

TOWN OF PENDLETON

Local Law No. 2 of 2022

A Local Law to Amend the Code of the Town of Pendleton

Be it hereby enacted by the Town Board of the Town of Pendleton as follows:

Section 1: Chapter 97 of the Code of the Town of Pendleton (“Code”) is hereby amended to read in its entirety as follows:

CHAPTER 97

Adult Uses

SECTION 97-1. PURPOSE.

It is recognized that buildings and establishments operated as adult uses have serious objectionable operational characteristics. In order to promote the health, safety and general welfare of the residents of the Town of Pendleton, this Chapter is intended to restrict adult uses to nonresidential and nonbusiness areas of the Town of Pendleton and otherwise regulate their operation. Moreover, in light of the fact that the operational characteristics of adult uses increase the detrimental impact on a community when such uses are concentrated, this Chapter is intended to promote the health, safety and general welfare of the residents of the Town of Pendleton by regulating the concentration of such uses.

SECTION 97-2. WORD USAGE AND DEFINITIONS.

- A. General. Unless specifically defined below, words or phrases used in this Chapter shall be interpreted so as to give them the meaning they have in common usage and to give this Chapter its most reasonable application.
- B. Specific terms. As used in this Chapter, the following terms shall have the meanings indicated:

ADULT BOOKSTORE

An establishment or business, whether retail or wholesale, having as a substantial or significant portions of its stock-in-trade, books, magazines and other periodicals, films and viewing materials for sale or viewing on premises, by use of motion picture devices or any coin operated means, which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas or an establishment or business containing a segment or section devoted to the sale or display of such material.

ADULT ENTERTAINMENT CABARET

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A public or private establishment which is licensed to serve food and/or alcoholic beverages, which features topless dancers, strippers, male or female impersonators or similar entertainers.

ADULT MINI-MOTION-PICTURE THEATER

An enclosed building with a capacity of less than fifty (50) persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

ADULT MOTION-PICTURE THEATER

An enclosed or unenclosed building or structure or portion of a building or structure, including drive-in theaters, used for presenting materials having as a dominant theme material distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

ADULT USE

Any establishment or business involved in the dissemination of material distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas, including, but not limited to, book stores, adult motion-picture theaters and adult entertainment cabarets.

BUSINESS

Any commercial enterprise, association or arrangement for profit.

DISSEMINATION

The transfer of possession, custody, control or ownership of or the exhibition or presentation of any performance to a customer, member of the public or business invitee of any material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

PERSON

Any person, firm, partnership, corporation, association or legal representative acting individually or jointly.

SPECIFIED ANATOMICAL AREAS

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

SPECIFIED SEXUAL ACTIVITIES

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- (1) Human genitals in a state of sexual stimulation or arousal.
- (2) Acts of human masturbation, sexual intercourse or sodomy.
- (3) Fondling or other erotic touching of human genitals, pubic regions, buttocks or female breasts.

SUBSTANTIAL CONNECTION

- (1) In a sole proprietorship, an individual who owns, operates, controls or conducts, directly or indirectly, any premises, building or location upon which any adult use takes place.
- (2) In a partnership, limited or general, an individual who shares in any potential profits or losses of the business or who shares in the ownership of any of the assets of the partnership business.
- (3) In a corporation, an individual who is an officer, director or a holder, either directly, indirectly or beneficially, of more than twenty percent (20%) of any class of stock.
- (4) Any person who furnishes more than twenty percent (20%) of the capital financing or assets of such business, whether in cash, goods or services.

SECTION 97-3. RESTRICTIONS.

In addition to the requirements of Chapter 247, Zoning, adult uses shall be permitted subject to the following restrictions:

- A. No adult use shall be allowed within five hundred (500) feet of another existing adult use.
- B. No adult use shall be located within five hundred (500) feet of the boundaries of any zoning district which is zoned FP, R-1, R-2, CO or LI-1.
- C. No adult use shall be located within two thousand (2,000) feet of a preexisting school or place of worship.
- D. No adult use shall be located in any zoning district, except those districts zoned for Special Light Industrial (SLI).

SECTION 97-4. PROHIBITION REGARDING PUBLIC OBSERVATION.

No adult use shall be conducted in any manner that permits the observation of any material depicting, describing or relating to specified sexual activities or specified anatomical areas from any public way or from any property not registered as an adult use. This provision shall apply to any display, decoration, design, show window, screen or other opening.

SECTION 97-5. PENALTIES FOR OFFENSES.

Any violation of this Chapter shall be an offense punishable by a fine not exceeding two hundred fifty dollars (\$250) or imprisonment for not more than fifteen (15) days, or both. Each and every day that a violation of this chapter is permitted to exist shall constitute a separate offense. This penalty shall be in addition to any other penalties or other remedies as may be provided by law.

SECTION 97-6. REGISTRATION.

No person, firm, corporation or other entity shall lease, rent, maintain, operate, use or allow to be used or operated any business or establishment, any part of which contains an adult use, without first complying with the provisions of this Chapter as set forth below:

- A. In addition to any and all other necessary licenses and permits, no form of adult use shall be allowed to operate or allowed to continue to operate until a certificate of registration is filed with the Code Enforcement Officer/Building Inspector containing:
 - (1) The address of the premises.
 - (2) The name and address of the owner(s) of the premises and the name and address of the beneficial owners(s) if the property is in a land trust.
 - (3) The name of the business or the establishment subject to the provisions of this Chapter.
 - (4) The name, business and home address and business or home phone numbers of all owners of the business or establishment subject to the provisions of this Chapter.
 - (5) The name, business and home address and business or home phone numbers of all those persons having a substantial connection with the business or establishment subject to the provisions of this Chapter.
 - (6) The date of the initiation of the adult use.
 - (7) The exact nature of the adult use.
 - (8) If the premises or the building in which the business containing the adult use is located is leased, a copy of the lease.

- B. If there occurs any change in the formation required for the registration, the Code Enforcement Officer/Building Inspector shall be notified of such change and a new amended certificate shall be filed within thirty (30) days of such change.

- C. The processing fee for each certificate of registration or amendment thereto shall be as described in the Town of Pendleton Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time.

- D. No certificate of registration issued under the provisions of this chapter shall be transferable to any other than the registrant, nor shall a certificate of registration be transferable for use at any premises, building or location other than stated in the certificate of registration.

- E. The owner, manager or agent of any adult use shall cause a copy of the certificate of registration issued under the provisions of this Chapter to be prominently displayed on the premises, building or location for which it is issued.

- F. Any knowingly false statement or any statement which the registrant or applicant should reasonably have known to be false which is provided in the certificate of registration or

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any document or information supplied therewith shall be grounds for rejection, suspension or revocation of the certificate of registration.

- G. It is a violation of this Chapter for the owner or person in control of any property to establish or operate thereon or to permit any person to establish or operate an adult use without having in force a certificate of registration complying with this Chapter.
- H. Any certificate of registration shall be immediately revoked if an owner or person in control of property operated or established as an adult use, or his employee, is convicted of any violation of the Penal Law of the State of New York or violates this Chapter in any manner.

SECTION 97-7. SPECIAL USE PERMIT.

- A. No use as described in this chapter shall be established until the issuance of an annual Special Use Permit by the Town Board of the Town of Pendleton, following an annual public hearing. Application for such a Special Use Permit shall be in conformity with this chapter, as provided for herein, and Section 247-16 of Chapter 247, Zoning. The application shall be in writing to the Town Board and shall consist of a description of the premises for which the Special Use Permit is sought, a plain and concise statement of the use which is proposed and such additional information as shall be required by the Town Board. The Town Board shall call an annual public hearing for the purpose of considering each request for a Special Use Permit.
- B. A Special Use Permit issued under the provisions of this Chapter shall not be transferable.
- C. The fee for each special use permit shall be as described in the Town of Pendleton Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time.
- D. Any Special Use Permit shall be immediately revoked if an owner or person in control of property operated or established as an adult use, or his employee, is convicted of any violation of the Penal Law of the State of New York, or violates this Chapter in any manner.

Section 2: Chapter 100 of the Code of the Town of Pendleton (“Code”) is hereby amended to read in its entirety as follows:

CHAPTER 100
Amusement Games and Centers

SECTION 100-1. DEFINITIONS.

As used in this chapter, the following terms shall have the meanings indicated:

AMUSEMENT CENTER

Any premises, place or enclosure which is open to the public containing five (5) or more amusement games.

AMUSEMENT GAME

Any mechanical, electric or electronic device used or designed to be operated for entertainment, amusement or as a game by the insertion of a piece of coin, money, token or other article. This definition is not intended to include a jukebox, musical device or any machine, contrivance or device which dispenses tobacco or would be commonly known as a “vending machine.”

AMUSEMENT GAME DISTRIBUTOR

Any person who owns, places, distributes or locates an amusement game in the Town.

OWNER

A record owner, contract purchaser, lessee, assignee, bailee, receiver or trustee.

PERSON

One (1) or more individuals, a corporation, partnership, association, trust or firm and any trustee, receiver or assignee.

SECTION 100-2. AMUSEMENT CENTER LICENSE.

- A. License requirement. No person shall maintain or operate an Amusement Center within the Town without having in full force and effect an Amusement Center license issued by the Town Board. Said license shall be prominently displayed on the premises at all times.
- B. Application for license. Any person desiring to operate an Amusement Center shall file an application with the Town Board which shall contain the following information:
 - (1) Name, address and telephone number of the applicant.
 - (2) The address of the premises to be used as an Amusement Center.
 - (3) If the applicant is an individual, the age, date, and place of birth of the applicant, and if the applicant is a partnership, firm, association or other business entity, the same information shall be supplied for each stockholder, officer and director of the corporation or of the partners, members or principals of such business entity or other organization.

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- (4) The name, home address and home telephone number of the manager or other authorized agent of the applicant who shall be principally in charge of or conduct the business of the applicant on the designated premises.
- (5) The prior criminal conviction record of the applicant, other than convictions for minor traffic infractions. Said information shall be supplied for each partner, stockholder, officer, director or principal of the business entity or organization.

C. Approval or disapproval of application.

- (1) The Town Board shall promptly forward a copy of the application to the Code Enforcement Officer/Building Inspector for investigation, review and report. The Code Enforcement Officer/Building Inspector shall promptly review all information contained in the application and recommend approval or disapproval of the application. If the application is approved, the Town Board shall issue the license upon payment of the fee as hereinafter provided.
- (2) The application for a license shall be denied for any of the following reasons:
 - (a) Conviction of a crime involving moral turpitude.
 - (b) False statements contained in the application.
 - (c) The operation of the proposed Amusement Center would not be in accordance with the appropriate provisions of Chapter 247, Zoning.
 - (d) The location of such machines upon the premises constitutes a safety or fire hazard under the applicable provisions of the Code of the Town of Pendleton.
 - (e) The premises do not comply with the appropriate building, electrical and plumbing codes of the Town.
 - (f) The premises are located within five hundred (500) feet of the lot lines of any public or private school, church or other place of religious worship.

D. Any person having obtained an Amusement Center license must also comply with the provisions of § 100-4, below.

SECTION 100-3. LICENSE FEE FOR AMUSEMENT CENTERS.

The fee for a license for an Amusement Center shall be as described in the Town of Pendleton Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time, and all licenses shall expire on the 31st day of December of each calendar year. An application for an Amusement Center license shall be accompanied by a nonreturnable fee as described in the Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time, which amount shall be credited to the yearly license fee if such license is approved.

SECTION 100-4. AMUSEMENT GAME LICENSE FOR AMUSEMENT CENTERS.

No person shall maintain or operate an Amusement Center within the Town without having in full force and effect an Amusement Center license, for each game so operated, issued by the Town Board. Said licenses shall be prominently displayed at all times on the premises where the games are operated. Any person desiring to operate or maintain Amusement Games shall file an application with the Town Board containing such same information as provided in § 100-2,

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above. Such application shall be approved or disapproved after investigation by the Code Enforcement Officer/Building Inspector of the applicant, and such application shall be disapproved for the same reasons as indicated in § 100-2, above.

SECTION 100-5. LICENSE FEE FOR OPERATION OF AMUSEMENT GAMES IN AMUSEMENT CENTERS.

The fee for a license to operate Amusement Games shall be as described in the Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time, and all licenses shall expire on the 31st day of December of each calendar year. Such fee shall accompany the application for such license.

SECTION 100-6. AMUSEMENT GAME DISTRIBUTOR LICENSE.

- A. License required. No person shall distribute or sell Amusement Games in the Town without having in full force and effect an Amusement Game Distributor license issued by the Town Board.
- B. Application for license; approval or disapproval.
 - (1) Any person desiring to distribute Amusement Games shall file an application with the Town Board, which shall contain the following information:
 - (a) Name, address and telephone number of the applicant.
 - (b) If the applicant is an individual, the age, date and place of birth of the applicant; and if the applicant is a partnership, firm and association or other business entity, the same information shall be supplied for each stockholder, officer, director, partner, member or principal of such organization.
 - (c) The prior criminal conviction record of the applicant, if any, other than convictions for minor traffic infractions. Said information shall be supplied for each partner, stockholder, officer, director, member or principal of the business entity.
 - (2) The Town Board shall conduct an investigation of such applicant as provided in § 100-2, above, and shall disapprove the applicant for any of the reasons stated therein and shall additionally disapprove such application if such person is not of good moral character.
- C. Reports. Any person granted an Amusement Game Distributor license must semiannually submit a report to the Town Board listing all Amusement Games distributed or sold in the Town by such person. Failure to provide such reports shall serve as grounds for revocation of the Amusement Game Distributor license.

SECTION 100-7. LICENSE FEE FOR AMUSEMENT GAME DISTRIBUTORS.

The fee for an Amusement Game Distributor license shall be as described in the Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time, and such

licenses shall expire on the 31st day of December of each calendar year. Such fee shall accompany the application for such license.

SECTION 100-8. OPERATION.

A. Minors.

- (1) No person under the age of sixteen (16) years shall be permitted to play or operate any Amusement Game unless accompanied by a parent or legal guardian; however, in premises where the sale of alcoholic beverages has been licensed by the State of New York, no person under the age of twenty-one (21) years shall be permitted to play or operate said Amusement Game unless accompanied by a parent or legal guardian. The owner or operator of said place where the Amusement Games are located shall be responsible for enforcing the above age restrictions and shall be charged with a violation of this Chapter if he/she knowingly permits persons under the age as set forth above to use or operate any amusement games. The owner or operator of said premises shall post an appropriate sign indicating the age restrictions as herein above set forth.
- (2) It shall be a violation of this Chapter for any person unaccompanied by a person or guardian to intentionally misrepresent his/her age or identification for the purpose of operating an Amusement Game.

B. Gambling. No owner or operator of any premises shall permit gambling or games of chance to take place on the premises in connection with the operation of Amusement Game and no cash awards shall be made in any contest, tournament, league or individual play on any Amusement Game.

C. Hours of operation. Any person operating an Amusement Center shall allow the operation of such Amusement Center only during the following hours:

- (1) Sunday: 1:00 p.m. to 11:00 p.m.
- (2) Monday through Saturday: 9:00 a.m. to 12:00 midnight.

D. Use of alcoholic beverages. No person shall allow the consumption of alcoholic beverages in any premises where Amusement Games are located, except if the premises are licensed by the State of New York for the sale and consumption of alcoholic beverages on the premises.

E. Orderly premises. The owner or operator of such Amusement Center shall at all times maintain good order in and about the premises and shall not permit any disturbance, congestion or loitering in and about the premises.

F. Competent person to be in charge of premises. Each owner or operator of an Amusement Center and each person operating or maintaining an Amusement Game on its premises shall at all times during the operation of the business keep in charge of the premises a person of at least eighteen (18) years of age who shall be responsible for the enforcement of all rules and regulations pertaining to the operation of the business.

G. Inspection.

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- (1) The premises of all Amusement Centers in the Town, when open for the transaction of business, shall be subject to inspection by any peace officer, acting pursuant to his special duties, or police officer.
- (2) Any other premises in the Town containing Amusement Games when open for the transaction of business shall be subject to inspection by any peace officer, acting pursuant to his special duties, or police officer.

SECTION 100-9. PENALTIES FOR OFFENSES.

Any person who violates any of the provisions of this Chapter shall be guilty of a violation punishable by a fine of two hundred fifty dollars (\$250) or by imprisonment for a term not exceeding fifteen (15) days, or by both such fine and imprisonment. The continuation of any offense against the provisions of this chapter shall constitute, for each week the offense is continued, a separate and distinct offense hereunder.

SECTION 100-10. SUSPENSION OR REVOCATION OF LICENSE.

Any permit or license issued under the provisions of this Chapter shall be suspended or revoked by the Town Board if the applicant has violated the provisions of this Chapter or made a false statement on the application for license or if the use and operation of the premises constitutes a breach of the peace or a nuisance to the general public.

Section 3: Chapter 110 of the Code is hereby amended to read in its entirety as follows:

**CHAPTER 110
Buildings, Moving of**

SECTION 110-1. PERMIT REQUIRED.

No person, firm or corporation shall move on or across any of the public streets, highways, lanes or alleys within the Town any building unless a permit shall have been issued therefor by the Town Highway Superintendent.

SECTION 110-2. APPLICATION; FEE.

The permit application shall be filed with the Highway Superintendent. A permit fee shall be paid as described in the Town of Pendleton Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time. The Highway Superintendent shall notify the Code Enforcement Officer/Building Inspector of the permit application.

SECTION 110-3. PENALTIES FOR OFFENSES.

A violation of the provisions of this chapter shall be punishable by a maximum fine of two hundred fifty dollars (\$250) or by a term of imprisonment not to exceed fifteen (15) days, or both.

Section 4: Chapter 114 of the Code is hereby amended to read in its entirety as follows:

CHAPTER 114

Camping, Travel Trailer and Recreational Vehicle Parks

SECTION 114-1. LICENSE REQUIRED.

It shall be unlawful for any person, firm or corporation to use a recreational vehicle, automobile camper-trailer or Mobile Home as habitation or to establish, maintain, operate or conduct within the Town any tourist park or camp or any automobile trailer park or camp or any combination of same without having first secured a license therefor from the Town Board.

SECTION 114-2. DETACHED TRAILERS IN PUBLIC PLACES.

No person shall detach any recreational vehicle, automobile camper-trailer or mobile home or other trailer from its towing vehicle and permit the same to remain standing in any public street or place.

SECTION 114-3. PARK PERMIT FEE; DURATION OF STAY; PERMIT APPLICATIONS.

