 3) Development rights which will tend to enhance public recreation opportunities;
 - 4) Development rights which will tend to protect historical or archeological sites;
 - 5) Development rights which will tend to promote conservation of agricultural soils, partially prime farmland soil;
 - 6) Development rights which will tend to contribute towards and preservation of agriculture in the town;
 - 7) Development rights which will tend to promote orderly development of the town; or
 - 8) Development rights which will tend to promote certain publicly desirable uses of land, expected at the present time to include agricultural, forest and natural uses.

(Ord. No. 1-97, § 4, 8-19-1997)

Secs. 16-205—16-210. Reserved.

Part K. - Public Health Nursing Agency Fund.

Sec. 16-211. Established; title.

There is established a fund entitled, öBerlin Public Health Nursing Agency Fund.ö
(Ord. No. 3-96, § 1, 4-12-1996)

Sec. 16-212. Use.

The public health nursing agency fund shall be used for the benefit of the public health nursing service and may be used, but not limited to, such things as patient care equipment, staff education, awards to employees for exemplary performances of duties, and the public health nursing agency annual meeting.
(Ord. No. 3-96, § 2, 4-12-1996)

Sec. 16-213. Continuation.

The public health nursing agency fund is to be continued from one (1) fiscal year to the other without being closed out at the end of each fiscal year.
(Ord. No. 3-96, § 3, 4-12-1996)

Sec. 16-214. Authorization of expenditures.

Expenditures from the public health nursing agency fund greater than one thousand dollars (\$1,000.00) in any given month shall be authorized by a majority vote of the public health nursing service board.
(Ord. No. 3-96, § 4, 4-12-1996)

Sec. 16-215. Administration.

The public health nursing agency funds shall be administered by the finance director under the general supervision of the town manager, subject only to the limitations imposed by either the town charter or the state statutes. Expenditures will be processed in an expeditious manner.
(Ord. No. 3-96, § 5, 4-12-1996)

Sec. 16-216. Accounting procedures.

An accounting of the public health nursing agency fund shall be provided to the board of directors of the public health nursing service monthly and shall be included in the town comprehensive annual financial report.
(Ord. No. 3-96, § 6, 4-12-1996)

Secs. 16-217—16-230. Reserved.

Part L. - Park and Recreation Capital and Nonrecurring Expense Fund.¹⁷

Sec. 16-231. Purposes of part.

The purposes of this part are as follows:

- (1) Establishment of a park and recreation capital and nonrecurring, expense fund.
- (2) In order to provide for the acquisition, development, improvement, maintenance and expansion of park and recreation lands, facilities, equipment and recreation programs and to pay any other capital or nonrecurring expenditure incurred for park or recreational purposes in the town, the park and recreation capital and nonrecurring expense fund is established pursuant to state statute § 7-129a.

(Ord. No. 1-86, § 1, 3-26-1986)

¹⁷ **Cross reference**—Parks and recreation and open spaces, chapter XIII of this code.
State law reference—Authority to establish fund, state statute § 7-129a.

Sec. 16-232. Custody; gifts, loans and conveyances.

The park and recreational capital and nonrecurring expense fund shall be in the custody of the town treasurer, and there shall be deposited therein all monies received by the town from whatever source and by whatever means, as gifts for park or recreation purposes; all monies received by the town from whatever source and by whatever means, as governmental grants or loans for park or recreational purposes; all monies received by the town from the sale or voluntary or involuntary conveyance of land used for park or recreational purposes; and all monies appropriated to the park and recreational capital and nonrecurring expense fund by the town.

(Ord. No. 1-86, § 2, 3-26-1986)

Sec. 16-233. Use and management.

- a) All or any part of the monies in the park and recreational capital and nonrecurring expense fund shall be lawfully invested, and all income therefrom shall be paid into the fund and become a part thereof. At least annually, the finance director shall submit to the park and recreation commission and to the town council a complete and detailed report of the condition of the fund, which report shall be made a part of the annual comprehensive financial report. All appropriations from this park and recreational capital and nonrecurring expense fund must be for a specific sum plainly designated for each project and must be recommended by the park and recreation commission and approved by the town council and, if such appropriation exceeds the amount permitted to be transferred by the town council by the town charter, such appropriation must also be approved by a duly called town meeting. All authorized appropriations may be used only for:
 - 1) Acquisition, development, improvement, maintenance and expansion of park and recreation lands;
 - 2) Acquisition, erection, installation, maintenance, improvement, and replacement of park or recreation facilities and equipment;
 - 3) Development, establishment and improvement of park or recreation programs;
 - 4) Any other capital or nonrecurring expenditure incurred for park or recreational purposes.
- b) No budget proposed or approved or appropriation made for park or recreational purposes in the town shall be reduced, ratably or otherwise, in consideration of any monies in such park and recreational capital and nonrecurring expense fund.

(Ord. No. 1-86, § 3, 3-26-1986)

Secs. 16-234—16-250. Reserved.

Article 5. - Property Tax Relief for Certain Elderly Homeowners.

Sec. 16-251. Establishment of elderly tax freeze program and qualifications.

A tax freeze program is hereby established pursuant to the provisions of state statutes §§ 12-170v and 12-170w, effective October 1, 2006, and applicable to assessment years commencing on or after October 1, 2006, as follows:

- 1) Any owner of real property or any tenant for life, or for a term of years liable for property taxes under state statute § 12-48, who meets the qualifications stated in § (2) of this section, shall be entitled to pay the tax levied on such property, calculated in accordance

with the provisions of § 16-252 of this article, for the first (1st) year the claim for such tax relief is filed and approved in accordance with the provisions of this section, and such person shall be entitled to continue to pay the amount of such tax or such lesser amount as may be levied in any year, during each subsequent year that such person meets such qualifications, and the surviving spouse of such owner or tenant qualified in accordance with the requirements pertaining to a surviving spouse in this section, or any owner or tenant possessing a joint interest in such property with such owner at the time of such owner's death and qualified at such time in accordance with the requirements of this section, shall be entitled to continue to pay the amount of such tax or such lesser amount as may be levied in any year, as it becomes due each year following the death of such owner for as long as such surviving spouse or joint owner or joint tenant is qualified in accordance with the requirements in this section. After the first (1st) year, a claim for such tax relief is filed and approved, application for such tax relief shall be filed biennially on a form prepared for such purpose by the assessor of the town. Any such owner or joint owner or joint tenant who is qualified in accordance with this section and any such surviving spouse or joint tenant surviving upon the death of such owner or tenant, shall be entitled to pay such tax in the amount as provided in § 16-252 of this article, for so long as such owner or tenant or such surviving spouse or joint owner or joint tenant continues to be so qualified.

- 2) To qualify for the tax relief provided in this section a taxpayer shall meet all the following requirements:
 - a. On or before December 31 of the calendar year preceding the year in which a claim is filed, the taxpayer must be: (A) seventy (70) years of age or over; (B) the spouse of a person, seventy (70) years of age or over, provided such spouse is domiciled with such person; or (C) sixty-two (62) years of age or over and the surviving spouse of a taxpayer who at the time of such taxpayer's death had qualified and was entitled to tax relief under this section, provided such surviving spouse was domiciled with such taxpayer at the time of the taxpayer's death;
 - b. Occupy such real property as his or her home;
 - c. Either spouse shall have resided within this state for at least one (1) year before filing the claim under this section; and
 - d. The taxable and nontaxable income of such taxpayer, the total of which shall hereinafter be called "qualifying income", in the tax year of such homeowner ending immediately preceding the date of application for benefits under the program in this section, was not in excess of limits set forth in § 12-170aa of the 2006 supplement to the state statutes, and as is thereafter adjusted annually, evidence of which income shall be submitted to the assessor of the town in such form and manner as the assessor may prescribe. The amount of any medicaid payments made on behalf of such homeowner or the spouse of such homeowner shall not constitute income. The income of the spouse of such homeowner shall not be included in the qualifying income of such homeowner for purposes of determining eligibility for tax relief under this section, if such spouse is a resident of a health care or nursing home facility in this state, and such facility receives payment related to such spouse under the Title XIX Medicaid Program.

(Ord. of 1-8-2008, § 1)

Sec. 16-252. Calculation of tax freeze benefit.

- a) The tax on the real property for which the benefits under this section are claimed shall be the lower of: The tax due with respect to the homeowner's residence for the assessment year commencing October 1 of the year immediately preceding the year in which the initial claim for tax relief is made, or the tax due for any subsequent assessment year. This calculated annual tax on the real property shall be known as the "base tax" and shall remain constant for each successive year until the taxpayer transfers, assigns, grants or otherwise conveys said property or until the taxpayer no longer qualifies for the tax freeze benefit in accordance with this article.
- b) If title to real property is recorded in the name of the person or the spouse making a claim and qualifying under this section and any other person or persons, the claimant hereunder shall be entitled to pay the claimant's fractional share of the tax on such property calculated in accordance with the provisions of this section, and such other person or persons shall pay the person's or persons' fractional share of the tax without regard for the provisions of this section. For the purposes of this section, a "mobile manufactured home", as defined in state statute § 12-63a, shall be deemed to be real property.
- c) If any person with respect to whom a claim for tax relief in accordance with § 16-251, of this article has been approved for any assessment year transfers, assigns, grants or otherwise conveys subsequent to the first (1st) day of October, but prior to the first (1st) day of August in such assessment year the interest in real property to which such claim for tax relief is related, regardless of whether such transfer, assignment, grant or conveyance is voluntary or involuntary, the amount of such tax relief benefit, determined as the amount by which the tax payable without benefit of this section exceeds the tax payable under the provisions of this section, shall be a pro rata portion of the amount otherwise applicable in such assessment year to be determined by a fraction the numerator of which shall be the number of full months from the first (1st) day of October in such assessment year to the date of such conveyance and the denominator of which shall be twelve (12). If such conveyance occurs in the month of October, the grantor shall be disqualified for such tax relief in such assessment year. The grantee shall be required within a period not exceeding ten (10) days immediately following the date of such conveyance to notify the assessor thereof, or in the absence of such notice, upon determination by the assessor that such transfer, assignment, grant or conveyance has occurred, the assessor shall determine the amount of tax relief benefit to which the grantor is entitled for such assessment year with respect to the interest in real property conveyed and notify the tax collector of the reduced amount of such benefit. Upon receipt of such notice from the assessor, the tax collector shall, if such notice is received after the tax due date in the municipality, no later than ten (10) days thereafter mail or hand a bill to the grantee stating the additional amount of tax due as determined by the assessor. Such tax shall be due and payable and collectible as other property taxes and subject to the same liens and processes of collection, provided such tax shall be due and payable in an initial or single installment not sooner than thirty (30) days after the date such bill is mailed or handed to the grantee and in equal amounts in any remaining, regular installments as the same are due and payable.

(Ord. of 1-8-2008, § 2)

Sec.16-253. Application procedures.