- A. The annual permit fee for every park or camp shall be as described in the Town of Pendleton Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time, and the permit shall expire each year on the 31st day of December. There shall be a monthly fee, as described in the Fee Schedule, for each space which has been occupied during that month for a period or periods aggregating more than 15 days.
- B. No recreational vehicle, automobile camper-trailer, mobile home or tent shall remain in any park or camp for a period exceeding 60 days or two months, whichever is longer, in any one year.
- C. Application for a camping, travel trailer and/or recreational vehicle park permit shall be filed with and issued by the Town Board after having been reviewed by the Planning Board and the Town Engineer.
 - (1) Applications shall contain the following:
 - (a) Name and address of the applicant.
 - (b) Location and legal description of the park.
 - (c) Plans and specifications for all buildings and improvements constructed or to be constructed within the park.
 - (2) No application shall be transferrable.

SECTION 114-4. PARK PLAN; REGULATIONS.

- A. The park shall conform to Chapter 247, Zoning, Chapter 133, Fire Prevention and Building Construction, Chapter 194, Plumbing, and the following requirements:

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- (1) Drainage facilities and grading shall be designed to ensure the reduction of stormwater runoff rates and volumes, erosion, and nonpoint source pollution in accordance with Article XIII of Chapter 247, Zoning, of the Town Code.
- (2) Camping, travel trailer and recreational vehicle spaces shall be provided consisting of a minimum of 10,000 square feet for each space, which shall be at least 50 feet in width and clearly defined. Tents, travel trailers and vehicles shall be so harbored on each space that there shall be at least 30 feet clearance between them. No tent, trailer or vehicle shall be located closer than 100 feet to any property line bounding the park.
- (3) All spaces shall abut a driveway of not less than 20 feet in width, which shall have unobstructed access to a public street or highway. All driveways shall be hard surfaced, well-marked by pavement markings in the daytime and lighted at night with electric light poles at distances and at the intensity as set by the utility company servicing said park.
- (4) Walkways not less than two feet wide shall be provided from the spaces to the service buildings. The walkway shall be hard surfaced, well-marked by pavement markings in the daytime and lighted at night with electric light poles at distances and at the intensity as set by the utility company servicing said park.
- (5) An electrical outlet supply of at least 110 volts shall be provided for each space.
- (6) A concrete pad not less than 100 square feet and not less than four inches in thickness shall be provided for each space, located adjacent to the entrance.
- (7) Playground areas shall be provided in addition to the spaces and shall be restricted to recreational use. Each park shall have at least one recreational area of a size no less than one acre.
- (8) Clothes drying facilities shall be provided at the service building only. Outdoor drying spaces are prohibited.
- (9) No permanent addition shall be built onto or become a part of any tent, travel trailer or recreational vehicle.
- (10) No owner or person in charge of a dog, cat or other animal shall permit it to run-at-large or to commit any nuisance within the limits of any park.
- (11) No park shall consist of more than 100 spaces.

B. SANITARY AND HEALTH REGULATIONS.

- (1) Laundry facilities shall be provided in the ratio of one laundry unit to every 10 spaces and shall be in a separate room of a service building or in a separate building.
- (2) A laundry unit shall consist of one or more laundry trays and clothes washing machines.
- (3) An accessible, adequate, safe and potable supply of water shall be provided in each park, capable of furnishing a minimum of 150 gallons per day per space. Connection shall be made to the public water supply and its supply shall be used exclusively.
- (4) Individual water service connection must be provided for direct use at each space. It shall be so constructed that it will not be damaged by a movement of vehicles. The park water system shall be adequate to provide 20 pounds per square inch of pressure at all connections.

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- (5) All plumbing in the park shall comply with state and local plumbing laws and regulations.
- (6) Each independent space shall be provided with at least a three-inch sewer connection. The sewer connection shall be provided with suitable fittings so that a watertight connection can be made between the vehicle drain and the sewer connection. Such individual connections shall be so that they can be closed when not linked to a trailer or recreational vehicle and shall be capped so as to prevent any escape of odors.
- (7) The park sewer line shall be connected to the public sewer.
- (8) The storage, collection and disposal of refuse in the park shall comply with the Town Refuse Ordinance.

C. FIRE PROTECTION.

The park shall be subject to the rules and regulations of the fire protection district authorities.

SECTION 114-5. REVOCATION OF PERMIT.

The Code Enforcement Officer/Building Inspector may revoke any permit to maintain and operate a park when the operator has been found guilty by a court of competent jurisdiction of violating any provision of this Chapter. After such revocation, the permit may be reissued, if the circumstances leading to conviction have been remedied and park is being maintained and operated in full compliance with law.

SECTION 114-6. ENFORCEMENT.

It shall be the duty of the Code Enforcement Officer/Building Inspector (or other official designated by the Town Board in case no Code Enforcement Officer/Building Inspector has been appointed) to enforce the regulations and restrictions provided by this Chapter.

SECTION 114-7. PENALTIES FOR OFFENSES.

All violations of this Chapter or of any regulations or provisions thereof shall be an offense punishable by a fine not exceeding \$250 or imprisonment for more than 15 days, or both. Each and every day that a violation of this chapter is permitted to exist shall constitute a separate offense. This penalty shall be in addition to any other penalties or other remedies as may be provided by law.

Section 5: Chapter 117 of the Code is hereby amended to read in its entirety as follows:

CHAPTER 117
Contractor's, Licensing of

SECTION 117-1. PURPOSE.

The purpose of this Chapter is to make certain that any Contractor engaged in business in the Town meets certain requirements as established by the Town Board.

SECTION 117-2. DEFINITIONS.

The following words, terms and phrases as used in this Chapter are defined as follows:

CONTRACTOR

Any person, firm, partnership, corporation, or any other entity engaged in the business of constructing, repairing, remodeling, altering, converting, modernizing or adding to any house, building, dwelling, structure of land adjacent to it shall include, but not limited to, blacktop sealing or blacktop work of any nature, cement or concrete work of any nature including replacement or improvement of sidewalks, driveways, curbs, streets, rights-of-way, flat concrete work, form or wall concrete work or masonry work of any nature or carpentry work of any nature or the construction, erection replacement or improvement of, among other things, streets, rights-of-way, swimming pools, siding, insulation, chimneys, roofing, windows, terraces, patios, fences, porches, garages, solar energy systems, flooring, basements or water, sanitary or drainage systems, landscape, and residential snow plowing. "Contractor" shall also include any contractor hired by another contractor.

SECTION 117-3. LICENSE REQUIRED; CONSTRUAL OF TERMS.

- A. It shall be unlawful to engage in business as a Contractor in the Town without first having obtained a license therefor as hereinafter provided.
- B. Engaging in the following activities in the Town for remuneration shall be construed as doing business as a Contractor in the Town: constructing, repairing, remodeling, altering, converting, modernizing, or adding to a house, building, dwelling, structure or land adjacent to it and shall include, but is not limited to, blacktop sealing or blacktop work of any nature, cement or concrete work of any nature including the replacement or improvements of sidewalks, driveways, curbs, streets, rights-of-way, flat concrete work, form or wall concrete work or masonry work of any nature or carpentry work of any nature or the construction, erection replacement or improvement of, among other things, streets, right-of-way, swimming pools, siding, insulation, chimneys, roofing, windows, terraces, patios, fences, porches, garages, solar energy systems, flooring, basements or water, sanitary or drainage systems, landscape and residential snow plowing in the Town.

SECTION 117-4. LICENSE APPLICATION; INFORMATION.

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- A. Any person, firm, partnership, corporation or any other entity desiring to engage in business as a Contractor in the Town shall make application for a license to the Code Enforcement Officer/Building Inspector on a form prescribed by him/her. The application shall be signed and verified under oath by the applicant, if an individual or sole proprietorship, or by a duly authorized agent, if a firm or partnership, or a duly authorized officer of the corporation, if the applicant is a corporation.

- B. The application shall contain the following information:
 - (1) If a person or firm, the name, residence, business address, and telephone number of the applicant.
 - (2) If a partnership, the business address, telephone number, employer identification number and also the name and residence of each partner.
 - (3) The specific type of work to be performed by the applicant.
 - (4) The approximate number of persons employed or to be employed by the applicant.
 - (5) Satisfactory evidence that employees of the applicant are covered by worker's compensation. The applicant shall be responsible for furnishing the Town with copies of current certificates of insurance demonstrating that the applicant has appropriate insurance coverage in place.
 - (6) Such information as the Code Enforcement Officer/Building Inspector may reasonably require.

SECTION 117-5. ISSUANCE OR DENIAL OF LICENSE.

The Code Enforcement Officer/Building Inspector is authorized to issue or deny the application for a license. Any application so approved shall be issued by the Code Enforcement Officer/Building Inspector upon payment of the required fee, which shall be as described in the Town of Pendleton Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time.

**SECTION 117-6. LICENSE EXPIRATION, POSTING AND SUSPENSIONS;
DUPLICATE LICENSE; FEES.**

- A. All licenses shall expire on the 31st day of December of each year.

- B. Each license issued shall be posted in a conspicuous place in the Contractor's place of business.

- C. Any license which has not been suspended or revoked may, upon payment of the fee prescribed by this Chapter, be renewed for an additional period of one year from its expiration upon filing of an application for renewal on a form to be prescribed by the Code Enforcement Officer/Building Inspector.

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- D. A duplicate license may be issued for a lost, destroyed or mutilated license upon application therefore to the Code Enforcement Officer/Building Inspector and upon payment of the fee prescribed therefore by this section.
- E. No license shall be assignable or transferable.
- F. The fee for a Contractor's license or for any renewal thereof shall be as described in the Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time. Such fee shall not be prorated for a term of less than one year.
- G. The fee for issuing a duplicate license for a lost, destroyed or mutilated license shall be as described in the Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time.

SECTION 117-7. COMPLIANCE WITH OTHER LAWS REQUIRED.

It shall be the duty of all Contractors to comply with all applicable state laws, including Article 36-A of the New York State General Business Law, state codes, local laws and/or ordinances relating to the various activities engaged in by the Contractor.

SECTION 117-8. REVOCATION OF LICENSE.

Any Contractor's license may be revoked by the Code Enforcement Officer/Building Inspector for any violation of any applicable state law, including Article 36-A of the New York State General Business Law, state codes, this Chapter, or any local laws and/or ordinances relating to the activities engaged in by such Contractor which are included within the scope of this Chapter. Such a revocation may be in addition to any fine imposed for violating this Chapter.

SECTION 117-9. PENALTIES FOR OFFENSES.

Any person, firm, partnership, corporation or any other entity violating any of the provisions of this Chapter shall be subject to a fine of not more the \$250.00 for each violation or to imprisonment for a period not exceeding 15 days for each such violation, or to both such fine and imprisonment, except when a punishment is expressly prescribed in such provision. Unless otherwise provided, each day on which a violation occurs shall be deemed a separate violation for purposes of this Chapter.

SECTION 117-10. EFFECTIVE DATE.

This chapter shall take effect on April 6, 2004.

PENDING APPROVAL

Section 6: Section 119-2(A) of the Code is hereby amended to read in its entirety as follows:

SECTION 119-2(A): All dogs in the Town of Pendleton over four months in age are required to be licensed. The owner of each dog required to be licensed shall obtain, complete and return to the Town Clerk a dog license application together with the appropriate certificates, license application fee, any applicable license surcharges and such additional fees as may be established by the Town. For applicable fees, see the Town of Pendleton Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time.

PENDING APPROVAL

Section 7: Section 119-10(C) of the Code is hereby amended to read in its entirety as follows:

SECTION 119-10(C). SEIZURE, IMPOUNDMENT, REDEMPTION, AND ADOPTION:

Impounded dogs may be redeemed by producing proof of licensing and identification pursuant to the provisions of Article 7 of the Agriculture and Markets Law and by paying the impoundment fees as shall be described in the Town of Pendleton Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time.

PENDING APPROVAL

Section 8: Chapter 131 of the Code is hereby amended to read in its entirety as follows:

CHAPTER 131
Fees

SECTION 131-1. VARIOUS FEES ENUMERATED.

All fees as required by the Town Code shall be as described in the Town of Pendleton Fee Schedule adopted by the Town Board by Resolution, and as may be amended from time to time.

Sections 131-2 through 131-7 Reserved.

Section 9: Chapter 133 of the Code is hereby amended to read in its entirety as follows:

CHAPTER 133
Fire Prevention, Rapid Entry System

SECTION 133-1. GENERAL PROVISIONS.

- A. Whereas, an ordinance is necessary to require certain commercial and residential buildings to install Knox Boxes.
- B. Whereas, the benefits of installing Knox Boxes include providing immediate emergency access to firefighters leading to increasing fire department efficiency; preventing costly forced entry damage and to allow undamaged doors to be re-secured after the emergency; and protect property, inventory, equipment and supplies as well as firefighters against possible injury.

SECTION 133-2. DEFINITIONS.

FIRE OFFICIAL

Includes Code Enforcement Officer/Building Inspector, Fire Marshal, Fire Chief, and or other fire department member designated by the Fire Chief, and shall express the opinion of the fire department regarding key lock boxes (Knox Boxes), their mounting, location and number needed.

GATE/DOOR/ENTRANCE

Any gate, crossbar, door or other construction device which is utilized for the purpose of restricting, controlling or obstructing entry by motor vehicle or pedestrians to or from private streets, parking areas, fenced areas or other enclosed or unenclosed which is not manned 24 hours a day, seven days a week by a person capable of providing immediate access by a police or fire safety vehicle and personnel.

KEY LOCK BOX (KNOX BOX)

A device designed to hold entry devices including keys, access cards, plans, lists etc., which allows access to a business or multi-family residential complex and which is mounted in an approved position on the premises.

TOWN CODE ENFORCEMENT OFFICE

The Code Enforcement Officer/Building Inspector or other Code Enforcement Personnel.

SECTION 133-3. KNOX BOX REQUIREMENT.

- A. Knox Box required for new commercial buildings. All new commercial buildings shall have installed a Knox Box of UL type and size approved by the Town Fire Official, in a location specified by the Town Fire Official prior to the issuance of the Certificate of occupancy/Certificate of Compliance.

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- B. Knox Box required for existing commercial buildings with improvements. All existing commercial buildings constructing improvements that require Planning Board approval shall have installed a Knox Box of UL type and size approved by the Town Fire Official, in a location specified by the Town Fire Official prior to the issuance of the Building Permit.
- C. Knox Box required for new Multifamily Residences. All new Multifamily Residences that have restricted access through locked doors and have a common corridor for access to the living units shall have installed a Knox Box of UL type and size approved by the Town Fire Official in a location specified by the Town Fire Official prior to the issuance of the Certificate of occupancy/Certificate of Compliance.
- D. Knox box contents. See definition of Key Lock Box (Knox Box), § 133-2, above.

SECTION 133-4. INSTALLATION AND MAINTENANCE.

Lock boxes (Knox Boxes) shall be installed in a location as approved by the Fire Official and/or Code Enforcement Officer/Building Inspector of the Town.

SECTION 133-5. MAINTENANCE.

It shall be the responsibility of the business or premises owner:

- A. To assume all costs involved in the purchase and installation of the lock boxes (Knox Boxes) and supplying the required contents for it.
- B. To keep said lock boxes (Knox Boxes) in good repair and visible to the Town Fire Official and Town Code Enforcement Office.
- C. To ensure that all key information required to be contained in the lock boxes (Knox Boxes) shall be provided and kept current

Section 10: Chapter 135 of the Code is hereby amended to read in its entirety as follows:

CHAPTER 135
Flood Damage Prevention

ARTICLE I
Statutory Authorization and Purpose

SECTION 135-1. FINDINGS.

The Town Board of the Town of Pendleton finds that the potential and/or actual damages from flooding and erosion may be a problem to the residents of the Town and that such damages may include destruction or loss of private and public housing, damage to public facilities, both publicly and privately owned, and injury to and loss of human life. In order to minimize the threat of such damages and to achieve the purposes and objectives hereinafter set forth, this Chapter is adopted.

SECTION 135-2. PURPOSE.

It is the purpose of this Chapter to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- E. Regulate uses which are dangerous to health, safety and property due to water or erosion hazards or which result in damaging increases in erosion or in flood heights or velocities;
- F. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- G. Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of floodwaters;
- H. Control filling, grading, dredging and other development which may increase erosion or flood damages;
- I. Regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands; and
- J. Qualify for and maintain participation in the National Flood Insurance Program.

SECTION 135-3. OBJECTIVES.

The objectives of this Chapter are:

- A. To protect human life and health;
- B. To minimize expenditure of public money for costly flood-control projects;
- C. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. To minimize prolonged business interruptions;
- E. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, sewer lines, streets and bridges located in areas of special flood hazard;

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- F. To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
- G. To provide that developers are notified that property is in an area of special flood hazard;
and
- H. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

ARTICLE II
Definitions

SECTION 135-4. DEFINITIONS.

Unless specifically defined below, words or phrases used in this Chapter shall be interpreted so as to give them the meaning they have in common usage and to give this Chapter its most reasonable application.

APPEAL

A request for a review of the Local Administrator's interpretation of any provision of this Chapter or a request for a Variance.

AREA OF SHALLOW FLOODING

A designated AO, AH or VO Zone on a community's Flood Insurance Rate Map ("FIRM") with a one-percent or greater annual chance of flooding to an average annual depth of one foot to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

AREA OF SPECIAL FLOOD HAZARD

The land in the Floodplain within a community subject to a one-percent or greater chance of flooding in any given year. This area may be designated as Zone A, AE, AH, AO, A1-A30, A99, V, VO, VE, or V1-V30. It is also commonly referred to as the "base floodplain" or "one-hundred-year floodplain." For purposes of this Chapter, the term "Special Flood Hazard Area ("SFHA")" is synonymous in meaning with the phrase "Area of Special Flood Hazard."

BASE FLOOD

The flood having a one-percent chance of being equaled or exceeded in any given year.

BASEMENT

That portion of a Building having its floor subgrade (below ground level) on all sides.

BUILDING

See "Structure."

CELLAR

Has the same meaning as "Basement."

CRAWL SPACE

An enclosed area beneath the lowest elevated floor, 18 inches or more in height, which is used to service the underside of the lowest elevated floor. The elevation of the floor of this enclosed area, which may be of soil, gravel, concrete or other material, must be equal to or above the lowest adjacent exterior grade. The enclosed crawl space area shall be

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properly vented to allow for the equalization of hydrostatic forces which would be experienced during periods of flooding.