- a) No claim shall be accepted under § 16-251 of this article, unless the taxpayer or authorized agent of such taxpayer, files an application with the assessor of the town, in such form and manner as the assessor may prescribe, during the period from February 1, to and including, May 15 of any year in which benefits are first claimed, including such information as is necessary to substantiate such claim in accordance with requirements in such application. A taxpayer may make application to the assessor prior to August 15 of the claim year for an extension of the application period. The assessor may grant such extension in the case of extenuating circumstance due to illness or incapacitation as evidenced by a physician's certificate to that extent, or if the assessor determines there is good cause for doing so. The taxpayer shall present to the assessor a copy of such taxpayer's federal income tax return and the federal income tax return of such taxpayer's spouse, if filed separately, for such taxpayer's taxable year ending immediately prior to the submission of the taxpayer's application, or if not required to file a federal income tax return, such other evidence of qualifying income in respect to such taxable year as the assessor may require. Each such application, together with the federal income tax return and any other information submitted in relation thereto, shall be examined by the assessor and a determination shall be made as to whether the application is approved. Upon determination by the assessor that the applying homeowner is entitled to tax relief in accordance with the provisions of § 16-251 of this article and this section, the assessor shall notify the homeowner and the municipal tax collector of the approval of such application. The municipal tax collector shall determine the maximum amount of the tax due with respect to such homeowner's residence and thereafter the property tax with respect to such homeowner's residence shall not exceed such amount. After a taxpayer's claim for the first (1st) year has been filed and approved such taxpayer shall file such an application biennially. In respect to such application required after the filing and approval for the first (1st) year the assessor shall notify each such taxpayer concerning application requirements by regular mail not later than February 1 of the assessment year in which such taxpayer is required to reapply, enclosing a copy of the required application form. Such taxpayer may submit such application to the assessor by mail provided it is received by the assessor not later than March 15 in the assessment year with respect to which such tax relief is claimed. Not later than April 1 of such year the assessor shall notify, by certified mail, any such taxpayer for whom such application was not received by said March 15, concerning application requirements and such taxpayer shall submit not later than May 15, such application personally or for reasonable cause, by a person acting on behalf of such taxpayer as approved by the assessor.
- b) Any person knowingly making a false application for the purpose of claiming property tax relief under state statute § 223-23, and this section, shall be fined not more than the amount listed in the town fee schedule. Any person who fails to disclose all matters relating thereto or with intent to defraud makes a false statement shall refund to the municipality all tax relief improperly taken.

(Ord. of 1-8-2008, § 3)

Sec. 16-254. Establishment of lien and interest for unpaid taxes.

The tax relief provided by the application of this article shall be the deferral of any annual tax increase, if any, above the base tax as calculated in § 16-252, above, for as long as the taxpayer

qualifies for such relief pursuant to § 16-251(2), above. The amount of property tax relief realized by a taxpayer each year as a result of the application of this article shall be a lien in favor of the town on the property in the amount of the total tax relief granted, plus interest applicable to the total of unpaid taxes represented by such tax relief, at the same rate of interest as provided by law for the collection of tax liens, provided, however, that interest does not begin to run until one (1) year after the death of the last surviving qualifying taxpayer. Such lien may be recorded, enforced and collected in the same manner and under the same dictates as are provided by law for the collection and enforcement of tax liens. Any such lien shall have a priority in the settlement of such person's estate.

(Ord. of 1-8-2008, § 4)

Sec. 16-255. Eligibility for other benefits.

Any property tax relief granted to any resident of the town in accordance with the provisions of state statute § 223-23 et seq., shall not disqualify such resident with respect to any benefits for which such resident shall be eligible under the provisions of state statutes §§ 12-129b to 12-129d, inclusive, of the 2006 supplement to the state statutes §§ 12-129n and 12-170aa of the 2006 supplement to the state statutes, and any such property tax relief provided under this article shall be in addition to any such benefits for which such resident shall be eligible under said state statutes §§ 12-129b to 12-129d, inclusive, and 12-129n and 12-170aa.

(Ord. of 1-8-2008, § 5)

CHAPTER XVII - TRAFFIC AND VEHICLES

Article 1. - General

Sec. 17-1. Sledding on streets.

No person shall coast upon a sled on any street in the town except upon such streets as may be designated by the board of police commissioners for such purposes.

(Ord. of 2-20-1961)

Cross reference—Streets, sidewalks and other rights-of-way, chapter XIV § 14-11 et seq of this code book.

Secs. 17-2—17-29. Reserved.

Article 2. - Parking

Part A. - Generally.

Sec. 17-30. Board of police commissioners; powers and duties.

- (a) The town board of police commissioners shall have the power to prohibit, limit, or restrict the parking of vehicles and to erect and maintain signs in each block designating the time or terms of such prohibitions, limitations or restrictions on any highway or thoroughfare coming under the jurisdiction of the town, or any highway or thoroughfare within the town, and may remove from any highway or thoroughfare under its jurisdiction any vehicle parked in violation of any regulation of this article.
- (b) The board of police commissioners shall be empowered, at a regular or special meeting, to establish, reestablish, change or modify a schedule of fines not to exceed one hundred dollars (\$100.00) for each violation of any such prohibition, limitation or restriction in this article 2 of the code book. Any person charged with any such violation shall pay such fine as provided in the town fee schedule.
- (c) The board of police commissioners shall issue or cause to be issued a form of notice to any persons violating such prohibitions, limitations or restrictions. The notice shall be served by any duly authorized police officer of the town on the person by leaving a copy in or on his vehicle. The notice shall specify the amount of the fine established for the violation charged and place where the fine may be paid. All fines will double if not paid within seven (7) days from the date of the violation.

(Ord. of 1-11-1960, §§ 16 3; Ord. No. 2-72, 7-5-1972; Ord. No. 1-83, §§ I6 III, 2-28-1983; Ord. of 9-21-2004; Ord. of 2-7-2006)

Cross reference—Boards, committees and commissions, chapter II § 2-10 et seq. of this code book.

Charter reference— §§ 2-4; 4-3-1 et seq.

Sec. 17-31. Towing and storing charges.

Vehicles towed for illegal parking shall be stored in a safe place and shall be restored to the owner or operator of such vehicle upon payment of a fee to the town police headquarters of the

appropriate fine. The owner or operator shall, at the same time, pay to the town the towing and storage charge in effect at the time of removal, which is not to exceed an amount listed in the town fee schedule.

(Ord. of 1-11-1960, § 4; Ord. No. 1-83, § IV, 2-28-1993)

Sec. 17-32. No parking ban.

- (a) *Determination of emergency.* Whenever, in the opinion of the town manager in consultation with the director of public works, an emergency arises, or in their opinion is imminent, calling for the cessation or limitation of parking of cars and other vehicles on any of the streets of the town, street parking will terminate until such time as the town manager in consultation with the director of public works declares an emergency no longer exists, or whenever there is an accumulation of four (4) inches or more of snowfall during any one storm, there will be an automatic cessation of parking of all vehicles on any of the streets of the town. Such parking shall terminate until eight (8) hours after the storm has stopped, or the director of public works declares the parking ban lifted.
- (b) *Notification.* Immediately upon making such a determination that a no parking ban should be ordered, the director of public works shall notify the news media, including radio, television, and newspapers, as to when such parking ban shall go into effect. In the case of snowstorms, the director of public works shall notify the news media when such parking ban is lifted.
- (c) *Enforcement and penalties.* Any vehicle left parked upon the street after such parking ban becomes effective, which may be considered a detriment under the existing emergency, or to snow plowing, snow removal or sanding operations, will be ticketed and then towed away at the owner's expense. The assessment to the owner of such vehicle will include a fine for violation of this section, as well as the charges for towing and storage. It shall be the duty of the chief of police, upon being notified of the emergency requiring temporary no parking, to enforce this section.

(Ord. No. 3-90, §§ 1 & 4, 9-18-1990; Ord. of 2-7-2006)

Sec. 17-33. Street parking violations.

Parking of motor vehicles, on roads within the boundaries of the town, in any of the following ways is prohibited:

- (1) *In opposite direction of traffic.* Facing against oncoming traffic on the side of the street on which the vehicle is parked.
- (2) *Close to curb.* More than twelve (12) inches from a curb.
- (3) *Fire hydrant.* Within ten (10) feet of a fire hydrant.
- (4) *Crosswalk.* Within ten (10) feet of a marked crosswalk.
- (5) *Intersection.* Within twenty-five (25) feet of an intersection.
- (6) *Stop sign.* Within twenty-five (25) feet of a stop sign.
- (7) *Restricted area.* In a restricted area.
- (8) *Bus stop.* Within a bus stop.
- (9) *Loading zone.* Within a loading and reloading zone.
- (10) *Traffic hazard zone.* In such a manner as to constitute a traffic hazard or to obstruct the free movement of traffic.
- (11) *Double parking.* Upon a traveled portion of the highway adjacent to parked cars.
- (12) *Driveway.* In such a manner as to obstruct a driveway.

(13) *Curb and sidewalk.* Within the area between the curb and the sidewalk.

(14) *Parking ban.* Violation of parking ban due to snow or emergency.
(Ord. of 2-7-2006)

Sec. 17-34. Registration plate prima facie evidence of ownership.

In any prosecution or proceeding under this article, the registration plate displayed on the motor vehicle shall constitute a prima facie presumption that the owner of such vehicle was the person who parked such vehicle at the place where such violation occurred.
(Ord. of 2-7-2006)

Sec. 17-35. Violations of parking regulations; citations; fines.

Wherever any vehicle is found parked or stopped in violation of any of the provisions of this article, or rule or regulation of the traffic authority concerning parking, a police officer shall attach to such vehicle a notice to the owner or operator stating that the vehicle has been parked unlawfully. The notice, or citation shall state time, place and nature of the violation and the registration number of the vehicle involved.
(Ord. of 2-7-2006)

Sec. 17-36. Authority to tow violating vehicles; reclaiming; charges.

Whenever any vehicle shall be found parked in violation of any provision of this article, in addition to the issuance of a parking citation, such vehicle may be removed under the direction of a member of the police department.
(Ord. of 2-7-2006)

Secs. 17-37—17-49. Reserved.

Part B. - Handicapped Parking.

Sec. 17-50. Applicability of part provisions.

This part shall apply to all new and existing nonresidential sites that have a parking area for twenty (20) or more vehicles including, but not limited to, shopping centers, office buildings, commercial buildings, mercantile buildings, warehouses, storage buildings, manufacturing buildings, convalescent homes, schools and public buildings. In addition, the traffic authority may designate handicapped parking spaces on town roads which shall be of such size and location as he may specify.
(Ord. No. 2-80, § 1, 1-30-1980)

Sec. 17-51. Use of specially designated spaces.

After establishment of specially marked parking spaces for handicapped persons, no person shall park a motor vehicle in such space unless a handicapped person is either a passenger or occupant of the vehicle, and the vehicle contains a designation issued by the commissioner of motor vehicles pursuant to the state statutes, which designation shall be visible as per the state statutes (or a handicapped designation issued by other governmental authority).
(Ord. No. 2-80, § 2, 1-30-1980)

Sec. 17-52. Number of spaces to be provided; location.

- (a) On each site having parking spaces for at least twenty (20), but not more than twenty-five (25) spaces, at least one (1) space shall be specifically designated and reserved for handicapped parking. Additional spaces for handicapped parking shall be in accordance with the following table:

<i>Total Parking On Site</i>	<i>Required Number of Handicapped Parking Spaces</i>
26ô 50	2
51ô 75	3
76ô 100	4
101ô 150	5
151ô 200	6
201ô 300	7
301ô 400	8
401ô 500	9
501ô 1,000	2 percent of total
Over 1,000	20, plus 1 for each 100 over 1,000

- (b) Parking spaces for the handicapped shall be located as close as possible to elevators, ramps, walkways and entrances, and so located that the handicapped person is not compelled to wheel or walk behind parked vehicles to reach the entrances, ramps, walkways and elevators.