DEVELOPMENT

Any man-made change to improved or unimproved real estate, including but not limited to Buildings or other Structures, mining, dredging, filling, paving, excavation or drilling operations or storage of equipment or materials.

ELEVATED BUILDING

A non-basement Building i) built, in the case of a Building in Zones A1-A30, AE, A, A99, AO, AH, B, C, X, or D, to have the top of the elevated floor, or, in the case of a Building in Zones V1-30, VE, or V, to have the bottom of the lowest horizontal Structure member of the elevated floor, elevated above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the flow of the water, and ii) adequately anchored so as not to impair the structural integrity of the Building during a flood of up to the magnitude of the base flood. In the case of Zones A1-A30, AE, A, A99, AO, AH, B, C, X, or D, "Elevated Building" also includes a Building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of floodwaters. In the case of Zones V1-V30, VE, or V, "Elevated Building" also includes a Building otherwise meeting the definition of "Elevated Building," even though the lower area is enclosed by means of breakaway walls that meet the federal standards.

FEDERAL EMERGENCY MANAGEMENT AGENCY ("FEMA")

The Federal agency that administers the National Flood Insurance Program.

FLOOD BOUNDARY AND FLOODWAY MAP ("FBFM")

An official map of the community published by FEMA as part of a riverine community's Flood Insurance Study. The FBFM delineates a Regulatory Floodway along Watercourses studied in detail in the Flood Insurance Study.

FLOOD ELEVATION STUDY

An examination, evaluation and determination of the flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of flood-related erosion hazards.

FLOOD HAZARD BOUNDARY MAP ("FHBM")

An official map of a community, issued by FEMA, where the boundaries of the areas of special flood hazard have been designated as Zone A but no flood elevations are provided.

FLOOD INSURANCE RATE MAP ("FIRM")

An official map of a community, on which FEMA has delineated both the Areas of Special Flood Hazard and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY

See “Flood Elevation Study.”

FLOOD or FLOODING

- A. A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - (1) The overflow of inland or tidal waters.
 - (2) The unusual and rapid accumulation or runoff of surface waters from any source.

- B. “Flood” or “flooding” also means 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 a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in Flooding as defined in Subsection A(1) above.

FLOODPLAIN OR FLOOD-PRONE AREA

Any land area susceptible to being inundated by water from any source (*see* definition of “Flood or flooding”).

FLOOD-PROOFING

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.

FLOODWAY

Has the same meaning as “Regulatory floodway.”

FUNCTIONALLY DEPENDENT USE

A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, and ship repair facilities. The term does not include long-term storage, manufacturing, sales, or service facilities.

HIGHEST ADJACENT GRADE

The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a Structure.

HISTORIC STRUCTURE

Any Structure that is:

- A. Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

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- B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
- C. 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
- D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (1) By an approved state program as determined by the Secretary of the Interior; or
 - (2) Directly by the Secretary of the Interior in states without approved programs.

LOCAL ADMINISTRATOR

The person appointed by the community to administer and implement this Chapter by granting or denying development permits in accordance with its provisions. This person is often the building inspector, code enforcement officer, or employee of an engineering department.

LOWEST FLOOR

Lowest floor of the lowest enclosed area (including Basement or Cellar). An unfinished or flood-resistant enclosure, usable solely for the 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 enclosure is not built so as to render the Structure in violation of the applicable non-elevation design requirements of this Chapter.

MANUFACTURED HOME

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 does not include a recreational vehicle.

MANUFACTURED HOME PARK OR SUBDIVISION

A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

MEAN SEA LEVEL

For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (“NGVD”) of 1929, the North American Vertical Datum of 1988 (“NAVD 88”), or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

MOBILE HOME

Has the same meaning as “manufactured home.”

NEW CONSTRUCTION

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Structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by the community and includes any subsequent improvements to such Structure.

ONE-HUNDRED-YEAR FLOOD

Has the same meaning as “Base flood.”

PRINCIPALLY ABOVE GROUND

That at least 51% of the actual cash value of the Structure, excluding land value, is above ground.

RECREATIONAL VEHICLE

A vehicle which is:

- A. Built on a single chassis;
- B. Four hundred square feet or less when measured at the largest horizontal projections;
- C. Designed to be self-propelled or permanently towable by a light-duty truck; and
- D. Not designed primarily for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

REGULATORY FLOODWAY

The 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 a designated height as determined by FEMA in a Flood Insurance Study or by other agencies as provided in § 135-13 of this Chapter.

START OF CONSTRUCTION

The date of permit issuance for New Construction and Substantial Improvements to existing Structures, provided that actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement is within 180 days after the date of issuance. “Actual start of construction” means the first placement of permanent construction of a Building (including a Manufactured Home) on a site, such as the pouring of a slab or footings, installation of pilings or construction of columns. Permanent construction does not include land preparation (such as clearing, excavation, grading, or filling) or the installation of streets or walkways or excavation for a basement, footings, piers or foundations or the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main building. 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.

STRUCTURE

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A walled and roofed Building, including a gas or liquid storage tank or Manufacture Home, that is principally above ground.

SUBSTANTIAL DAMAGE

Damage of any origin sustained by a Structure whereby the cost of restoring the Structure to its before-damaged condition would equal or exceed 50% of the market value of the Structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT

Any reconstruction, rehabilitation, addition, or other improvement of a Structure, the cost of which equals or exceeds 50% of the market value of the Structure before the Start of Construction of the improvement. The term includes Structures which have incurred Substantial Damage, regardless of the actual repair work performed. The term does not, however, include either:

- A. Any project for improvement of a Structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- B. Any alteration of a Historic Structure, provided that the alteration will not preclude the Structure's continued designation as a Historic Structure.

VARIANCE

A grant of relief from the requirements of this Chapter which permits construction or use in a manner that would otherwise be prohibited by this Chapter.

VIOLATION

The failure of a Structure or other Development to be fully compliant with the community's floodplain management regulations

ARTICLE III
General Provisions

SECTION 135-5. LANDS TO WHICH THIS CHAPTER APPLIES.

This Chapter shall apply to all Areas of Special Flood Hazard within the jurisdiction of the Town of Pendleton, Niagara County.

SECTION 135-6. BASIS FOR ESTABLISHING AREAS OF SPECIAL FLOOD HAZARD.

- A. The Areas of Special Flood Hazard are identified and defined on the following documents prepared by the Federal Emergency Management Agency:
- (1) Flood Insurance Rate Map Panel Nos. 36063C0214E, 36063C0218E, 36063C0219E, 36063C0238E, 36063CO239E, 36063C0352E, 36063C0354E, 36063C0356E, 36063C0357E, 36063C0362E, 36063C0377E, 36063C0379E, whose effective date is September 17, 2010, and any subsequent revisions to these map panels that do not affect areas under our community's jurisdiction; and
 - (2) Flood Insurance Rate Map Panel Nos. 36063C0358F, 36063C0359F, 36063C0366F, 36063C0376F, 36063C0378F, whose effective date is November 3, 2017, and any subsequent revisions to these map panels that do not affect areas under our community's jurisdiction; and
 - (3) A scientific and engineering report entitled "Flood Insurance Study, Niagara County, New York, (All Jurisdictions)," dated November 3, 2017.
- B. The above documents are hereby adopted and declared to be a part of this Chapter. The Flood Insurance Study and/or maps are on file at Pendleton Town Hall, 6570 Campbell Boulevard, Pendleton, New York 14094.

SECTION 135-7. INTERPRETATION AND CONFLICT WITH OTHER LAWS.

- A. This Chapter includes all revisions to the National Flood Insurance Program through October 27, 1997, and shall supersede all previous laws adopted for the purpose of flood damage prevention.
- B. In their interpretation and application, the provisions of this Chapter shall be held to be minimum requirements, adopted for the promotion of the public health, safety, and welfare. Whenever the requirements of this Chapter are at variance with the requirements of any other lawfully adopted rules, regulations, or ordinances, the most restrictive, or that imposing the higher standards, shall govern.

SECTION 135-8. PENALTIES FOR OFFENSES.

No Structure in an Area of Special Flood Hazard shall hereafter be constructed, located, extended, converted, or altered and no land shall be excavated or filled without full compliance

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with the terms of this Chapter and any other applicable regulations. Any infraction of the provisions of this Chapter by failure to comply with any of its requirements, including infractions of conditions and safeguards established in connection with conditions of the permit, shall constitute a violation. Any person who violates this Chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined no more than \$250 or imprisoned for not more than 15 days, or both. Each day of noncompliance shall be considered a separate offense. Nothing herein contained shall prevent the Town from taking such other lawful action as necessary to prevent or remedy an infraction. Any Structure found not compliant with the requirements of this chapter for which the developer and/or owner has not applied for and received an approved Variance under Article VI of this Chapter will be declared noncompliant and notification sent to the Federal Emergency Management Agency.

SECTION 135-9. WARNING AND DISCLAIMER OF LIABILITY.

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 man-made or natural causes. This Chapter does not imply that land outside the Area of Special Flood Hazard or uses permitted within such areas will be free from Flooding or flood damage. This Chapter shall not create liability on the part of the Town, any officer or employee thereof, or FEMA, for any flood damage that result from reliance on this Chapter or any administrative decision lawfully made thereunder.

ARTICLE IV
Administration

SECTION 135-10. DESIGNATION OF LOCAL ADMINISTRATOR.

The Code Enforcement Officer/Building Inspector is hereby appointed Local Administrator to administer and implement this Chapter by granting or denying floodplain development permits in accordance with its provisions.

SECTION 135-11. FLOODPLAIN DEVELOPMENT PERMIT REQUIRED.

A floodplain development permit shall be obtained before the Start of Construction or any other Development within the Area of Special Flood Hazard as established in § 135-6. Application for a floodplain development permit shall be made on forms furnished by the Local Administrator and may include, but not be limited to: plans, in duplicate, drawn to scale and showing the nature, location, dimensions and elevations of the area in question, existing or proposed Structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Application for a floodplain development permit shall include a Stormwater Pollution Prevention Plan (“SWPPP”), if required for the proposed land development activity under Article XIII of Chapter 247, Zoning, of the Town Code, together with the recommendation of the Stormwater Management Officer to approve, approve with modifications, or disapprove the SWPPP pursuant to § 247-85(C) of Chapter 247, Zoning, of the Town Code. Applicable fees shall be as described in the Town of Pendleton Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time.

SECTION 135-12. APPLICATION FOR FLOODPLAIN DEVELOPMENT PERMIT.

The applicant shall provide the following information as appropriate. Additional information may be required on the permit application form.

- A. The proposed elevation, in relation to mean sea level, of the lowest floor (including basement or cellar) of any new or substantially improved structure to be located in Zones A1-A30, AE or AH, or Zone A if base flood elevation data are available. Upon completion of the lowest floor, the permittee shall submit to the Local Administrator the as-built elevation, certified by a licensed professional engineer or surveyor.
- B. The proposed elevation, in relation to mean sea level, to which any new or substantially improved nonresidential structure will be flood-proofed. Upon completion of the flood-proofed portion of the Structure, the permittee shall submit to the Local Administrator the as-built flood-proofed elevation, certified by a professional engineer or surveyor.
- C. A certificate from a licensed professional engineer or architect that any utility Flood-proofing will meet the criteria in § 135-15(C), Utilities.

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- D. A certificate from a licensed professional engineer or architect that any nonresidential flood-proofed structure will meet the Flood-proofing criteria in § 135-17, Nonresidential structures.
- E. A description of the extent to which any watercourse will be altered or relocated as a result of proposed Development. Computations by a licensed professional engineer must be submitted that demonstrate that the altered or relocated segment will provide equal or greater conveyance than the original stream segment. The applicant must submit any maps, computations or other material required by FEMA to revise the documents enumerated in § 135-6, when notified by the Local Administrator, and must pay any fees or other costs assessed by FEMA for this purpose. The applicant must also provide assurances that the conveyance capacity of the altered or relocated stream segment will be maintained.
- F. A technical analysis, by a licensed professional engineer, if required by the Local Administrator, which shows whether the proposed Development to be located in an Area of Special Flood Hazard may result in physical damage to any other property.
- G. In Zone A, when no base flood elevation data are available from other sources, base flood elevation data shall be provided by the permit applicant for subdivision proposals and other proposed Developments (including proposals for Manufactured Home and Recreational Vehicle parks and subdivisions) that are greater than either 50 lots or five acres.

SECTION 135-13. DUTIES AND RESPONSIBILITIES OF LOCAL ADMINISTRATOR.

Duties of the Local Administrator shall include, but not be limited to the following:

- A. Permit application review. The Local Administrator shall conduct the following permit application review before issuing a floodplain development permit:
 - (1) Review all applications for completeness, particularly with the requirements of § 135-12, Application for permit, and for compliance with the provisions and standards of this Chapter.
 - (2) Review subdivision and other proposed new Development, including Manufactured Home Parks, to determine whether proposed building sites will be reasonably safe from Flooding. If a proposed building site is located in an Area of Special Flood Hazard, all New Construction and Substantial Improvements shall meet the applicable standards of Article V, Construction standards, and, in particular, § 135-14(A), Subdivision proposals.
 - (3) Determine whether any proposed Development in an Area of Special Flood Hazard may result in physical damage to any other property (e.g., stream bank erosion and increased flood velocities). The Local Administrator may require the applicant to submit additional technical analyses and data necessary to complete the determination. If the proposed Development may result in physical damage to any other property or fails to meet the requirements of Article V, Construction

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Standards, no permit shall be issued. The applicant may revise the application to include measures that mitigate or eliminate the adverse effects and resubmit the application.

- (4) Determine that all necessary permits have been received from those governmental agencies from which approval is required by state or federal law.
- (5) If a SWPPP was submitted together with the floodplain development permit application pursuant to § 135-11, review the SWPPP and floodplain development permit application for compliance with Article XIII of Chapter 247, Zoning, of the Town Code.

ARTICLE V
Construction Standards

SECTION 135-14. GENERAL STANDARDS.

The following standards apply to new Development, including New Construction and Substantial Improvements, in the Areas of Special Flood Hazard shown on the Flood Insurance Rate Map designated in § 135-6.

- A. Subdivision proposals. The following standards apply to all new subdivision proposals and other proposed Development in Areas of Special Flood Hazard (including proposals for manufactured home and recreational vehicle parks and subdivisions):
- (1) Proposals shall be consistent with the need to minimize flood damage;
 - (2) Public utilities and facilities such as sewer, gas, electrical and water systems shall be located and constructed so as to minimize flood damage; and
 - (3) Adequate drainage shall be provided to reduce exposure to flood damage.
- B. Encroachments.
- (1) Within Zones A1-A30 and AE, on streams without a Regulatory Floodway, no New Construction, Substantial Improvements or other Development (including fill) shall be permitted unless:
 - (a) The applicant demonstrates that the cumulative effect of the proposed Development, when combined with all other existing and anticipated Development, will not increase the water surface elevation of the Base Flood more than one foot at any location; or
 - (b) The Town agrees to apply to FEMA for a conditional FIRM revision, FEMA approval is received, and the applicant provides all necessary data, analyses, and mapping and reimburses the Town for all fees and other costs in relation to the application. The applicant must also provide all data, analyses, and mapping and reimburse the Town for all costs related to the final map revision.
 - (2) On streams with a Regulatory Floodway, as shown on the Flood Boundary and Floodway Map or the Flood Insurance Rate Map adopted in § 135-6, no New Construction, Substantial Improvements or other Development in the floodway (including fill) shall be permitted unless:
 - (a) A technical evaluation by a licensed professional engineer shows that such an encroachment shall not result in any increase in flood levels during occurrence of the Base Flood; or
 - (b) The Town agrees to apply to FEMA for a conditional FIRM and floodway revision, FEMA approval is received, and the applicant provides all necessary data, analyses, and mapping and reimburses the Town for all fees and other costs in relation to the application. The applicant must also provide all data, analyses, and mapping and reimburse the Town for all costs related to the final map revisions.

SECTION 135-15. STANDARDS FOR ALL STRUCTURES.

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- A. Anchoring. New Structures and Substantial Improvements in Areas of Special Flood Hazard shall be anchored to prevent flotation, collapse, or lateral movement during the Base Flood. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.
- B. Construction materials and methods.
- (1) New Construction and Substantial Improvements shall be constructed with materials and utility equipment resistant to flood damage.
 - (2) New Construction and Substantial Improvements shall be constructed using methods and practices that minimize flood damage.
 - (3) Enclosed areas below lowest floor.
 - (a) For enclosed areas below the Lowest Floor of a Structure within Zones A1-A30, AE or AH, and also Zone A if base flood elevation data are available, new and substantially improved structures shall have fully enclosed areas below the Lowest Floor that are usable solely for parking of vehicles, building access or storage in an area other than a Basement and which are subject to Flooding, designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a licensed professional engineer or architect or meet or exceed the following minimum criteria:
 - (1) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding; and
 - (2) The bottom of all such openings no higher than one foot above the lowest adjacent finished grade.
 - (b) Openings may be equipped with louvers, valves, screens or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters. Enclosed areas subgrade on all sides are considered Basements and are not permitted.
- C. Utilities.
- (1) New and replacement electrical equipment, heating, ventilating, air conditioning, plumbing connections, and other service equipment shall be located at least two feet above the base flood elevation or be designed to prevent water from entering and accumulating within the components during a flood and to resist hydrostatic and hydrodynamic loads and stresses. Electrical wiring and outlets, switches, junction boxes and panels shall also be elevated or designed to prevent water from entering and accumulating within the components unless they conform to the appropriate provisions of the electrical part of the Building Code of New York State or the Residential Code of New York State for location of such items in wet locations;
 - (2) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;
 - (3) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters. Sanitary sewer and storm drainage systems

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- for Buildings that have openings below the base flood elevation shall be provided with automatic backflow valves or other automatic backflow devices that are installed in each discharge line passing through a Building's exterior wall; and
- (4) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during Flooding

SECTION 135-16. RESIDENTIAL STRUCTURES.