- (c) The exact location of the parking spaces shall be designated by the town traffic authority or his designee.

(Ord. No. 2-80, § 3, 1-30-1980)

Sec. 17-53. Marking of spaces.

Each such space designated for handicapped parking shall be not less than fifteen (15) feet in width, including three (3) feet of cross hatch, unless the space would create a nonconforming condition, in which event, the existing parking stall width shall be permitted. Each space shall be designated by abovegrade signs with white lettering against a blue background and shall bear the words "HANDICAPPED PARKING STATE PERMIT REQUIRED." Such signs shall be erected, installed and maintained by and at the expense of the owner, operator, lessee or tenant of such site and shall further indicate that unauthorized use of such space shall subject the violator to a fine. If the signs and markings called for in this section are not installed within thirty (30) days after written request by the town traffic authority, the town may proceed to install the same and impose the costs against the owner of the site.

(Ord. No. 2-80, § 4, 1-30-1980)

Sec. 17-54. Violations; citations.

Whenever any vehicle shall be found parked in violation of this part, any town police officer may issue a citation for such violation, which citation shall provide for a fine as set by the board of police commissioners, payable to the town and remitted to the town police department within

seven (7) days of the citation date. If any fine is not paid within seven (7) days, a penalty in an amount equal to the fine shall immediately become due and payable, in addition to the original fine.

(Ord. No. 2-80, § 5, 1-30-1980; Ord. No. 4-92, 5-7-1992; Ord. of 2-7-2006)

Sec. 17-55. Owner's responsibility for violations.

The registered owner of any vehicle parked in violation of this part shall be presumed to be the operator at the time of the violation.

(Ord. No. 2-80, § 6, 1-30-1980)

Secs. 17-56—17-69. Reserved.

Part C. - Fire Lanes

Sec. 17-70. Definitions.

The following words, terms and phrases, when used in this part, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Fire lane means the traffic lane or other area sufficient in width adjacent to the front, rear, or sides of public buildings or private buildings devoted to public use with a capacity of twenty (20) or more persons to permit free passage of heavy fire apparatus and other emergency equipment to all necessary areas in all seasons and all kinds of weather. Nothing in this part is intended to designate any portion of a public street, even though such street may be used for parking, as a fire lane.

(Ord. No. 4-74, § 1, 10-21-1974)

Cross reference—Definitions generally, chapter I § 1-2 of this code book.

Sec. 17-71. Designation.

Whenever the chief fire marshal shall determine that the reasonable safety of persons occupying or using any such building requires the establishment of a fire lane for orderly access of fire and other emergency equipment, he shall establish such fire lane by written order. He shall cause a copy of such order to be delivered to the owner, or agents thereof, of any land on which such fire lane is established.

(Ord. No. 4-74, § 2, 10-21-1974)

Sec. 17-72. Notice.

Whenever the chief fire marshal establishes a fire lane, he shall file one (1) copy of his order with each of the following: the town clerk, the four (4) fire chiefs, and the traffic division of the police department. Any person aggrieved by such order may file with the town clerk a written notice of appeal, within fifteen (15) days after the date of such order, setting forth therein reasons of aggrievement. After a hearing before the town manager with the aggrieved, the chief fire marshal and the fire chief whose district is involved, the town manager may affirm, modify, or rescind such order.

(Ord. No. 4-74, § 3, 10-21-1974; Ord. of 2-7-2006)

Sec. 17-73. Sign designation.

Upon establishment of a fire lane, the traffic division of the police department shall cause to be erected or installed adequate signs, markings and other devices to delineate such fire lane. Signs, markings and other devices erected or installed on privately owned premises shall be at the cost of the owner. In lieu of the foregoing, the owner may install, or cause to have installed, adequate signs, markings, and other devices under the direction of the traffic division.
(Ord. No. 4-74, § 4, 10-21-1974)

Sec. 17-74. Violations.

No person shall park, or permit to stand, a motor vehicle in a fire lane which has been established in accordance with this part, except when loading or unloading at which time such motor vehicle shall not be unattended. Any person violating this section shall be fined in accordance with the schedule of fines set by the board of police commissioners. The registered owner of a motor vehicle shall be presumed to be the operator of such vehicle.
(Ord. No. 4-74, § 5, 10-21-1974; Ord. of 1-7-2006)

Sec. 17-75. Maintenance.

Fire lanes, established under this part, shall be kept free of ice and snow by the owner, and fire hydrants located on private property shall be accessible from such fire lanes and also kept free of snow by the owner.
(Ord. No. 4-74, § 6, 10-21-1974)

Sec. 17-76. Removal.

Any motor vehicle found standing in a fire lane, which has been established in accordance with this part, may be towed, upon the direction of a police officer, to any public or private parking facility, and all expense of such towing, and any subsequent storage, shall be borne by the registered owner of such vehicle.
(Ord. No. 4-74, § 7, 10-21-1974)

Sec. 17-77. Penalties for violation of part.

Whenever a vehicle is found standing in violation of § 17-74, a police officer shall serve upon the owner or operator of such vehicle, or place upon such vehicle, a notice directing the owner or operator to a fine as specified in such notice in accordance with the schedule of fines set by the board of police commissioners.
(Ord. No. 4-74, § 8, 10-21-1974; Ord. No. 3-92, 5-7-1992; Ord. of 2-7-2006)

Secs. 17-78—17-89. Reserved.

Article 3. - Towing*

Sec. 17-90. From private property where parking is prohibited.

Whenever any vehicle is found parked on private property where parking is not permitted, provided that the owner of such private property, or his authorized agent, has posted such restriction on such property in a manner calculated to put persons on notice of such no parking of

* **State law reference**—Towing or removal of vehicle, state statutes §§ 14-145ô 14-145c.

vehicles, such vehicles may be removed and conveyed by, and/or under the direction of a member of the police department by means of towing, or otherwise, to a vehicle pound.
(Ord. No. 5-80, § I, 8-4-1980)

Sec. 17-91. Storage; fees for reclaiming towed vehicles.

- (a) Vehicles so towed for illegal parking shall be stored in a safe place and shall be restored to the owner or operator of such vehicle upon payment of a fee to the town police headquarters of an amount listed in the town fee schedule. The owner or operator shall, at the same time, pay to the town the towing charge in effect at the time of removal.
- (b) The board of police commissioners shall be empowered at a regular meeting held annually during the month of January to reestablish, change or modify the penalties of not less than thirty-five dollars (\$35.00), nor more than fifty dollars (\$50.00), which change shall be filed in the office of the town clerk

(Ord. No. 5-80, § II, 8-4-1980; Ord. No. 2-92, 5-7-1992)

Sec. 17-92. Payment upon failure of vehicle owner or operator to remove vehicle.

If the owner of private property requests the removal of a vehicle, he shall pay the town for such removal if the vehicle owner or operator fails to do so.

(Ord. No. 5-80, § III, 8-4-1980)

Sec. 17-93. Recordkeeping.

When a motor vehicle is authorized to be towed away, the police department shall keep and maintain a record of the vehicle towed, list the color, year of manufacturer's trade name, body style, vehicle identification number and license plate displayed on the vehicle. The record shall also include the date and hour of towing, location towed to, reason for towing and the name of the officer authorizing the tow.

(Ord. No. 5-80, § IV, 8-4-1980)

Secs. 17-94—17-109. Reserved.

Article 4. - Truck Routes

Sec. 17-110. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Truck means any motor vehicle solely registered as a commercial vehicle and has a gross vehicle weight of at least one thousand (1,000) pounds. Public safety, educational, municipal and municipal purpose vehicles are exempt from the provisions of this article.

(Ord. No. 4-88, § 1, 8-22-1988)

Cross reference—Definitions generally, chapter I § 1-2 of this code book.

Sec. 17-111. Prohibited acts.

No person shall operate a truck on any public road where the town has erected a sign in a conspicuous place on such road, which effectively states that trucks are prohibited from

operating on such road, unless the truck has a point of origin or destination point on such road or an intersecting road which has no alternative access.

(Ord. No. 4-88, § 2, 8-22-1988)

Sec. 17-112. Penalty for violation of article.

Any person violating the terms of this article shall be fined in accordance with the town fee schedule for each offense.

(Ord. No. 4-88, § 3, 8-22-1988)

Secs. 17-113—17-119. Reserved.

Article 5. - Regulating Off-Road Vehicles

Sec. 17-120. Policy.

The state legislature has found and declared that:

- (1) excessive noise is a serious hazard to the health, welfare and quality of life of residents of the state;
- (2) exposure to certain levels of noise can result in physiological, psychological and economic damage;
- (3) a substantial body of science and technology exists by which excessive noise may be abated;
- (4) the primary responsibility for control of noise rests with the state and the political subdivisions thereof; and
- (5) each person has a right to an environment free from noise that may jeopardize his or her health, safety or welfare. The town council adopts these findings and policy statement.

This article is intended to protect, preserve and promote the health, safety, welfare and quality of life of the residents of the town through the regulation of noise, disturbance and inconvenience caused by the use of off-road vehicles as defined herein.

(Ord. 5-10, 10-19-2010)

Sec. 17-121. Definitions.

- a) "Off-Road Vehicle" (hereinafter "ORV") as used in this article shall include the following: "Snowmobiles" as defined in state statute § 14-379; "All-terrain vehicles" as defined in state statute § 14-379; Motorcycles, motorized dirt bikes, motorized go-carts, or any other motorized vehicle, registered or unregistered, which is being used for off road recreational purposes.
- b) "Operate" means to control the course of or otherwise use an ORV;
- c) "Operator" means the person who controls the course of and operation of an ORV;
- d) "Owner" means the owner of the ORV;
- e) "dB(A)" means the standard abbreviation for "A weighted sound level in decibels";

- f) "Lot" means a parcel of land which is part of an approved subdivision as a designated lot, the map of which has been recorded with the town clerk or a parcel of land described by metes and bounds, the deed of which has been recorded with the town clerk;
- g) "Immediate family" means a spouse, child, grandchild, parent or grandparent.

(Ord. 5-10, 10-19-2010)

Cross reference—Definitions generally, chapter 1 § 1-2 of this code book.

Sec. 17-122. Prohibition on town owned property.

It is illegal to operate or possess an ORV on any town owned land, including all parks and open space land.

(Ord. 5-10, 10-19-2010)

Sec. 17-123. Vehicle registration and written land owner permission.

- a) The written permission of the landowner or his duly authorized agent shall be carried by any person operating an ORV and shall be available for inspection whenever such person operates an ORV.
- b) No person operating an ORV shall refuse to produce their vehicle registration (as required under state statute § 14-386) and/or the written permission of the landowner or his agent when requested by an authorized law enforcement officer.
- c) Upon the request by an authorized law enforcement officer and upon the failure to produce required vehicle registration and/or written permission from the landowner (or his agent) upon whose property the vehicle is being operated, the law enforcement officer shall stop the operator from further use of said ORV and shall escort the operator with the vehicle to a location accessible to a commercial towing service. From this location the ORV shall be moved at the vehicle owner's expense to a location designated by the police department. The ORV shall remain at this designated location until the owner of the vehicle claims it by providing valid proof of ownership and by paying all applicable towing and storage charges. In addition to said towing and storage charges, the owner (or parent of the owner if he or she is a minor) shall pay the fines listed in the town fee schedule for failure to produce valid registration and/or written permission to operate on the private property of another.
- d) The provisions of this section requiring written permission of the landowner or his agent do not apply to the operation of an ORV on premises owned or leased by the owner of said vehicle or his or her immediate family.