- A. Elevation. The following standards apply to new and substantially improved residential structures located in Areas of Special Flood Hazard, in addition to the requirements in §§ 135-14(A), Subdivision proposals, and 135-14(B), Encroachments, and § 135-15, Standards for all structures.
- (1) Within Zones A1-A30, AE and AH, and also Zone A if base flood elevation data are available, new construction and substantial improvements shall have the lowest floor (including basement) elevated to or above two feet above the base flood elevation.
 - (2) Within Zone A, when no base flood elevation data are available, New Construction and Substantial Improvements shall have the Lowest Floor (including Basement) elevated at least three feet above the Highest Adjacent Grade.
 - (3) Within Zone AO, New Construction and Substantial Improvements shall have the Lowest Floor (including Basement) elevated above the Highest Adjacent Grade at least as high as two feet above the depth number specified in feet on the community's Flood Insurance Rate Map enumerated in § 135-6 (at least two feet if no depth number is specified).
 - (4) Within Zones AH and AO, adequate drainage paths are required to guide floodwaters around and away from proposed Structures on slopes.

SECTION 135-17. NONRESIDENTIAL STRUCTURES.

The following standards apply to new and substantially improved commercial, industrial and other nonresidential structures located in Areas of Special Flood Hazard, in addition to the requirements in § 135-14A, Subdivision proposals, and 135-14(B), Encroachments, and § 135-15, Standards for all structures.

- A. Within Zones A1-A30, AE and AH, and also Zone A if base flood elevation data are available, New Construction and Substantial Improvements of any nonresidential structure shall either:
- (1) Have the Lowest Floor, including Basement or Cellar, elevated to or above two feet above the base flood elevation; or
 - (2) Be flood-proofed so that the Structure is watertight below two feet above the base flood elevation, including attendant utility and sanitary facilities, with walls substantially impermeable to the passage of water. All structural components located below the base flood level must be capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.

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- B. Within Zone AO, New Construction and Substantial Improvements of nonresidential structures shall:
 - (1) Have the Lowest Floor (including Basement) elevated above the Highest Adjacent Grade at least as high as two feet above the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified); or
 - (2) Together with attendant utility and sanitary facilities, be completely flood-proofed to that level to meet the Flood-proofing standard specified in Subsection A(2).
- C. If the structure is to be flood-proofed, a licensed professional engineer or architect shall develop and/or review structural design, specifications, and plans for construction. A Flood-proofing certificate or other certification shall be provided to the Local Administrator that certifies the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of Subsection A(2), including the specific elevation (in relation to mean sea level) to which the Structure is to be flood-proofed.
- D. Within Zones AH and AO, adequate drainage paths are required to guide floodwaters around and away from proposed structures on slopes.
- E. Within Zone A, when no base flood elevation data are available, the Lowest Floor (including Basement) shall be elevated at least three feet above the Highest Adjacent Grade.

SECTION 135-18. MANUFACTURED HOMES AND RECREATIONAL VEHICLES.

The following standards in addition to the standards in § 135-14, General standards, and § 135-15, Standards for all structures apply, as indicated, in Areas of Special Flood Hazard to Manufactured Homes and to Recreational Vehicles which are located in Areas of Special Flood Hazard:

- A. Recreational Vehicles.
 - (1) Recreational Vehicles placed on sites within Zones A1-A30, AE and AH shall either:
 - (a) Be on site fewer than 180 consecutive days;
 - (b) Be fully licensed and ready for highway use; or
 - (c) Meet the requirements for Manufactured Homes in Subsections B, C and D.
 - (2) 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.
- B. A Manufactured Home that is placed or substantially improved in Zones A1-A30, AE and AH shall be elevated on a permanent foundation such that the Lowest Floor is elevated to or above two feet above the base flood elevation and is securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

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- C. Within Zone A, when no base flood elevation data are available, new and substantially improved Manufactured Homes shall be elevated such that the Manufactured Home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and are securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement.

- D. Within Zone AO, the floor shall be elevated above the Highest Adjacent Grade at least as high as the depth number specified on the Flood Insurance Rate Map enumerated in § 135-6 (at least two feet if no depth number is specified).

ARTICLE VI
Variance Procedure

SECTION 135-19. APPEALS BOARD.

- A. The Zoning Board of Appeals as established by the Town Board shall hear and decide appeals and requests for Variances from the requirements of this Chapter.
- B. The Zoning Board of Appeals shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Local Administrator in the enforcement or administration of this Chapter.
- C. Those aggrieved by the decision of the Zoning Board of Appeals may appeal such decision to the Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules.
- D. In passing upon such applications, the Zoning Board of Appeals shall consider all technical evaluations, all relevant factors, standards specified in other sections of this Chapter, and:
 - (1) The danger that materials may be swept onto other lands to the injury of others;
 - (2) The danger to 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 of that area;
 - (9) The safety of access to the property in times of Flood for ordinary and emergency vehicles;
 - (10) The costs to local governments and the dangers associated with conducting search and rescue operations during periods of Flooding;
 - (11) 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
 - (12) The costs of providing governmental services during and after flood conditions, including search and rescue operations, maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems and streets and bridges.
- E. Upon consideration of the factors of § 135-19(D) and the purposes of this Chapter, the Zoning Board of Appeals may attach such conditions to the granting of Variances as it deems necessary to further the purposes of this Chapter. See § 135-20, Conditions for variances.

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- F. The Local Administrator shall maintain the records of all appeal actions, including technical information, and report any Variances to FEMA upon request.

SECTION 135-20. CONDITIONS FOR VARIANCES.

- A. Generally, Variances may be issued for New Construction and Substantial Improvements to be erected on a lot of 1/2 acre or less in size contiguous to and surrounded by lots with existing Structures constructed below the base flood level, providing that the factors in § 135-19(D)(1) through (12) are fully considered. As the lot size increases beyond the 1/2 acre, the technical justification required for issuing the Variance increases.
- B. Variances may be issued for the repair or rehabilitation of Historic Structures upon determination that:
 - (1) The proposed repair or rehabilitation will not preclude the Structure's continued designation as an Historic Structure; and
 - (2) The Variance is the minimum necessary to preserve the historic character and design of the Structure.
- C. Variances may be issued by a community for New Construction and Substantial Improvements and for other Development necessary for the conduct of a functionally dependent use, provided that:
 - (1) The criteria of Subsections (A), (D), (E) and (F) of this Section are met; and
 - (2) The Structure or other Development is protected by methods that minimize flood damages during the base flood and create no additional threat to public safety.
- D. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- E. Variances shall only be issued upon a determination that the Variance is the minimum necessary, considering the flood hazard, to afford relief.
- F. Variances shall only be issued upon receiving written justification of:
 - (1) A showing of good and sufficient cause;
 - (2) A determination that failure to grant the Variance would result in exceptional hardship to the applicant; and
 - (3) 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.
 - (1) Any applicant to whom a Variance is granted for a Building with the Lowest Floor below the base flood elevation shall be given written notice over the signature of a community official that:

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- (a) The issuance of a Variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and
 - (b) Such construction below the base flood level increases risks to life and property.
- (2) Such notification shall be maintained with the record of all Variance actions as required in § 135-19(F) of this Chapter.

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Section 11: Section 192-7 of the Code is hereby amended to read in its entirety as follows:

SECTION 192-7. FEES.

Fees for peddlers or solicitor's permits, transient businesses, or junk dealers shall be as described in the Town of Pendleton Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time.

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Section 12: Section 191-6(B)(2) of the Code is hereby amended to read in its entirety as follows:

SECTION 191-6(B)(2): In accordance with N.Y. Vehicle and Traffic Law § 2286, Licensing by Municipalities, such all-terrain vehicle or ATV must obtain a permit from the Town Clerk.

Section 13: Chapter 194 of the Code is hereby amended to read in its entirety as follows:

CHAPTER 194
Plumbing

SECTION 194-1. DEFINITIONS AND WORD USAGE.

A. The following term shall be defined:

CODE ENFORCEMENT OFFICER/BUILDING INSPECTOR

The duly appointed Code Enforcement Officer/Building Inspector or his/her deputy or assistant and any other individual designated to act as or assist the Code Enforcement Officer/Building Inspector.

HOUSE OR BUILDING DRAIN

That part of the lowest piping of a drainage system which receives the discharge of soil, waste and other drainage pipes inside the walls of the building and conveys such discharge to the building sewer; the "building drain" shall be considered to extend three feet outside the building wall.

PLUMBING

All gas, water supply, sewer and drainage piping and the installation of all fixtures and appurtenances incidental to the uses thereof, permanently installed whether inside or outside of buildings, excepting such work as may be done for or by the Town in public highways or rights-of-way.

B. The word "shall" will be interpreted as mandatory.

SECTION 194-2. GENERAL REQUIREMENTS.

- A. Before the commencement of plumbing work within the Town, the plumber or person performing the work shall present plans and specifications to the Code Enforcement Officer/Building Inspector and secure the written approval of the Code Enforcement Officer/Building Inspector for the performance of the work.
- B. No part of such plumbing work shall be covered or concealed in any way until it has been examined and approved by the Code Enforcement Officer/Building Inspector.
- C. In addition to any provisions of this Chapter, all plumbing work performed within the Town shall conform to all rules, regulations and specifications of Article 9 of Subchapter B of the New York State Uniform Fire Prevention and Building Code.

SECTION 194-3. SYSTEM DESIGNS FOR STRUCTURES.

- A. All structures hereafter erected within the Town, except Garages or farm structures, shall have at least one room provided therein with a water closet, lavatory or bathroom and

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shall have a complete system of house or building drains, including, but not limited to, connecting of soil and waste pipes to a sanitary sewer or septic tank and leach field.

- B. All water closets shall be vented individually through the roof, except if back to back. When directly above each other, a back vent of two inch diameter shall be used. The vents shall not be less than two inches in diameter and where carried through the roof shall increase to not less than three inches in diameter.
- C. All other drains shall be vented through the roof and, where carried through the roof, shall be at least two inches in diameter. Any fixture more than 3 1/2 feet from the main stack shall be vented separately to the main stack or through the roof.
- D. No soil pipe or vent shall open within 10 feet of any window, door, ventilating shaft or air duct.
- E. All drains shall be at least 1 1/2 in diameter. When a garbage grinder is used, the drain shall be at least two inches in diameter. Kitchen drains running over 10 feet must be at least two inches in diameter. At the base of all kitchen sink drains, provisions shall be made for the cleanout.
- F. Waste from all fixtures shall be emptied into a sanitary sewer or septic tank. No kitchen, lavatory, tub or laundry drains shall be discharged above the ground or into an open ditch. Surface water shall be disposed of through the sump pump and may not be disposed of into the leach field or sanitary sewer. Also, all water from gutters or roof drains shall be routed in such a way that the water will not enter the public sewer or septic system.
- G. All soil lines running from the house or building to a sanitary sewer or septic tank shall be at least four inches in diameter and shall be provided with an accessible cleanout inside the house or building. On sewer lines where the grinder pump unit exceeds nine feet from the house, a cleanout will be required to be installed 18 inches from the grinder pump unit on the inlet line. All soil lines shall be of extra-heavy cast iron pipe with leaded caulked joints or ASTM Standard SDR-35 PVC piping for gravity sewer pipes. Approved plastic PVC sewer pipe may be used for outside sewer lines. Where plastic PVC sewer pipe is used, a bed of at least two inches of 1A stone must be used under the pipe. Schedule 40 plastic pipe will be allowed inside the house for drainage, waste and vent pipes above the basement floor. The use of Schedule 40 plastic pipe under concrete slabs shall be allowed when used with a bed of at least two inches of 1A stone.
- H. All connections made to any county sewer district manhole shall require a minimum six-inch tap-in. A vented running trap (six-inch minimum) shall be required at the easement boundary for each future property connection.
- I. Tables for fixture units.

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(1) Fixture units. The following table, based on the rate of discharge from a lavatory as the unit, shall be employed to determine fixture equivalents and shall be known as “fixture units”:

Fixtures	Units
1 lavatory or wash basin	1
1 kitchen sink	2
1 bath tub	2
1 laundry tub	3
1 combination fixture	3
1 urinal	3
1 shower	3
1 floor drain	3
1 slop sink	3
1 closet	6

(2) The sizes of the house drain and of its horizontal branches shall be determined by the total fixture units served thereby as indicated in the following table, and except by special permission of the Town Board, no water closet shall discharge into a house drain or a horizontal branch of the house drain that is less than four inches in diameter.

House Drains (sanitary only)			
Maximum Number of Fixture Units			
Drainpipe diameter (inches)	1/8 inches to 1 foot	Fall 1/4 inches to 1 foot	1/2 inches to 1 foot
1 1/2	2	2	3
2	5	6	8
3	15	18	21
4	84	96	114
5	162	216	264
6	300	450	600
8	990	1,392	2,220
10	1,740	2,442	3,900
12	3,084	4,320	6,912

J. All fixtures hot and cold shall be valved.

SECTION 194-4. SEPTIC TANKS.

A. All septic sinks hereafter installed shall be of concrete, with a baffle at the inlet and outlet, and shall have at least one access hole. All septic tanks and distribution boxes shall be placed on a minimum of four inch coarse sand or pea gravel.

B. The minimum size of all septic tanks shall be 1,000 gallons.

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- C. Septic tanks shall not be located less than 12 feet from a dwelling house.
- D. All septic tanks shall be provided with a trap and vent, with the vent installed on the house side of the trap. Such vent shall be not less than 10 feet from any door or window.
- E. Septic tanks shall discharge into a distribution box and from there into a disposal field. All connections between septic tanks, distribution boxes and leaching beds shall be constructed with tight connections.
- F. Waste pumped or removed from a septic tank for any purpose shall not be dumped above ground at any time.
- G. Prior to the construction of any septic system the Niagara County Department of Health shall approve the site and condition of the soil through the analysis of performed percolation tests. All septic systems constructed shall conform to the orders and recommendations of the County Health Department, New York State Department of Health, this Chapter, and the Code Enforcement Officer/Building Inspector. It shall be the duty of the Code Enforcement Officer/Building Inspector to make recommendations for proper installation of septic systems.

SECTION 194-5. LEACH TRENCHES.

- A. All leaching trenches shall be not less than 30 inches in width and, if possible, not less than 18 inches in depth, nor less than 500 feet in length.
- B. Agricultural or perforated fibre tile at least four inches in diameter shall be used, and the same shall not be pitched more than one inch to every 16 feet. Grade boards securely staked in the bottom of the trench shall be provided for all lines consisting of field tile. Where perforated fibre tile is used, grade boards are not required.
- C. Crushed stone or gravel with a depth of at least four inches below the tile shall be used, and all tile so used shall be covered with at least two inches of crushed stone or gravel.
 - (1) All crushed stone or gravel used shall be at least No. 1 in size.
 - (2) All open joints between tile shall be covered with four by eight inches black or resin paper.
 - (3) All crushed stone shall be covered with one inch of straw.
 - (4) All leach trenches and beds shall be backfilled and rough graded within one week after inspection.
- D. All laterals in leach beds shall be not more than 70 feet in length and not less than eight feet from each other and shall not be less than 10 feet from lot lines.
- E. All lines leading from the septic tank to the leach beds which pass under driveways or roadways shall be a minimum four-inch cast iron pipe or SDR-35 PVC piping, or equivalent, as approved by the Code Enforcement Officer/Building Inspector or New

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York State Uniform Fire Prevention and Building Code. The trench shall be filled with No. 1 crushed stone or gravel.

SECTION 194-6. PENALTIES FOR OFFENSES; ENFORCEMENT.

- A. Penalties. Unless otherwise provided in § 382 of the Executive Law, all violations of this chapter or any regulation or provision thereof shall be a violation punishable by a fine not exceeding two hundred fifty dollars (\$250) or imprisonment for not more than fifteen (15) days, or both. Each and every week that a violation of this chapter is permitted to exist shall constitute a separate offense. This penalty shall be in addition to any other penalties or other remedies as may be provided by law.
- B. Enforcement. It shall be the duty of the Code Enforcement Officer/Building Inspector or such other official as may be designated by the Town Board to enforce the regulations and restrictions provided by this Chapter.

SECTION 194-7. FEES.

Fees shall be as described in the Town of Pendleton Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time.

SECTION 194-8. BACKFLOW PREVENTION DEVICES.

An approved backflow prevention device shall be installed on the house or building side of all water meters.

Section 14: Chapter 198 of the Code is hereby amended to read in its entirety as follows:

**CHAPTER 198
Property Maintenance**

SECTION 198-1. FINDINGS AND DETERMINATION.

- A. The Town Board hereby finds that the outdoor storage, accumulation, deposit or placement of abandoned, junked, discarded, wholly or partially dismantled or unlicensed or unregistered motor vehicles, rubbish, debris, or solid waste upon private property threatens the health, safety and welfare of the Town residents. Outdoor storage, accumulation, deposit or placement of such items and uncontrolled weeds and vegetation creates a significant fire hazard, endangers the environment and groundwater, leads to infestation by insects, vermin or rodents, depreciates property values, and has a deteriorating and blighting effect upon the neighborhood and community.
- B. The Town Board hereby determines that the outdoor storage, accumulation, deposit or placement of abandoned, junked, discarded, wholly or partially dismantled or unlicensed or unregistered motor vehicles, rubbish, debris, or solid waste and uncontrolled weeds and vegetation upon private property constitutes a public nuisance.

SECTION 198-2. DEFINITIONS.

- A. As used herein, the following terms shall have the following definitions:

CODE ENFORCEMENT OFFICER/BUILDING INSPECTOR

The Code Enforcement Officer/Building Inspector or his/her deputies or staff, or any other person having authority in the Town to enforce the Town Code.

DEBRIS

Includes all materials resulting from the construction, excavation, renovation, equipping, remodeling, repair or demolition of structures, property or roads as well as materials consisting of vegetation resulting from land clearing and grubbing, utility line maintenance and seasonal and storm-related cleanup. Such materials include but are not limited to bricks, concrete and other masonry materials, soil, rock, wood, wall coverings, plaster, drywall, plumbing fixtures, non-asbestos insulation, roofing shingles, asphaltic pavement, glass, window frames, electrical wiring and components, plastics, carpeting, foam padding, linoleum, metals, or any combination thereof which are incidental to construction, excavation, renovation, equipping, remodeling, repair or demolition.

GARBAGE

Includes all putrescible animal and vegetable waste resulting from processing, marketing and preparation of food items, including the container in which it is packaged.

MOTOR VEHICLE

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Includes all vehicles as defined by New York State Vehicle and Traffic Law § 125. The term "motor vehicle," as used in this chapter, shall also include all-terrain vehicles, as defined by New York State Vehicle and Traffic Law § 2281, and snowmobiles, as defined by New York State Vehicle and Traffic Law § 2221, and shall further include any vehicle intended for operation on land by means other than muscle power.

OUTDOORS

Includes anything not housed in a fully enclosed building.