(Ord. 5-10, 10-19-2010)

Sec. 17-124. Operational restrictions.

- a) *Proximity to Adjoining Land:* No person shall operate an ORV less than twenty five (25) feet from the adjoining property line unless such person owns the abutting property or has written permission from the owner of such abutting property (which written permission must be with the operator at all times).
- b) *Proximity to Public Road:* No person shall operate an ORV within twenty five (25) feet of a public road unless the operator is lawfully entering such road for travel or lawfully crossing such road;

- c) *Hours of Operation:* The operation of any ORV within two hundred and fifty (250) feet of any residential dwelling is hereby prohibited before 8:00 a.m. and after 8:00 p.m., Monday through Saturday, and before 9:00 a.m. and after 6:00 p.m. on Sunday.

(Ord. 5-10, 10-19-2010)

Sec. 17-125. Noise restrictions.

- a) *Noise Restrictions:* Municipal officers enforcing this article shall make reference to the regulations of the state department of motor vehicles, § 14-80a-1, et seq. entitled "Maximum Permissible Noise Levels for Vehicles." Measurement of noise levels shall be done in a manner consistent with the standards and procedures set forth in these regulations promulgated by the department of motor vehicles. Noise emissions from an ORV when measured with a sound level measuring microphone located fifty (50) feet from the ORV shall not exceed eighty (80) dB(A) at any time or under any condition of surface grade, vehicle load, acceleration or deceleration, or at any speed or rpm. In addition, noise emissions from an ORV may not exceed ninety-nine (99) dB(A) at a distance of twenty (20) inches at idle.
- b) *Mufflers:* Each ORV operated by an internal combustion engine shall be provided with muffler(s) designed to prevent excessive, unusual or unnecessary exhaust noise. Each muffler shall be maintained by the vehicle owner or operator in good working order and in constant operation.

No person, including an ORV dealer or repairer, shall install or use upon said vehicle a muffler lacking interior baffle plates or other effective muffling devices, a gutted muffler, a muffler cut-out, a straight exhaust, or any other mechanical device which will amplify the noise emitted by such vehicle.

(Ord. 5-10, 10-19-2010)

Sec. 17-126. Exclusions and exceptions.

The following vehicles or activities shall be exempt from this article:

- (a) Farming equipment or farming activity, as defined in state statutes §§ 1-1 and 12-91;
- (b) Vehicles used for mowing, lawn maintenance and other yard work, provided that all equipment complies with other provisions of this article pertaining to mufflers and noise;
- (c) Vehicles used for gardening, provided that all equipment complies with other provisions of this article pertaining to mufflers and noise;
- (d) ORV used by authorized law enforcement officers, fire fighters or emergency medical personnel while on duty and acting within the scope of their employment;
- (e) Vehicles used in the normal course of snow removal from driveways or sidewalks, provided that all equipment complies with other provisions of this article pertaining to mufflers and noise;
- (f) Businesses that provide ORVs and a place to ride to the public on commercial property and are authorized to do so by all municipal and state agencies having jurisdiction over the property and activity in question.

(Ord. 5-10, 10-19-2010)

Sec. 17-127. Enforcement.

The police department is charged with enforcing the provisions of this article. With respect to privately owned land no police officer shall initiate an investigation, or attempt to enforce or issue a summons to enforce this article, except upon complaint. The chief of police may develop regulations or procedures consistent with this article for the enforcement thereof, including but not limited to the metering procedures and training of officers.

(Ord. 5-10, 10-19-2010)

Sec. 17-128. Fines.

In addition to any offenses enumerated in state statutes §§ 14-379 through 14-390, non-compliance with any section of this article shall constitute a separate offense and shall carry a fine for each violation as set forth in the town fee schedule.

(Ord. 5-10, 10-19-2010)

Sec. 17-129. Appeals.

Any person fined pursuant to this article may appeal such fine to the town manager or his/her designee within thirty (30) days of the issuance of said fine, and then, if necessary, to the superior court.

(Ord. 5-10, 10-19-2010)

Sec. 17-130. Relation to nuisance and other laws.

Nothing in this article shall be construed as authorizing or legalizing the creation or maintenance of a nuisance, and compliance with this article is not a bar to a claim of nuisance, or any other private cause of action, by any person. A violation of this article shall not be deemed to create a nuisance per se. The provisions of this article shall not be construed to prevent the enforcement of other ordinances, regulations, or statutes that prescribe other standards for the type of noise or conduct involved.

(Ord. 5-10, 10-19-2010)

CHAPTER XVIII – UTILITIES

Article 1. - General

Secs. 18-1—18-29. Reserved.

Article 2. - Sewer Service

Sec. 18-30. Approval of facilities required before construction of buildings.

No dwelling, apartment, boardinghouse, hotel, restaurant, business building, or other building requiring sewerage facilities shall hereafter be constructed in the town, unless such facilities shall have been approved by the town health officer or by an inspector appointed by the town health officer.

(Ord. of 12-11-1950, § 1)

Sec. 18-31. Certificate of approval of facilities required; exception.

No building permit shall hereafter be issued by the officer or agency authorized by law to issue building permits until a certificate of approval of such sewerage facilities issued by said health officer or his authorized inspector shall have been presented to such office or agency; provided however, this article shall not apply to any building, the owner of which has in good faith applied for and received permission to connect with the regularly established sewerage facilities installed in the street on which his property abuts.