OWNER

The owner, as identified on the current assessment roll, or the managing representative of the owner.

RUBBISH

Includes all non-putrescible solid wastes consisting of both combustible and noncombustible wastes, including but not limited to paper and paper products, rags, wrappings, cigarettes, cardboard, tin cans, yard clippings, wood, glass, metals, plastics, tires, bedding, cloth, crockery, furniture, appliances and similar items.

SOLID WASTE

Includes all putrescible and non-putrescible materials and substances having served their original intended use or being spent, useless, worthless or in excess to the owner, including but not limited to household and commercial garbage, industrial waste, rubbish, debris, garbage, litter and ashes.

WEEDS or VEGETATION

Refers to, but is not limited to, any organic growths which constitute a fire, health or safety hazard.

B. All other terms as used in this Chapter shall have their common or ordinary meaning.

SECTION 198-3. UNLAWFUL GROWTH OF WEEDS, ETC.

Each owner, occupant, lessee, or agent shall ensure that their exterior property be maintained free from weeds or plant growth in excess of 10 inches. All noxious weeds shall be prohibited. Weeds shall be defined as all grasses, annual plants and vegetation, other than trees or shrubs; provided, however, this term shall not include landscaping beds consisting of maintained gardens and clearly defined planting beds where actual care and maintenance is taking place on a regular basis. It shall also not include farming fields where continued planting is done on a yearly basis and is clearly used for farm planting, including but not limited to corn, soy beans, wheat, etc. It shall be the duty of any owner or an agent, lessee or tenant of any premises fronting on any public street to keep the terrace in front of the same in good order and repair. Said duty shall include but not be limited to the cutting and removing of brush, weeds or other unhealthful growth of plants.

SECTION 198-4. OUTDOOR DEPOSIT OR STORAGE OF WASTE.

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- A. No person, as owner, occupant, lessee or agent, or in any capacity, shall store, deposit, place, maintain, or cause or permit to be stored, deposited, placed or maintained outdoors any abandoned, junked, discarded, wholly or partially dismantled, unlicensed or unregistered motor vehicle or any solid waste, rubbish, or debris or weeds and vegetation as defined herein upon any private property within the Town.

- B. This section shall not apply to:
 - (1) Any solid waste, rubbish or debris temporarily stored or placed in a container for collection or disposal per scheduled collections established by the Town.
 - (2) The maintenance of a mulch pile used for on-premises gardening or landscaping confined to an area to the side or rear of a residence and not exceeding 50 square feet.
 - (3) The temporary storage on a premises of a single motor vehicle meeting New York State inspection requirements which is unlicensed or unregistered but which is not dismantled, abandoned, junked or discarded. This exception shall only apply where the vehicle is stored on a stone or paved surface not closer to the street than the front facade of the building.
 - (4) The maintenance of any motor vehicle on a duly licensed automobile repair or sales business lot, properly zoned, while said vehicle is being repaired or sold, provided that this exception shall not permit storage of vehicles which will not pass a New York State vehicle inspection on any premises for a period in excess of 30 days.
 - (5) The maintenance or storage of operable business equipment or construction equipment for sale or in connection with a legally operating business.
 - (6) Vegetation consisting of maintained gardens and landscaping where actual care and maintenance is taking place on a regular basis.

- C. For the purposes of this Chapter, every owner and occupant shall be strictly liable and fully responsible and shall be deemed to have permitted any condition on the premises they own or occupy.

SECTION 198-5. INSPECTION AND REPORT.

Whenever it shall appear that the provisions of this Chapter are violated, the Code Enforcement Officer/Building Inspector is authorized to make an inspection of the property involved and prepare a written report of the conditions found.

SECTION 198-6. NOTICE OF VIOLATION.

- A. If conditions existing on the inspected property violate the provisions of this Chapter, the Code Enforcement Officer/Building Inspector is authorized to serve or cause to be served a written notice of such violation, either personally or by certified mail, upon the owner or owner's agent as well as upon the lessee or occupant of said premises. Failure to serve either an owner or an occupant or lessee shall not prevent enforcement against any party served.

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- B. Said written notice shall contain substantially the following: the name of the owner, lessee or occupant of the premises, if known; the address or location of the premises; the identification of the premises as the same appears on the current assessment roll; a statement of the conditions on the property deemed upon inspection to be in violation of this chapter; a demand that the motor vehicle, solid waste, rubbish, or debris, weeds or vegetation determined to be in violation of this Chapter be removed from the property on or before five days after the service or mailing of such notice; and a statement that a failure or refusal to comply with the provisions of this chapter and the notice given pursuant thereto within the time specified may result in the Code Enforcement Officer/Building Inspector, or any authorized officer, agent or employee of the Town, to enter the property and remove such motor vehicle, solid waste, rubbish or debris, weeds or vegetation, and cause the same to be disposed of or otherwise destroyed. The Town department, officer or designee performing such work shall keep an accurate and itemized account of the expenses incurred for all labor, equipment and materials furnished plus any other incidental costs. All bills shall reflect work completed on property, plus a charge of 20% to cover the costs and disbursements and administrative handling.
- C. The water billing clerk, upon receiving the invoice/invoices described in Subsection B above regarding a property, shall be responsible to charge the unpaid bill to the most current water bill for that property. In the event that collection is not made within 30 days, the water billing clerk shall forward the unpaid account to the Town Assessor, who shall charge the cost of such expenditure against the owner or owners of said property on the next regular tax bill.
- D. The Code Enforcement Officer/Building Inspector or any authorized Town employee shall have the right, at reasonable times, upon notification, to enter upon lands within the Town for the purpose of inspection to determine compliance with this section. The right of inspection herein granted shall apply to the exterior of the buildings and grounds only.

SECTION 198-7. EMERGENCY ACTIONS.

- A. Nothing in this Chapter shall prohibit a municipality from entering onto private property to remove any solid waste, motor vehicle, appliance, rubbish or debris, weeds or vegetation whenever an imminent threat to the life or safety of persons does exist. Municipal authority pursuant to this section may only be exercised where there is an immediate necessity to protect life and safety. Any municipal action taken pursuant to this section must be reasonably calculated to alleviate or prevent the crisis condition.
- B. A property owner shall be given notice and an opportunity to be heard prior to any costs and expenses incurred pursuant to this section being placed on the property's tax bill.

SECTION 198-8. PENALTIES FOR OFFENSES; ENFORCEMENT.

In addition to the remedies set forth in §§ 198-3 through 198-8:

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- A. A violation of §§ 198-3 or 198-4 of this Chapter is a violation punishable by a fine of up to \$250 and/or imprisonment for up to 15 days. Each additional week of continuous violation of the terms of this Chapter constitutes a separate violation.
- B. The Town may seek injunctive relief in a court of competent jurisdiction and shall be entitled to a judgment for any expenses incurred, including attorney fees.

SECTION 198-9. CONFLICTS WITH OTHER LAWS.

When the provisions of this Chapter conflict with the provisions of any other local law or ordinance of the Town of Pendleton, the provisions of this Chapter shall prevail.

Section 15: Chapter 200 of the Code is hereby amended to read in its entirety as follows:

CHAPTER 200
Public Improvements

ARTICLE I
Public Improvement Permit (PIP) Ordinance and Regulations

SECTION 200-1. PURPOSE.

The purpose of this article is to establish a mechanism to ensure that any improvement that is to be constructed by a private individual, corporation or any other entity—with the intent that following completion of the improvement the ownership of such improvement is to be conveyed to the Town with the Town to assume responsibility for maintaining and operating such improvement—be constructed in accordance with Town specifications. The Town will be provided with mapping of the layout of all improvements, including location of all lines, valves, hydrants and appurtenances.

SECTION 200-2. PUBLIC IMPROVEMENT PERMITS REQUIRED.

- A. All improvements that are completed by an individual, corporation or other entity that are to be dedicated to or maintained by the Town are considered public improvements and are required to be installed under public improvement permits (“PIP”).
- B. Public improvement permits are required for:
 - (1) Sanitary sewers.
 - (2) Water lines.
 - (3) Roadways.
 - (4) Public drainage and storm sewers.
 - (5) Curbs or sidewalks.
- C. These improvements are to be constructed to Town standards as well as Niagara County and New York State requirements upon real property in the Town for the use of the general public.

SECTION 200-3. PERMIT REQUIRED; APPLICATION; MAPS AND SURVEYS.

- A. No person, firm, association or corporation shall install, construct or perform any work incident to the installation and/or construction of any public improvement upon real property in the Town without first having obtained a PIP.
- B. Applications for PIPS must be received by the Town Clerk at least one week prior to a scheduled Town Board meeting for consideration at that meeting.
- C. PIPs are to be issued by the Town Clerk, with the approval of the Town Board, after certification by the designated Town officer that the plans and specifications, as

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submitted by the applicant, comply with the specifications and requirements of the Town and by the Town Attorney that the bonds and other legal requirements are met.

- D. The applications for PIPs shall be made on forms furnished by the Town. They shall contain such information as the designated Town officer and the Engineer of the Town shall require to determine that the proposed public improvement will conform to the specifications and requirements of the Town for such proposed public improvement.
- E. All applications shall be accompanied by five complete sets of drawings (prints), previously approved, together with specifications of the proposed public improvement, prepared by a professional engineer duly licensed by the State of New York or a licensed land surveyor, under the provisions of § 7208 of the New York Education Law.
- F. All applications shall be accompanied by a Stormwater Pollution Prevention Plan (“SWPPP”) if required for the proposed public improvement under Article XIII of Chapter 247, Zoning, of the Town Code, together with the recommendation of the Stormwater Management Officer to approve, approve with modifications, or disapprove the SWPPP pursuant to § 247-85(C) of the Town Code. If a SWPPP is submitted pursuant to this Section, such SWPPP and PIP application shall comply with the requirements of Article XIII of Chapter 247, Zoning, of the Town Code.

SECTION 200-4. DEPOSIT AND PAYMENT OF FEES.

- A. The fee for a PIP, paid by the developer to the Town, shall be as described in the Town of Pendleton Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time.
- B. Simultaneously with the filing of an application for a PIP and development and prior to the commencement of any construction of any buildings, highways, drainage facilities, utilities or parks therein, the applicant or developer, as the case may be, shall deposit with the Town Clerk a sum of money, the actual costs to be determined by the Town based on studies over several years, previous Town experience with public improvements, various surveys of other towns and general knowledge in the engineering and legal professions. The deposit shall be an amount necessary to pay the legal, inspection and engineering costs of the project. Under no circumstances will the cost to the applicant or developer be more than the Town Board-approved vouchered costs.
- C. Upon receipt and approval by the Town Board of an itemized voucher from an engineer and/or attorney rendered on behalf of the Town pertaining to the development, the Town Clerk shall cause such vouchers to be paid out of the monies so deposited and shall furnish copies of such vouchers to the applicant or developer at the same time such vouchers are submitted to the Town Board.

SECTION 200-5. ADMINISTRATIVE, LEGAL, ENGINEERING AND INSPECTION COSTS; COMPLETION OF IMPROVEMENT.

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- A. All vouchers and charges to the developer or applicant must be reviewed and approved by the Town Board before the engineers are paid for the services rendered to the Town from the deposit provided by the developers under this Chapter. All disputes between the developer, engineers, legal professionals, and other related matters, will be subject to the fair hearing process, as provided in this Chapter.
- B. The applicant shall be responsible for the actual cost of the project, which includes administration, legal, engineering and the costs of full-time inspection. No work will be permitted without a Town Inspector onsite.
- C. The Town Board hereby adopts a cost schedule, which shall be set by Resolution of the Town Board. This schedule shall be subject to further review and modification from time to time. The Town Engineer shall approve estimated construction costs.
- D. The developer is responsible for submitting to the Town an estimate of the number of days that will be required to complete the project. A normal workday will be considered to be eight hours. The developer will be required to deposit a sum of money equal to the total of the days, times eight hours necessary to complete the project, multiplied by the inspection rate per hour set by the Town and agreed to by the developer and Town. Administration costs will be agreed to prior to the start of work. Town expenses will be reimbursed to the Town and are the responsibility of the developer.
- E. A work time schedule will be agreed upon by the applicant and the Town Engineer. Contractors shall give at least 24 hours' notice to the Town Engineer before starting work, continuing work previously started but delayed for any reason, or stoppage of work.
- F. The developer is responsible for depositing with the Town any additional funds required to complete the project if the project has not been completed within the time specified.
- G. Any deposit surplus shall be returned to the applicant; or, if there is a deficit, the applicant shall pay to the Town sufficient additional amounts to pay the actual total cost of inspections, engineering, administrative and legal costs incurred by the Town for the project.
- H. Before any more moneys are so placed in escrow, the person depositing the same shall acknowledge the terms of this Chapter upon a form prescribed by the Town Board.
- I. The applicant shall provide any required easements or rights-of-way to the Town in a form acceptable to the Town Attorney for filing in the Niagara County Clerk's office.
- J. The applicant shall furnish certification of completion and waiver of all liens stating that all construction costs, including inspection costs, legal, administrative and engineering costs, have been paid.
- K. The fees charged by the engineers for inspections will be at the same rate the Town Engineers charge the Town for inspections and other related matters. There will be no

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variations in charges from the set approved rates charged to the Town for other engineering required by the Town.

- L. After five workdays, if the additional money needed to complete the project is not deposited, the Town may or will stop work on the project until the money is deposited.
- M. Upon completion of any public improvement, the applicant shall submit a record set of plans to the Town Engineer signed by the licensed project engineer. Upon receipt of such certification, the Town Engineer shall recommend approval or disapproval for acceptance for maintenance of the public improvements by the Town.

SECTION 200-6. PERFORMANCE; SURETY BOND.

- A. No permit shall be issued until the applicant has provided to the Town a surety bond executed by a solvent corporation authorized to do business in New York State in a sum equal to the cost of the work to be performed. Such bonds shall be approved by the Town Board. Such bonds shall remain in full force and effect until the certificate of completion and dedication, as well as complete compliance with all regulations approved by the Town Engineer, Town Attorney and department heads and the project is accepted by the Town Board.
- B. Work under this permit shall be started within 60 days of the Town Board approval. Work shall be completed within one year. Requests for extension of time shall be addressed to the Town Board.
- C. Work under this permit will be performed in accordance with all laws, rules, regulations, ordinances and specifications in existence of the Town and the State of New York, and any federal regulations.

SECTION 200-7. INSURANCE REQUIREMENTS.

All applications for PIPs shall be accompanied by insurance documentation which specifically lists the Town as an additional insured on policies of general liability, auto liability and excess liability in the face amount no less than that which the Town carries for its own coverage.

SECTION 200-8. MAINTENANCE BOND.

- A. A maintenance bond shall be filed by all applicants for PIPs. The bond will protect against any and all defects in material and/or workmanship and provide for the cost of repair or replacement of such improvement.
- B. The maintenance bond shall be executed by a solvent surety corporation as surety authorized to do business in New York State. The bond will be in a sum equal to 50% of the cost of such public improvements. Such bonds shall remain in force and effect for a period of two years from the acceptance date of such public improvement by the Town Board.

SECTION 200-9. FAILURE TO COMPLY; FORFEITURE.

In the event that the holder of the PIP shall fail or refuse to comply with provisions of this Article, the above bond shall be forfeited to the Town.

SECTION 200-10. SUPERVISION OF WORK; INSPECTIONS.

- A. No work shall be performed except under the supervision and inspection of the Town Engineer or his designee.
- B. The applicant shall provide written notice to the Town Engineer of intent to proceed on the public improvement. The Town Engineer shall authorize the applicant to proceed only upon the Town Engineer's receipt of written verification that all permit requirements remain in effect and after a preconstruction meeting has been held.
- C. Upon completion of the work authorized by the PIP application, the Town Engineer will provide the town with:
 - (1) A certificate of construction compliance at completion of each permit.
 - (2) Sanitary sewer and water main test reports.
 - (3) Niagara County Health Department acceptance of installed facilities.
 - (4) Photocopies of inspectors' reports during construction.
 - (5) Two paper prints and one Mylar of the as-built condition of installed facilities, elevations, locations, etc., as provided by the developers' engineers.
- D. Upon receipt of the certificate of construction and as-built prints, a walk-through inspection will be conducted a minimum of one week prior to a regularly scheduled Town Board meeting.
- E. At the next scheduled Town Board meeting, the Town will accept the installed facilities upon:
 - (1) Town Engineer approval.
 - (2) Town departments' approval.
 - (3) Receipt of a two-year maintenance bond from the contractor covering installed facilities.
 - (4) Receipt of payment of all PIP fees.
- F. The Town Board will then authorize payment of any moneys remaining for inspection fees to the owner.
- G. Work under the PIP shall be completed within one year from the date of permit issuance.

SECTION 200-11. CONDITIONS OF ACCEPTANCE.

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- A. Upon completion of any public improvement, the applicant shall submit a record set of plans to the Town Engineer; two paper prints and one Mylar of the as-built condition of installed facilities, elevations, locations, etc., to the Town.
- B. The applicant shall provide any required easements or rights-of-way to the Town in a form acceptable to the Town Attorney for filing in the Niagara County Clerk's office by the applicant.
- C. Compliance with the provisions of this Section shall be a condition precedent to the acceptance of any public improvement by the Town.

SECTION 200-12. STOP-WORK ORDERS.

- A. The Code Enforcement Officer/Building Inspector, in consultation with the Town Engineer, shall issue or cause to be issued a stop-work order for any public improvement found ongoing without a PIP. Disregard of a stop-work order shall subject the violator to the penalties described in § 200-14 of this Article.
- B. The Town Engineer shall issue or cause to be issued a stop-work order for any public improvement found noncompliant with the provision of this Chapter and/or the conditions of the PIP. Disregard of a stop-work order shall subject the violator to the penalties described in § 200-14 of this Article.

SECTION 200-13. CONFLICT WITH OTHER LAWS.

Whenever any provision of this Article is at variance or in conflict with any other provision of this Chapter, the Town Code, or any other statute, local ordinance or regulation covering any of the same subject matter, the most restrictive provision, or the one imposing the higher standard, shall govern.

SECTION 200-14. PENALTIES FOR OFFENSES.

- A. A violation of this Article is hereby declared to be an offense, punishable by a fine not to exceed \$250 per day, imprisonment for a period not to exceed 15 days, or both.
- B. Upon notice by the Code Enforcement Officer/Building Inspector, any applicant deemed to be in violation of this article will have 10 days to comply with said notice. Each day's continued violation shall constitute a separate additional violation and shall be punishable as herein provided.
- C. In addition to the foregoing remedies, the Town may institute any appropriate action or proceeding to prevent, correct or restrain any violation of this Article.

ARTICLE II
Fair Hearing Process

SECTION 200-15. PURPOSE.

The purpose of this process is to provide an informal, expedited process for the review and/or hearing of disputes between contractors and the Town regarding the administration of the Town's public improvement permit ("PIP") application procedure.

SECTION 200-16. REQUEST FOR REVIEW OF HEARING.

Under this process, a contractor may request a review or hearing on, in general, any disagreement or dispute regarding the administration of the PIP ordinance; specifically, a contractor may request a review and/or hearing regarding the timing, cost or results of any actions required of Town officials or representatives in the course of the Town's administration of the PIP ordinance (for example, inspection of a contractor's work, or opinions issued by Town representatives or employees regarding work in progress or completed work of a contract).

SECTION 200-17. PROCEDURE.

A contractor who believes that a dispute or disagreement exists with the Town, shall conform to the following:

- A. Written notice. The contractor shall sign and file two copies of the review/hearing dispute form setting forth the specific nature of the dispute (including a full description of the dispute and the identities of Town personnel or representatives involved); the manner in which the contractor proposes to settle or rectify the disputes; and whether the contractor elects hearing officer review without a hearing or review with a hearing.
- B. Hearing officer and hearing. If the contractor requests informal review by a hearing officer without a hearing, the hearing officer shall review the contractor's dispute form and review any and all submissions made by the Town employees or representatives in response to the dispute form and issue a finding and decision within 10 business days of the date of the filing of the dispute. If a hearing is requested by the contractor, the hearing officer shall set a hearing date and time, which hearing shall be held no later than 10 business days after the filing of the dispute form. The contractor shall be provided with copies of all writings and documents submitted to the hearing officer by the Town five business days in advance of the hearing date. The contractor shall have the right to submit additional documents, data and other information to the hearing officer three business days before the hearing date.
- C. Conduct of hearing. If a hearing is requested, the contractor shall have the right to appear in person, either with or without an attorney, and shall have the right to examine and question any Town officers, employees or representatives in attendance at the hearing. It shall be the responsibility of the hearing officer to assure the attendance at the hearing of

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all Town personnel/representatives noted in the Town dispute form. The purpose of this process is to establish an informal process by which disputes are heard and determined. Accordingly, the hearing officer shall have full discretion as to the procedure to be followed at the hearing, the calling of a recess or adjournments and the relevancy of evidence submitted. Further, the hearing will be conducted in an informal manner, and the hearing officers shall not be required to follow the formal rules of evidence. Additionally, the contractor shall have the right to produce at the hearing any witnesses the contractor deems necessary to support his/her/its case. Upon hearing the statements and answers of the parties and, if any, the witnesses, the hearing officer shall make a written finding and decision within 10 business days of the date of the hearing. Consistent with the informal nature of the hearing process, the hearing officer may request additional information after the hearing is closed, but is not required to do so. Only one hearing may be held on any dispute.

- D. For purposes of an informal hearing, the Town Superintendent of Highways shall act as the hearing officer.

SECTION 200-18. APPLICABILITY.

This process shall be effective as to all PIP applications filed on or after the date this process is duly adopted by the Town Board.

SECTION 200-19. NO WAIVER.

By entering into the informal procedure provided under this process, the contractor shall not be deemed to waive any rights to proceed in any other administrative forum or in a court of law concerning any dispute reviewed under this process.

Section 16: Section 209-1 of the Code is hereby amended to read in its entirety as follows:

SECTION 209-1. DEFINITIONS AND WORD USAGE.

- A. Unless the context specifically indicates otherwise, the meaning of terms used in this chapter shall be as follows:

ABNORMAL POLLUTANT

Industrial waste, substance or wastewater characteristic in excess of that found in normal sewage, but which is otherwise acceptable into a public sewer under the terms of this chapter.

ABNORMAL POLLUTANT SURCHARGE

The charge levied against any person for services rendered during treatment of abnormal pollutants or waste. This charge is intended to partially defray the added cost of transporting and treating abnormal pollutants or waste. This charge shall be in addition to the usual monthly charge for sanitary sewerage service.

ABNORMAL SEWAGE

Any industrial waste having a suspended solids or BOD content in excess of that found in normal sewage but which is otherwise acceptable into a public sewer under the terms of this chapter.

ABNORMAL SEWAGE PERMIT

A permit approved by and received from the engineer permitting the discharge or deposit of abnormal sewage into a sanitary sewer upon payment of a surcharge.

ABNORMAL SEWAGE SURCHARGE

The charge levied against any person for services rendered during treatment of abnormal sanitary sewage or waste. This charge is intended to partially defray the added cost of transporting and treating abnormal sewage or waste. This charge shall be in addition to the usual monthly charge for sanitary sewerage service.

ACT

The Federal Clean Water Act, as amended.

APPLICANT

The person or persons who have properly applied for permission to hook up and install an acceptable sewer system within an organized Town Sewer Improvement Area.

ASTM

The American Society for Testing and Materials.

BEST MANAGEMENT PRACTICES (BMPS)

Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or

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indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

BOD STRENGTH INDEX

The measure of the biochemical oxygen demand content of sewage in parts per million (milligrams per liter).

BOD (DENOTING BIOCHEMICAL OXYGEN DEMAND)

The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty degrees Celsius (20° C.), expressed in milligrams per liter.

BUILDING DRAIN

That part of the lowest horizontal piping of a sewerage system which receives discharge from sewerage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet [one and five-tenths (1.5)] meters) outside the inner face of the building wall.

BUILDING SEWER

The extension from the building drain to the public sewer or other place of disposal.

CODE ENFORCEMENT OFFICER (CEO)

An individual appointed by the Town Board to enforce this section. The CEO shall, within the time prescribed by law, obtain such basic training, in-service training, advanced in-service training and other training as the State of New York shall require for Code Enforcement Personnel. The term "Code Enforcement Officer" or "CEO" as used in this Chapter 209 shall include "Code Enforcement Officer/Building Inspector," as that term is defined in Chapter 247, Zoning.

CONSTRUCTION ACTIVITY

Any activity requiring authorization under the SPDES Permit for Stormwater Discharges from Construction Activity, GP-02-01, as amended or revised, including construction projects resulting in land disturbance of one or more acres. Construction activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

COOLING WATER

The water discharged from any system of condensation, such as air conditioning, cooling or refrigeration.

DEPARTMENT

The New York State Department of Environmental Conservation.

ENGINEER

The Engineer of the town or his authorized deputy, agent or representative.

GARBAGE

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Solid wastes from the domestic and commercial preparation, cooking and dispensing of food and from the handling, storage and sale of produce.

HAZARDOUS MATERIALS

Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

ILLCIT CONNECTION

Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the MS4, including but not limited to:

- a. Any conveyance which allows any nonstormwater discharge including treated or untreated sewage, process wastewater, and wash water to enter the MS4 and any connection to the storm sewer system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or
- b. Any drain or conveyance connected from a commercial or industrial land use to the MS4 which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

ILLCIT DISCHARGE

Any direct or indirect nonstormwater discharge to the MS4, except as exempted in § 209-12D of this chapter.

INDUSTRIAL ACTIVITY

Activities requiring the SPDES Permit for Discharges From Industrial Activities Except Construction, GP-98-03, as amended or revised.

INDUSTRIAL WASTE PERMIT

A permit to deposit or discharge industrial waste into any sanitary sewer in the town.

INDUSTRIAL WASTES

The liquid wastes from industrial manufacturing processes, trade, business, institutions or other SIC Index, as distinct from sanitary sewage.

LABORATORY DETERMINATION

The measurements, tests and analyses of the characteristics of waters and wastes in accordance with the methods contained in the latest edition at the time of any such measurement, test or analysis of Standard Methods for Examination of Water and Sewage, a joint publication of the American Public Health Association, the American Waterworks Association and the Water Pollution Control Federation, or in accordance with any other method prescribed by the Commissioner by rules and regulations promulgated pursuant to this chapter.

MS4

PENDING APPROVAL

Municipal separate storm sewer system.

MUNICIPAL SEPARATE STORM SEWER SYSTEM

A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm sewers):

- (1) Owned or operated by the Town of Pendleton;
- (2) Designed or used for collecting or conveying stormwater;
- (3) Which is not a combined sewer; and
- (4) Which is not part of a publicly owned treatment works (POTW) as defined at 40 CFR 122.2.

NATURAL OUTLET

Any outlet into a watercourse, pond, ditch, lake or other body of surface or ground water.

NONSTORMWATER DISCHARGE

Any discharge to the MS4 that is not composed entirely of stormwater.

NORMAL SEWAGE

Sewage which, when analyzed, shows by weight a daily average of not more than two thousand five hundred (2,500) pounds per one million (1,000,000) gallons [three hundred (300) parts per million] of suspended solids and not more than two thousand five hundred (2,500) pounds per one million (1,000,000) gallons [three hundred (300) parts per million] of BOD, and which is otherwise acceptable into a public sewer under the terms of this chapter.

OBJECTIONABLE WASTE

Any wastes that can harm either the sewers, sewer treatment process or equipment, have an adverse effect on the receiving stream or can otherwise endanger life, limb, public property or which constitutes a nuisance.

OWNER

The owner of record of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a building.

P (denoting phosphate)

The total phosphate determined under standard laboratory procedures, expressed in milligrams per liter.

PERSON

Any individual, firm, company, association, society, corporation, including municipal corporation, or group.

pH

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The logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

POLLUTANT

Any substance or wastewater characteristic present in polluted water or waste. "Pollutant" shall also mean dredged spoil, filter backwash, solid waste, incinerator residue, treated or untreated sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand and industrial, municipal, and agricultural waste and ballast discharged into water, any of which may cause or might reasonably be expected to cause pollution of the waters of the state in contravention of water quality standards.

POLLUTED WATER OR WASTE

Any water or liquid waste containing any of the following: phenols or other substances to an extent imparting taste and odor in receiving waters; toxic or poisonous substances in suspension, colloidal state or solution; noxious odorous gases; more than ten thousand (10,000) parts per million by weight of dissolved solids of which more than two thousand five hundred (2,500) parts per million are chloride; more than ten (10) parts per million each of suspended solids and/or BOD; color exceeding fifty (50) parts per million or having a pH value of less than five point five (5.5) or more than nine point five (9.5); and/or any water or waste not approved for discharge into a stream or waterway by the appropriate state or federal authority.

PREMISES

Any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.

PRETREATMENT

The reduction of the amount of pollutants, the elimination of pollutants or the alteration of the nature of the pollutant properties in wastewater to a less harmful state, prior to or in lieu of discharging or otherwise introducing such pollutants into a publicly-owned treatment works. The reduction or alteration can be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by 40 CFR 403.6, General Pretreatment Regulations for Existing and New Sources of Pollution.

PROPERLY OPERATING SEPTIC SYSTEM

A septic system that meets the Health and Sanitation Code of the County of Niagara and Health Department standards of the State of New York.

PROPERLY SHREDDED GARBAGE

The wastes from the preparation, cooking and dispensing of food that have been shredded to such degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half (1/2) inch [one and twenty-seven hundredths (1.27) centimeters] in any dimension.

PUBLIC SEWER

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A sewer to which all owners of abutting properties have equal rights and which is controlled by public authority.

PUBLICLY OWNED TREATMENT WORKS (POTW)

A treatment works as defined by Section 212 of the Act (33 U.S.C. § 1292). It includes any sewers that convey wastewater to the POTW, but does not include pipes, sewers or other conveyances not connected to a facility providing treatment.

RULES AND REGULATIONS

Any additional rules and regulations adopted by the Town of Pendleton.

SANITARY SEWER

A sewer which carries sewage and to which storm-, surface and ground waters are not intentionally admitted.

SEWAGE

A combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments, together with such groundwater as may be present.

SEWAGE TREATMENT PLANT

Any arrangement of devices and structures used for treating sewage.

SEWAGE WORKS

All facilities for collection, pumping, treating and disposing of sewage.

SEWER

A pipe or conduit for carrying sewage.

SEWER INSPECTOR

Any person, agent or representative of the United States Environmental Protection Agency, New York State Department of Environmental Conservation or duly authorized employees of the Niagara County Health Department.

SEWER RENT

A scale of charges established and imposed in the Town of Pendleton for service by the sewer system of the Town of Pendleton.

SIGNIFICANT INDUSTRIAL USER

Any user who:

- (1) Has a discharge flow of twenty-five thousand (25,000) gallons or more per average workday;
- (2) Has a flow greater than five percent (5%) of the flow in the municipality wastewater system;
- (3) Has in his waste toxic pollutants as defined pursuant to Section 307 of the Act;

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- (4) Has been identified as one (1) of the twenty-one (21) industrial categories pursuant to Section 307 of the Act; or
- (5) Is found by the town to have significant impact, either singly or in combination with other contributing industries, on the treatment or collection system.

SLUG

Any discharge of water, sewage or industrial waste which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) concentrations or flows during normal operation.

SPECIAL CONDITIONS

- (1) Discharge compliance with water quality standards: the condition that applies where the Town has been notified that the discharge of stormwater authorized under their MS4 permit may have caused or has the reasonable potential to cause or contribute to the violation of an applicable water quality standard. Under this condition, the Town must take all necessary actions to ensure future discharges do not cause or contribute to a violation of water quality standards.
- (2) 303(d) listed waters: the condition in the Town's MS4 permit that applies where the MS4 discharges to a 303(d) listed water. Under this condition, the stormwater management program must ensure no increase of the listed pollutant of concern to the 303(d) listed water.
- (3) Total maximum daily load (TMDL) strategy: the condition in the Town's MS4 permit where a TMDL including requirements for control of stormwater discharges has been approved by EPA for a water body or watershed into which the MS4 discharges. If the discharge from the MS4 did not meet the TMDL stormwater allocations prior to September 10, 2003, the Town was required to modify its stormwater management program to ensure that reduction of the pollutant of concern specified in the TMDL is achieved.
- (4) The condition in the Town's MS4 permit that applies if a TMDL is approved in the future by EPA for any water body or watershed into which an MS4 discharges. Under this condition, the Town must review the applicable TMDL to see if it includes requirements for control of stormwater discharges. If an MS4 is not meeting the TMDL stormwater allocations, the Town must, within six months of the TMDL's approval, modify its stormwater management program to ensure that reduction of the pollutant of concern specified in the TMDL is achieved.

S.S. STRENGTH INDEX

The measure of the suspended solids content of sewage in parts per million (milligrams per liter)

STANDARD METHODS

Standard Methods for the Examination of Water and Wastewater prepared and published jointly by the American Public Health Association, American Waterworks Association and the Water Pollution Control Federation, latest edition.

STATE POLLUTANT DISCHARGE ELIMINATION SYSTEM (SPDES) STORMWATER DISCHARGE PERMIT

A permit issued by the Department that authorizes the discharge of pollutants to waters of the state.

STORM SEWER or STORM DRAIN

A sewer which carries storm- and surface waters and drainage, but excludes sewage and polluted industrial wastes other than unpolluted cooling wastes.

STORMWATER

Rainwater, surface runoff, snowmelt and drainage.

STRENGTH INDEX

Both the biochemical oxygen demand index and the suspended solids strength index.

SUSPENDED SOLIDS

Solids that either float on the surface of or are in suspension in water, sewage or other liquids and which are removable by laboratory filtering.

SYSTEM

The trunk sewers, interceptors, pumping stations, treatment plants, outfall conduits, and so forth, designed to collect, transmit, treat and dispose of estimated flows and loadings of participants and other users of the system.

303(d) LIST

A list of all surface waters in the state for which beneficial uses of the water (drinking, recreation, aquatic habitat, and industrial use) are impaired by pollutants, prepared periodically by NYSDEC as required by Section 303(d) of the Act. 303(d) listed waters are estuaries, lakes and streams that fall short of state surface water quality standards and are not expected to improve within the next two years.

TMDL

Total maximum daily load.

TOTAL MAXIMUM DAILY LOAD

The maximum amount of a pollutant to be allowed to be released into a water body so as not to impair uses of the water, allocated among the sources of that pollutant.

TOWN

The Town of Pendleton.

UNIT

The base charge for sewer rent established in this chapter.

UNPOLLUTED WATER OR WASTE

PENDING APPROVAL

Any water or liquid waste containing none of the following: Phenols or other substances to an extent imparting taste and odor in receiving waters; toxic or poisonous substances in suspension, colloidal state or solution; noxious or odorous gases; not more than ten thousand (10,000) parts per million, by weight, of dissolved solids, of which not more than two thousand five hundred (2,500) parts per million are chloride; not more than ten (10) parts per million each of suspended solids and BOD; color not exceeding fifty (50) parts per million, nor a pH value of less than five point five (5.5) nor higher than nine point five (9.5); and/or any water or waste approved for discharge into a stream or waterway by the appropriate state or federal authority.

WASTEWATER

Water that is not stormwater, is contaminated with pollutants and has been or will be discarded.

WATERCOURSE

A channel in which a flow of water occurs, either continuously or intermittently.

B. "Shall" is mandatory; "may" is permissive.

Section 17: Section 209-13 of the Code is hereby amended to read in its entirety as follows:

SECTION 209-13. WATER AND SANITARY SEWER INSPECTION.

- A. Prior to transfer of real property, which is connected to the Town's water system or sewer system, the Town Water and Sewer Department shall be notified.
- B. The current owner shall provide access to the premises to allow inspection for:
 - (1) Waterline backflow prevention. If a backflow prevention device has not been installed, it shall be installed prior to transfer.
 - (2) Proper connection of sewer lines to the sewer system.
 - (3) Proper functions of grinder pumps if applicable.
 - (4) Inspection to insure that stormwater and sump pump flow does not enter the sanitary sewer system.
 - (5) Final water meter reading.
- C. A fee shall be established for such inspections, described in the Town of Pendleton Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time. Prior to transfer, any required water maintenance repairs shall be performed to comply with Town codes and regulations.
- D. If an inspection shall not take place prior to transfer due to failure to notify the Water and Sewer Department or failure to pay the required fee as described above, the new owner of the premises shall become responsible for the inspection and any necessary repairs or work to come into compliance with water and sewer requirements, and the fee shall be added to the water and sewer billing.

Section 18: Section 213-5 of the Code is hereby amended to read in its entirety as follows:

SECTION 213-5. DEFINITIONS.