(Ord. of 12-11-1950, § 2)

Sec. 18-32. Fee for certificate of approval.

For the inspection of the sewage facilities and the issuance of a certificate of approval by the director of health or his authorized inspector, a fee as listed in the town fee schedule shall be paid to the town treasurer at the time said certificate of approval is issued.

(Ord. of 12-11-1950, § 3; Amd. of 2-6-1958)

Sec. 18-33. Penalty for violation.

Any person violating any provision of this article shall be fined a fee as listed in the town fee schedule for each violation.

(Ord. of 12-11-1950, § 4)

CHAPTER XIX – ZONING AND LAND USE

Article 1. - General

Secs. 19-1—19-20. Reserved.

Article 2. - Zoning Violations

Sec. 19-21. Definitions.

- A) "Person" means any individual, firm, partnership, corporation, limited liability company, association or any other entity.
- B) "Citation" shall be a written statement of the relevant conditions and facts giving rise to the zoning violation, including a reference to the specific section(s) of the zoning regulations which have been violated.

(Ord. No. 5-96, 12-03-1996)

Sec. 19-22. Fine for zoning violation.

Pursuant to § 8-12(a) of the state statutes, rev. 1958, as amended, and in addition to remedies provided in state statute § 8-12 thereof, on and after October 1, 1996, the zoning enforcement officer is hereby authorized to issue citations for violations of the zoning regulations of the town in accordance with this article. The fine for each such zoning violation shall be listed in the town's fee schedule.

(Ord. No. 5-96, 12-03-1996)

Sec. 19-23. Service of citation.

Any citation issued hereunder shall be served upon the person named in such citation by either:

- (1) in hand service made by the zoning enforcement officer or his designated agents, an indifferent person, or any sheriff or constable having authority to serve civil process in the state, or
- (2) by mailing such citation to the person named therein at his last known home address or other address provided by him to the zoning enforcement officer, by certified mail, return receipt requested, postage prepaid. If the citation is refused, it may be sent by regular mail to such address. The zoning enforcement officer shall retain a true and attested duplicate original of such citation.

(Ord. No. 5-96, 12-03-1996)

Sec. 19-24. Hearing procedure for citation.

- A) The town manager shall appoint, subject to the confirmation by the town council, a citation hearing officer to conduct the hearings authorized by this article. The citation hearing officer may not be an employee of the town and shall serve without compensation but may be reimbursed for actual expenses incurred in performing the duties of this office to the extent that funds have been made available by the town council. The citation hearing officer shall serve for a term of two (2) years, unless removed for cause.

- B) Any person served such a citation may make payment of the fine within thirty (30) days of such service. Such payment shall be delivered to the zoning enforcement officer and shall be inadmissible in any proceeding, civil or criminal, to establish the conduct of such person making the payment.
 - C) If the person cited fails to pay the fine within said thirty (30) day period, the zoning enforcement officer, pursuant to general statute § 7-152c, as amended, is authorized, at any time with twelve (12) months from the expiration of said thirty (30) day period to enforce said citation by sending said person a notice informing him of: (i) of the allegations against him and the amount of the fine(s) due; (ii) that he may contest his liability before the citation hearing officer by delivering in person or by mail written notice within ten (10) days of the date thereof; (iii) that if he does not demand a hearing, an assessment of fine and judgment shall be entered against him; and (iv) that such judgment may issue without further notice.
 - D) If the person sent the notice required by § c above, does not make full payment of the fine(s) and does not make written demand for a hearing before the citation hearing office within ten (10) days of the notice provided for in § c above, he shall be deemed to have admitted liability, and the zoning enforcement officer shall certify such person's failure to respond to the citation hearing officer. The citation hearing officer shall thereupon enter and assess the fine(s) provided for by this article.
 - E) If a hearing is requested, it shall be conducted in accordance with the provisions of state statute § 7-152c(e).
 - F) The failure to pay the assessment of any fine(s) made by the citation hearing officer can result in a superior court judgment as provided by state statute § 7-152c(f) subject to judicial review as provided in state statute § 7-152c(g).
- (Ord. No. 5-96, 12-03-1996)

Secs. 19-25—19-29. Reserved.

Article 3. - Fees for Technical Assistance

Sec. 19-30. Development applications.

Due to the scope, nature, complexity, or the impact of certain development applications on a particular site or on surrounding areas, town staff may not have the resources to completely and adequately review said application in the time period prescribed by state statute(s). In such cases the town council, a board or commission may determine that the town requires additional technical, engineering and legal assistance (hereinafter "technical assistance").
(Ord. No. 10-08, 02-26-2008)

Sec. 19-31. Fees. Additional technical assistance.

Whenever the town council, a board or commission determines that additional technical assistance is necessary due to the scope, nature, complexity and/or impact of a proposed development the expense of such technical assistance shall be passed on to the applicant. The council, board or commission involved shall obtain an estimate prepared by a qualified party or expert and the estimated cost of the technical assistance to review the application multiplied by one hundred-fifty percent (150%) shall be paid by the applicant and deposited with the agency

involved in reviewing said application. Such deposit shall be made within ten (10) days of determination by the council, board or commission that a technical review is required.
(Ord. No. 10-08, 02-26-2008)

Sec. 19-32. Final costs.

Upon completion of the technical assistance and final action on the application by the town council, board or commission involved, the town shall determine the costs incurred for the technical assistance and refund the excess monies to the applicant. Applicants shall not be responsible for costs incurred for technical assistance which exceed the deposit submitted to the town.

(Ord. No. 10-08, 02-26-2008)

Sec. 19-33. More than one (1) agency.

If a proposed development involves review by more than one (1) agency within the town then each agency review is subject to the provisions of this article.

(Ord. No. 10-08, 02-26-2008)

(Adopted by Town Council on July 19, 2011)