A. Unless indicated herein or unless the context shall otherwise require, the terms and words used in this article shall have the same meaning as those defined in Article 27 of the Environmental Conservation Law and regulations promulgated by the New York State Department of Environmental Conservation.

B. The following terms and words shall be defined as follows:

AGRICULTURE

The cultivation and production of crops for human consumption. "Agriculture" shall include the use of land for the grazing of dairy cows or other animals whose products are consumed by humans.

ANAEROBIC DIGESTION FACILITY

Any facility which accepts manure, food waste, fats, oils, greases, sludges resulting from the treatment process at wastewater treatment plants (bio solids), energy crops, glycerin, or silage waste for the purpose of producing biogas and digestate waste.

BEDROCK

Cemented or consolidated earth materials exposed on the earth's surface or underlying unconsolidated earth materials.

CODE ENFORCEMENT OFFICER

The term "Code Enforcement Officer" as used in this Chapter shall include the term "Code Enforcement Officer/Building Inspector," as that term is defined in Chapter 247, Zoning.

CONSTRUCTION AND DEMOLITION DEBRIS

Wastes resulting from construction, remodeling, repair and demolition of structures, road building and land clearing. Such wastes include bricks, concrete and other masonry materials, soil, rock, lumber, road spoils, paving materials and tree stumps.

CONSTRUCTION AND SITING PERMIT

The permit issued by the Town which allows for the construction or modification of a anaerobic digestion facility, disposal of solid waste facility, incineration facility, industrial waste disposal facility, recycling facility, sanitary landfill facility, or solid waste management facility within any zoning and/or use district within the Town of Pendleton.

DEC

The New York State Department of Environmental Conservation.

DIGESTATE WASTE

PENDING APPROVAL

Bio solid waste in liquid, semisolid or solid form and which is a by-product of the anaerobic digestion process.

DISPOSAL

The deposit, discharge, distribution, dumping, injection, leaking, placing, removal, spilling, spreading, storage, or transportation of any digestate waste, solid waste and/or industrial wastes into or on any land or water.

DOMESTIC SEWAGE

Any mixture of domestic sewage or other waste that passes through a sewer system to a publicly owned treatment works for treatment, including the contents of holding tanks and portable toilets (domestic sewage means untreated sanitary waste that passes through a sewer system);

FACILITY

All contiguous land and structures or other improvements used for a solid waste management facility. Each solid waste management facility located on noncontiguous parcels of land shall constitute a separate facility.

GARBAGE

Putrescible solid waste, including animal and vegetable waste resulting from the handling, storage, sale, preparation, cooking or serving of foods; "garbage" originates primarily in home kitchens, stores, markets, restaurants and other places where food is stored, prepared or served.

HAZARDOUS WASTE

A solid waste or combination of solid wastes which, because of its quantity, concentration or physical, chemical or biological characteristics, may cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness, or cause or significantly contribute to a substantial present or potential hazard to human health or the environment when otherwise managed. Such wastes shall include but not be limited to wastes which are bioconcentrative, highly flammable, explosive, highly reactive, toxic, poisonous, radioactive, irritating, sensitizing or infectious, and shall include wastes that are solid, semisolid or liquid or contain gases. The final determination of whether or not a waste is hazardous shall be made by the Town.

INCINERATOR FACILITY

A facility utilizing a controlled process by which solid, liquid or gaseous combustible wastes are burned and changed into gases and the residue produced contains little or no combustible materials.

INDUSTRIAL WASTE

Waste in liquid, semisolid or solid form that results from industrial or commercial processes, including, but not limited to, factories, processing plants and repair and cleaning establishments, which wastes include, but are not limited to, sludges, oils,

PENDING APPROVAL

solvents, spent chemicals and acids. This article shall apply to hazardous wastes as defined in § 27-1101 of the Environmental Conservation Law or 42 U.S.C. § 6903(5).

LAND APPLICATION FACILITY

A facility used for the storage or disposal of digestate waste from a solid waste management facility for agricultural use of bio solids, septage, sludge, and other permitted land applied solid wastes to the soil surface or injected into the upper layer of the soil as defined under the Solid Waste Management Regulations Part 360-4.

LANDFILL

Any disposal area for solid wastes in or upon the ground surface. Includes solid waste management facilities.

LEACHATE

A liquid, including any suspended components in the liquid, which has been in contact with or passed through solid waste.

NYCRR

New York Codes, Rules and Regulations as they exist upon the effective date of this chapter and as may thereafter be amended.

OPERATING AND SITING PERMIT

The permit issued by the Town which allows for the operation of a anaerobic digestion facility, disposal of solid waste facility, incineration facility, industrial waste disposal facility, landspreading facility, recycling facility, sanitary landfill facility, or solid waste management facility within any zoning and/or use district within the Town of Pendleton.

OPERATOR

The person responsible for the operation of a solid waste management facility.

OWNER

The person who owns all or any part of the real property and/or improvements upon which a solid waste management facility is operated.

PERSON

Any individual, partnership, firm, association, business, industry, enterprise, public or private corporation, political subdivision of the state, government agency, municipality, estate, trust or any other legal entity whatsoever.

PROCESSING FACILITY

A combination of structures, machinery or devices utilized to reduce or alter the volume, chemical or physical characteristics of solid waste through processes such as baling or shredding prior to delivery of such waste to a resource recovery facility, sanitary landfill or incinerator, and excludes collection vehicles.

RESOURCE RECOVERY FACILITY

PENDING APPROVAL

A combination of structures, machinery or devices, utilized to separate, process, modify, convert, treat or prepare collected solid waste so that component materials or substances or recoverable resources may be used as a raw material or energy source.

RUNOFF

Any rainwater, leachate or other liquid that drains over land from any part of a facility.

SALVAGING

The controlled removal of waste materials for reuse.

SANITARY LANDFILL

A land disposal site employing an engineered method disposing of solid wastes on land in a manner that minimizes environmental hazards and meets the design and operation requirements of 6 NYCRR Part 360.

SEPTAGE

The contents of a septic tank, cesspool or other individual sewage treatment facility which receives domestic sewage wastes.

SLUDGE

Any solid, semisolid or liquid waste generated or disposed from commercial, industrial municipal, or private wastewater treatment plant, water supply treatment plant, or air pollution control facility, or sewage treatment plants.

SOLID WASTE

All putrescible and nonputrescible materials or substances discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection, including, but not limited to, garbage, refuse, industrial and commercial waste, bio solid waste and digestate, sludges from sewer or water control facilities, rubbish, ashes, contained gaseous material, incinerator residue, demolition and construction debris, discarded automobiles, but not including substances in gaseous form or hazardous wastes as defined in 42 U.S.C. and the Environmental Conservation Law of the State of New York.

SOLID WASTE MANAGEMENT

The purposeful and systematic transportation, storage, processing, recovery and disposal of solid waste.

SOLID WASTE MANAGEMENT FACILITY

Any facility employed beyond the initial solid waste collection process, including, but not limited to, transfer stations, baling facilities, anaerobic digestion facilities and associated land application facilities, treatment facilities, rail haul or barge haul facilities, processing facilities, including resource recovery equipment or other facilities to reduce or alter the volume, chemical or physical characteristics of solid waste, sanitary landfills, plants and facilities for composting, compacting or pyrolyzation of solid wastes, incinerators, burial facilities, industrial waste processing or waste disposal facilities, landspreading facilities,

PENDING APPROVAL

storage areas associated with any of the foregoing and storage lagoons for sanitary landfills. This article shall also apply to hazardous wastes treatment, storage and disposal facilities as defined in § 27-1101 of the Environmental Conservation Law or 42 U.S.C. § 6903(5).

STORAGE

The containment of any solid waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such waste.

SURFACE WATER

Lakes, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, and all other bodies of surface water, natural or artificial, public or private.

TOWN

The Town of Pendleton. Whenever this chapter refers to any action which is to be taken or authorized by the Town, the provisions shall be deemed to refer to the Town Board unless otherwise specified.

TRANSFER STATION

A combination of structures, machinery or devices at a place or facility where solid waste is taken from collection vehicles and placed in other transportation units for movement to another solid waste management facility.

TREATMENT

Any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of any solid waste to neutralize such waste, recover energy or material resources from the waste, to render such waste safer to transport, store or dispose of, or amenable for recovery, storage or reduction in volume.

WASTE TO ENERGY FACILITY

Includes any industrial waste or solid waste disposal operation, recycling operation, sanitary landfill, and anaerobic digester facility.

Section 19: Section 213-9 of the Code is hereby amended to read in its entirety as follows:

SECTION 213-9. PERMIT APPLICATION CONTENTS AND PERMITTING FEES.

- A. All applications for a permit for the siting, construction and modification or expansion of a facility shall include an application to the Town Board upon a form prescribed by said Town Board.
- B. The applications shall be accompanied by any other data the Town Board reasonably requires to determine the feasibility of issuance or denial of a permit and such information as may be required by the New York State Environmental Quality Review Act (SEQRA).
- C. All applications shall contain the following:
 - (1) The full name of the person seeking a permit and whether that person is an individual, corporation, partnership, joint venture, or other legal entity; if the applicant is not an individual, the application shall set forth the names of all parent corporations, shareholders, partners, joint ventures, or other beneficial owners of the entity seeking a permit, unless the applicant is a publicly held corporation, and the names of all officers of an applicant that is a corporation, and officers and shareholders of any parent corporations.
 - (2) That the applicant is over 21 years of age.
 - (3) Whether the applicant has ever been convicted of a felony or misdemeanor.
 - (4) A description of the exact type of business the applicant intends to conduct, including the nature of the materials to be handled.
 - (5) Each application shall contain an emergency contact telephone number.
 - (6) Engineering plans, reports and specifications prepared by a person or firm registered to practice professional engineering in New York State.
 - (7) The location of all property boundaries certified by a person or firm legally qualified to practice land surveying in New York State.
 - (8) The applicant shall survey and record and include in his application background sound-level data in the vicinity of the facility at the time of application and a topographic map, hydrogeological report, survey of area drainage and proposed location of monitoring wells if required by the DEC.
 - (9) A proposed detailed program for the closure of the facility to be implemented when use of the facility or the useful life of the facility permanently terminates. Such proposal shall set forth a restoration plan which must satisfy the following minimum criteria:
 - (a) No slope shall be left with a grade steeper than one foot of a vertical rise to three feet of horizontal distance, and the normal angle of repose should not be exceeded in any case;
 - (b) All stumps, boulders and other debris resulting from the excavating and appurtenant activities or related operations shall be disposed of by approved methods, and, if disposed on site, such debris shall be covered with a minimum of two feet of soil;

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- (c) Topsoil shall be spread over the excavated area to a minimum depth of six inches or as required by Part 360 of the New York Codes, Rules and Regulations, whichever is greater;
- (d) The restoration area shall be planted with trees, shrubs, grass or other vegetation so as to provide for screening, natural beauty and soil stability. The planting shall follow acceptable conservation and engineering practices;
- (e) Restoration shall be undertaken in such a way that natural and storm drainage, where it enters and leaves the premises, shall be altered only to the minimal degree necessary to carry out excavations and appurtenant activities. Any alterations of natural and storm drainage shall not adversely affect public roads or neighboring property owners;
- (f) Restoration shall be a continuous operation, subject to review and approval at each inspection and at the termination of the permit period. Topsoil grading and planting of the area designated for restoration during the permit period shall have been completed before a permit renewal is granted;
- (g) Within six months after termination and closure of the facility operation, all equipment, buildings, structures and other unsightly evidence of the operation and/or constructions shall have been removed from the premises or disposed of by approved methods, and all restoration shall have been completed;
- (h) An enumerated list of wastes to be received, treated or disposed of, the quantities of such wastes to be received, their places of origin, method of transportation to be utilized for their shipment to the facility and the proposed method for their recycling or disposal shall be provided. The applicant shall identify all highways to be used for access to the facility;
- (i) A proposed program shall be provided for the monitoring of all activities of the facility by personnel of the Town of Pendleton or persons authorized by the Town of Pendleton whereby such monitoring personnel or persons shall be allowed access to the facility at regular stated times and also any other time deemed necessary by the Town Inspector;
- (j) All methods and actions to be utilized are to satisfy the dictates of all applicable standards of operations, as enumerated by 6 NYCRR 360 and herein. Results shall be submitted to the Town. The applicant shall submit, with the application and any renewal application, a copy of all correspondences between the landowner/applicant and applicable federal, state or local regulatory agencies and a copy of all applicable federal, state and local permits;
- (k) In the application, the applicant shall agree that if granted the license applied for the applicant will conduct the activity or business pursuant to the regulations hereinafter set forth and that upon his failure to do so, such license may be revoked forthwith; and
- (l) If the person conducting such activity or business is not the sole owner thereof, the applicant shall state such fact at the time the applicant applies for the temporary license, and the Town Clerk at the time of issuing such

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temporary license shall send the owners or each of them a notice of the issuance of such temporary license to such person, together with a copy of this chapter.

- (10) In the case of an incineration facility, there shall be submitted, where relevant and in addition to the above requirements, a detailed plan of air pollution abatement and the following:
 - (a) A description of the waste to be transported into the facility;
 - (b) A description of the burning process, prevailing winds and their effect on adjacent commercial and residential areas;
 - (c) A detailed plan for vermin control;
 - (d) A detailed plan or drawing of the physical facility, which plan or drawing shall include the height of any structures and compliance with Chapter 132, Fire Prevention and Building Code Administration;
 - (e) A statement showing the proposed transportation route of any vehicles transporting waste to the facility; and
 - (f) A proposed plan for disposition and transportation or the burying of any waste product produced by incineration.
- (11) In the case of a land application facility or solid waste storage facility, there shall be submitted, where relevant and in addition to the above requirements a waste management plan and nutrient management plan and reports as required in 6 NYCRR Subpart 360-4 detailing material data on the solids and waste, solids or bio solids management practices, treatment alternatives, storage, application including monitoring and reporting, and contingency plans.
- (12) All applications shall be accompanied by evidence of authority to sign the application and shall be signed as follows:
 - (a) Corporation: by a duly authorized principal executive officer of at least the level of Vice President, accompanied by a certified copy of the authorizing corporate resolution;
 - (b) Partnership: by a general partner; or
 - (c) Sole proprietorship: by the proprietor.
- (13) Applications shall be sworn to by or on behalf of the applicant in respect to all statements of fact therein or shall bear an executed statement by or on behalf of the applicant, pursuant to the New York State Penal Law § 210.45, to the effect that false statements made therein are made under penalty of perjury.
- (14) Each permit application shall be accompanied by an application fee, as described in the Town of Pendleton Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time, plus the applicant shall incur all costs for review thereof as provided under the Environmental Quality Review Act (SEQRA) and regulations promulgated thereunder.
- (15) In addition to the application fee provided above and the cost of SEQRA compliance, the applicant shall acknowledge and be responsible for the costs incurred in any testing of materials deposited in or placed upon any facility, or any surface waters or groundwaters adjacent to said facility. Such tests shall be conducted at laboratories or facilities approved by the Town Board.
- (16) Each applicant shall demonstrate that the facility will not have adverse impact upon the environment of the Town of Pendleton, Town-wide fire protection,

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Town-wide sewer, water and public utilities, local traffic conditions, local land use and planning, and the Town Board, Planning Board and Conservation Board shall approve an application only after careful consideration of the above criteria and requirements.

PENDING APPROVAL

Section 20: Chapter 217, Article I of the Code is hereby amended to read in its entirety as follows:

**Article I
Excavations**

SECTION 217-1. STREET EXCAVATIONS PROHIBITED.

No person, firm or corporation shall have the right to make any opening or excavation in any street, highway, lane or alley, including any sidewalk in the Town of Pendleton.

SECTION 217-2. PENALTIES FOR OFFENSES.

A violation of this Article shall be construed and is hereby declared to be a violation and is punishable by imprisonment of not more than 15 days or by a fine of not more than \$250, or both, for each violation.

Section 21: Chapter 217, Article IV of the Code is hereby amended to read in its entirety as follows:

**Article IV
Curb Cuts**

SECTION 217-11. PERMIT REQUIRED; APPLICATIONS.

No work shall be performed in any town right-of-way without first obtaining a Curb Cut permit from the Town Highway Superintendent. Application for such permit shall contain seven copies of the following: a survey of the property and drawings of the intended work. The Highway Superintendent shall distribute copies to the Town Board, the Planning Board, the Code Enforcement Officer/Building Inspector, the Town Engineer, the Town Assessor, the Town Clerk and the Town Highway Department.

SECTION 217-12. PERFORMANCE STANDARDS.

- A. Work authorized by this permit shall be performed in a manner satisfactory to the Highway Superintendent. Drainage culverts shall be sized and installed according to the directions of the Highway Superintendent.
- B. The applicant shall keep in good repair all pipes, hydrants or appurtenances which may be placed within the bounds of the highway under terms of this permit and shall save the town harmless from all claims and damages which may accrue by reason of their location in the highway and, upon notice of the Highway Superintendent, agrees to make any repairs required for the protection and preservation of the highway and further agrees that, upon the failure of the applicant to make such repairs, they may be made by the Highway Superintendent at the expense of the applicant and such expense shall be a prior lien upon the land benefited by the use of the highway for such pipes, hydrants or appurtenances.
- C. If the work performed is on a road which has been improved by state aid, in no case shall the pavement be disturbed. Upon completion of the work, the highway shall be left in as good a condition as before the work was performed and to the satisfaction of the Highway Superintendent.
- D. If the work is being performed on a county or state road, a permit must be obtained from the proper authority first. A Town curb cut permit is required for work beyond the right-of-way. The applicant must show the permit from the county or state agency to obtain the Town permit.

SECTION 217-13. RESPONSIBILITIES OF THE APPLICANT.

The said applicant hereby agrees to hold the Town harmless on account of damages of any kind which may arise during the progress of the work authorized by this permit or by reason thereof. The applicant certifies all persons concerned with actual work under this permit are duly covered by workmen's compensation insurance and the Town shall be held harmless on account thereof.

SECTION 217-14. VIOLATIONS.

Failure to comply with the above requirements will be considered a violation of this Article and other conditions as set forth in the approved permit.

SECTION 217-15. INSPECTIONS.

- A. The Highway Superintendent or his designee shall make a first inspection after the curb is cut to ensure the curb is cut properly and that driveway stone of at least six inches of no smaller than No. 3 stone for the base is installed from the road to the location of the intended site work.
- B. The Highway Superintendent or his designee shall make a final inspection after the driveway is complete to ensure all work has been satisfactorily completed.

SECTION 217-16. BUILDING PERMIT; CERTIFICATE OF OCCUPANCY.

- A. No Building Permit shall be issued without submittal of a curb cut permit with a first inspection approval.
- B. No Certificate of occupancy/Certificate of Compliance shall be issued without submittal of a curb cut permit with a final inspection approval.

SECTION 217-17. FEE.

Fees for installations and inspections shall be as described in the Town of Pendleton Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time.

Section 22: Chapter 220 of the Code is hereby amended to read in its entirety as follows:

CHAPTER 220
Subdivision of Land

ARTICLE I
General Provisions

SECTION 220-1. LEGISLATIVE AUTHORITY.

The Planning Board of the Town of Pendleton, by virtue of the authority vested in it by law, does hereby exercise the power and authority to approve plats showing lots, to approve the development of entirely or partially undeveloped plats already filed in the office of the Clerk of the County and to approve preliminary and final plats within the Town.

SECTION 220-2. TITLE.

This Chapter shall hereafter be known, cited and referred to as the “Town of Pendleton Land Subdivision Regulations.”

SECTION 220-3. POLICY.

- A. It is hereby declared to be the policy of the Town to consider the subdivision of land and the subsequent development of the subdivided land as subject to the control of the municipality pursuant to the Comprehensive Plan of the municipality for the orderly, planned, efficient and economical development of the municipality.
- B. Land to be subdivided shall be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood or other menace; that proper provision shall be made for drainage, water supply, sewerage and other needed improvements; that all proposed lots shall be so laid out and of such size as to be in harmony with the development pattern of the neighboring properties; that the proposed streets shall impose a convenient system conforming to the Comprehensive Plan and shall be of such width, grade and location as to accommodate the prospective traffic, to facilitate fire protection and to provide access of fire-fighting equipment to buildings; and that provision may be made for open spaces, parks and playgrounds.

SECTION 220-4. PURPOSES.

This Chapter is adopted for the following purposes:

- A. To protect and provide for the public health, safety and general welfare of the municipality.

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- B. To guide the future growth and development of the municipality, in accordance with the Comprehensive Plan.
- C. To provide for adequate light, air and privacy, secure from fire, flood and other damage, and to prevent overcrowding of the land and undue congestion of the population.
- D. To provide the most beneficial relationship between the uses of land and buildings and the circulation of traffic throughout the municipality, having particular regard to the avoidance of congestion in the streets and highways, and the pedestrian traffic improvements appropriate to the various uses of land and buildings and to provide for the proper location and width of streets and building lines.
- E. To establish reasonable standards of design and procedures for subdivision and re-subdivision in order to further the orderly layout and use of land, and to ensure proper legal descriptions and monumenting of subdivided land.
- F. To ensure that public facilities are available and will have sufficient capacity to the proposed subdivision.
- G. To prevent the pollution of air, streams and ponds; to assure the adequacy of drainage facilities; to safeguard the water table; and to encourage the wise use and management of natural resources throughout the municipality in order to preserve the integrity, stability and beauty of the community and the value of the land.
- H. To preserve the natural beauty of the municipality and to ensure appropriate development with regard to these natural features.
- I. To provide for open spaces through the most efficient design and layout of the land, including the use of average density in providing for minimum width and area of lots, while preserving the density of land as established in Chapter 247, Zoning.

SECTION 220-5. INTERPRETATION.

In their interpretation and application, the provisions of this Chapter shall be held the minimum requirements for the promotion of the public health, safety, and general welfare.

SECTION 220-6. WAIVERS.

- A. Where the Planning Board finds that, due to the special circumstances of a particular plat, the provision of certain required improvements is not requisite in the interest of the public health, safety and general welfare or is inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the proposed subdivision, it may waive such requirements subject to appropriate conditions, provided that such waiver will not have the effect of nullifying the intent and purpose of the Comprehensive Plan or Chapter 247, Zoning.

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- B. In granting waivers, the Planning Board shall require such conditions that will, in its judgment, secure substantially the objectives of the standards or requirements so waived.

ARTICLE II
Word Usage and Definitions

SECTION 200-7. WORD USAGE.

- A. For the purpose of this Chapter, certain numbers, abbreviations, terms and words used herein shall be used, interpreted and defined as set forth in this Article.
- B. Unless the context clearly indicates to the contrary, words used in the present tense include the future tense; words used in the plural number include the singular; the word “herein” means “in this Chapter”; the word “regulations” means “this Chapter.”
- C. A “person” includes a corporation, a partnership and an incorporated association of persons such as a club; “shall” is always mandatory; a “building” includes a “structure”; a “building” or “structure” includes any part thereof; “used” or “occupied,” as applied to any land or building, shall be construed to include the words “intended, arranged or designed to be occupied.”

SECTION 220-8. DEFINITIONS.

As used in this Chapter, the following terms shall have the meanings indicated:

ADMINISTRATIVE ASSISTANT TO THE PLANNING BOARD

The officer as appointed by the Planning Board to administer this Chapter. If no such officer shall be appointed, the Planning Board Chairman shall also serve as Administrative Assistant.

APPLICANT

- A. The owner of land proposed to be subdivided or his representative. Consent shall be required from the legal owner of the premises.
- B. The person making an application to an agency to grant an approval in connection with a proposed action.

BLOCK

A tract of land bounded by streets or by a combination of streets and public parks, cemeteries, railroad rights-of-way, shorelines of waterways or boundary lines of municipalities.

BOND

PENDING APPROVAL

Any form of security, including a cash deposit, surety bond, collateral, property or instrument of credit in an amount and form satisfactory to the Town Board. All bonds shall be approved by the Town Board wherever a bond is required by this Chapter.

BUILDING

Any structure built for the support, shelter or enclosure of persons, animals, chattel or movable property of any kind, and includes any structure.

BUILDING INSPECTOR

The Code Enforcement Officer/Building Inspector of the Town of Pendleton or his designated assistant.

CODE ENFORCEMENT OFFICER

The Code Enforcement Officer/Building Inspector of the Town of Pendleton or his designated assistant.

COMPREHENSIVE PLAN

A document and referenced map that sets forth the goals and objectives that will guide the physical development of the Town over a period of time.

CONSTRUCTION PLAN

The maps or drawings accompanying a subdivision plat and showing the specific location and design of improvements to be installed in the subdivision in accordance with the requirements of the Planning Board as a condition of the approval of the plat.

CUL-DE-SAC

A local street with only one outlet and having an appropriate terminal for the safe and convenient reversal of traffic movement.

DEVELOPER

The owner of land proposed to be subdivided or his representative. Consent shall be required from the legal owner of the premises.

EASEMENT

Authorization by a property owner for the use by another and for a specific purpose of any designated part of his property.

ESCROW

A deposit of cash with the Town in lieu of an amount required and still in force on a performance or maintenance bond. Such escrow funds shall be deposited by the Town in a separate account.

FINAL PLAT

PENDING APPROVAL

The map or plan of record of a subdivision and any accompanying material, as described in this Chapter.

FRONTAGE

The side of a lot abutting on a highway, road or way.

GRADE

The slope of a road, street or other public way, specified in percentage terms.

HIGHWAY SUPERINTENDENT

The duly elected Highway Superintendent of the Town of Pendleton.

IMPROVEMENT

One of the physical changes to the land necessary to produce usable and desirable building lots from undeveloped acreage, including, but not limited to, installation of grading, pavement, curb, gutters, storm sewers and drains, sidewalks, street signs, crosswalks, shade trees, sodding or seeding, street name signs, monuments and betterments to existing streets and watercourses.

INDIVIDUAL SEWAGE DISPOSAL SYSTEM

A septic tank's seepage tile sewage system or any other approved sewage treatment device.

JOINT OWNERSHIP

Joint ownership among persons shall be construed as the same owner.

LOT

A tract, plot or portion of a subdivision or other parcel of land intended as a unit for the purpose, whether immediate or future, of transfer of ownership or of building development.

LOT, CORNER

A lot situated at the intersection of two streets. The interior angle of such intersection shall not exceed 135°. The least dimension shall be considered the front. However, a minimum front yard setback must be maintained from both streets.

LOT IMPROVEMENT

Any building, structure, work of art or improvement of the land on which they are situated constituting a physical betterment of real property, or any part of such betterment. Certain lot improvements may require permits for bonding.

PLANNING BOARD

PENDING APPROVAL

The Planning Board of the Town of Pendleton.

PRELIMINARY PLAT

A drawing or drawings clearly marked "preliminary plat" showing the salient features of a proposed subdivision, as specified in Article IV, § 220-19, of this Chapter, submitted to the Planning Board for consideration prior to submission of the plat in final form and sufficient detail to apprise the Planning Board of the layout of the proposed subdivision.

REGISTERED ENGINEER

An engineer properly licensed and registered in the State of New York.

REGISTERED LAND SURVEYOR

A land surveyor properly licensed and registered in the State of New York.

RE-SUBDIVISION

A change in a map of an approved or recorded subdivision plat if such change affects any road layout on such map or any lot line or if it affects or changes any map or plan legally recorded prior to the adoption of any regulations controlling subdivisions.

RIGHT-OF-WAY

A strip of land between property lines opened for use as a street, alley or crosswalk.

SETBACK

The distance between a building and the edge of the right-of-way nearest thereto.

SKETCH PLAN

A sketch of a proposed subdivision showing the information specified in § 220-17 of this Chapter to enable the subdivider to save time and expense in reaching general agreement with the Planning Board as to the form of the layout and objectives of this Chapter.

STORMWATER MANAGEMENT AREA

For use during excessive rainfall or water runoff conditions to prevent property damage; constructed under subdivision or site plan review regulations.

STREET (ROAD OR HIGHWAY)

Includes streets, roads, avenues, or other traffic ways within rights-of-way.

STREET PAVEMENT

The wearing or exposed surface of the roadway used by vehicular traffic.

STREET WIDTH

The width of a right-of-way, measured at right angles to the center line of the street.

SUBDIVIDER

Any person, firm, corporation, partnership or association who or which shall lay out any subdivision or part thereof as defined herein, either for himself or others.

SUBDIVISION

The division of a single lot, tract or parcel of land or a part thereof for the purpose of transfer of ownership or for building development; provided, however, that division of land for agricultural purposes into parcels of more than seven acres shall not be included within the meaning of “subdivision.” The term “subdivision” shall also include “re-subdivision.”

A. MAJOR SUBDIVISION

Any subdivision not classified as a minor subdivision or any size subdivision requiring any new street or extension of municipal facilities.

B. MINOR SUBDIVISION

Any subdivision containing not more than four lots created within any three-year time period fronting on an existing street(s), not involving any new street or road or the extension of municipal facilities and not adversely affecting the development of the remainder of the parcel or adjoining property and not in conflict with any provision or portion of the Comprehensive Plan or Chapter 247, Zoning.

SUBDIVISION PLAT or FINAL PLAT

A drawing, in final form, showing a proposed subdivision containing all information or detail required by law and by this Chapter, to be presented to the Planning Board for approval and which, if approved, may be duly filed or recorded by the applicant in the Office of the County Clerk. See § 220-20 of this Chapter.

TEMPORARY IMPROVEMENT

An improvement built and maintained by a subdivider during construction of the subdivision and prior to release of the performance bond.

TOWN ATTORNEY

The licensed attorney designated by the Town Board to furnish legal assistance for the administration of this Chapter.

TOWN BOARD

The Town Board of the Town of Pendleton.

TOWN ENGINEER

The licensed engineer designated by the Town Board to furnish engineering assistance for the administration of this Chapter.

VACATION OF PLAT

The provision in § 220-15(C), of this Chapter which provides for the legal voiding of a plat.

ARTICLE III
Application Procedures

SECTION 220-9. PRE-APPLICATION PROCEDURE.

- A. Applicants must meet with the Planning Board Chairman or designated administrative assistant.
- B. The developer is made aware of the subdivision requirements.
- C. The developer is given copies of the subdivision application.
- D. The developer requests that the subdivision be placed on the Planning Board agenda for sketch plan review.
- E. There shall be no fee for this pre-application procedure.

SECTION 220-10. SKETCH PLAN.

- A. No Submission of sketch plan and fee.
 - (1) Any owner of land shall, prior to subdividing or resubdividing land, submit to the Administrative Assistant official application forms along with 14 copies of a sketch plan of the proposed subdivision, which shall comply with the requirements of Article IV, § 220-17, for purposes of classification and preliminary discussion. The Administrative Assistant shall immediately forward seven copies to the Planning Board and one copy to the Town Board, Town Engineer, Code Enforcement Officer/Building Inspector, and Highway Superintendent and retain one file copy. All submissions for a sketch plan review shall be accompanied by a fee as described in the Town of Pendleton Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time.
 - (2) The names and addresses of all landowners immediately adjacent to and immediately across the street from proposed subdivision shall be provided as shown on the Town Assessor's current maps.
- B. Discussion of requirements and classification.
 - (1) The subdivider or his duly authorized representative shall attend the meeting of the Planning Board to discuss the requirements of this chapter for street improvements, drainage, sewerage, water supply, fire protection and similar aspects, as well as the availability of existing services and other pertinent information.
 - (2) Classification of the sketch plan as a minor or major subdivision is to be made at this time. If classified as a minor subdivision, the subdivider shall comply with Article III, §§ 220-11 and 220-15, of this Chapter. The Planning Board may require, however, when it deems it necessary for protection of the public health, safety and welfare, that a minor subdivision comply with some or all of the

PENDING APPROVAL

requirements specified for major subdivisions. If classified as a major subdivision, the subdivider shall comply with Article III, §§ 220-12 through 220-16.

- (3) Once classified as major subdivision by the Planning Board, no alterations or improvements to the property may be made, *e.g.*, excavation, topsoil stripping, etc., without final plat approval or by special permission from the Town Board or Planning Board. Complete supervision by the Town Engineer must also be provided.

- C. Study of sketch plan. The Planning Board shall determine whether the sketch plan meets the purposes of this Chapter and shall, where it deems it necessary, make specific recommendation, in writing, to be incorporated by the applicant in the next submission to the Planning Board.

SECTION 220-11. APPROVAL OF MINOR SUBDIVISION.

- A. Submissions and fee.

- (1) Within six months after classification of the sketch plan as a minor subdivision by the Planning Board, the subdivider shall submit to the Administrative Assistant a final subdivision plan in 14 copies. Failure to do so shall require resubmission of the sketch plan to the Planning Board for reclassification. The plat shall conform to the layout shown on the sketch plan plus any recommendations made by the Planning Board and to the requirements listed in Article IV, § 220-18.

- (2) All submissions for final plat approval for minor subdivisions shall be accompanied by a fee as described in the Town of Pendleton Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time.

- B. Distribution of copies. The Administrative Assistant shall retain one copy of the final subdivision plat and shall immediately forward seven copies to the Planning Board and one copy to the Town Board, Town Engineer, Town Assessor, Code Enforcement Officer/Building Inspector, and Highway Superintendent for review.

- C. Subdivider to attend Planning Board meeting. The subdivider or his duly authorized representative shall attend the meeting of the Planning Board to discuss the final subdivision plat.

- D. Review by Planning Board. The Planning Board, Highway Superintendent, Town Assessor, Town Engineer and Code Enforcement Officer/Building Inspector shall review the final plat prior to approval.

- E. When officially submitted. The time of submission of the final subdivision plat shall be considered to be the date on which the plat, complete and accompanied by the required fee and all data required by Article IV, § 220-18, of this Chapter, has been filed with the Administrative Assistant.

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- F. Public hearing. A public hearing shall be held by the Planning Board within 62 days from the time of submission of the final subdivision plat for approval. Said hearing shall be advertised in the official newspaper of the Town at least five days before such hearing.
- G. Action on final subdivision plat.
- (1) The Planning Board shall, within 62 days from the date of the public hearing, act to conditionally approve, conditionally approve with modification, disapprove or grant final approval and authorize the signing of the final subdivision plat. This time may be extended by mutual consent of the subdivider and the Planning Board. Failure of the Planning Board to act within such time shall constitute approval of the plat.
 - (2) In the event of conditional approval (with or without modification) to the plat, the Planning Board shall empower a duly authorized officer to sign the plat upon compliance with such conditions and requirements as may be stated in its resolution of conditional approval. Within five days of the resolution granting conditional approval, the plat shall be certified by the Administrative Assistant as conditionally approved, a copy shall be filed in his/her office and a copy mailed to the subdivider. The copy mailed to the subdivider shall include a statement of such requirements which, when completed, will authorize the signing of the conditionally approved plat. Upon completion of such requirements, the plat shall be signed by the duly authorized officer. Conditional approval of a plat shall expire 180 days after the date of the resolution granting such approval unless the requirements have been certified as completed within that time. The Planning Board may, however, extend the time within which a conditionally approved plat may be submitted for signature, if, in its opinion, such extension is warranted in the circumstances, for two additional periods not to exceed 90 days each.
- H. Any or all road frontage, lots or parcels approved by the Planning Board as part of the minor subdivision process shall meet the minimum lot area requirements in the applicable zoning districts as found in Chapter 247, Zoning, of the Town Code:
- (1) R1 District: § 247-10(C).
 - (2) R2 District: § 247-11(C).
 - (3) CO1 District: § 247-12(D) and (E).
 - (4) CO2 District: § 247-13(D) and (E).
 - (5) LI District: § 247-14(E) and (F).
 - (6) SLI District: § 247-15(E) and (F).
- I. Transfer of excess land within the right-of-way. Prior to dedication of a street, any land in excess of the minimum requirement for a street right-of-way shall be deeded to the lot adjacent to the right-of-way.

SECTION 220-12. PRELIMINARY PLAT FOR MAJOR SUBDIVISION.

- A. The Submission and fee.

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- (1) Within six months after classification as a major subdivision by the Planning Board, the subdivider shall submit to the Administrative Assistant a preliminary plat in 14 copies. Failure to do so shall require resubmission of the sketch plan to the Planning Board for reclassification. Said plat shall be clearly marked "preliminary plat" and shall be in a form as described in Article IV, § 220-19, of this Chapter.
 - (2) The submission for approval of the preliminary plat shall be accompanied by a fee as described in the Town of Pendleton Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time.
- B. Distribution of copies. The Administrative Assistant shall retain one copy of the preliminary plat and shall immediately forward seven copies to the Planning Board and one copy to the Town Board, Town Engineer, Town Assessor, Code Enforcement Officer/Building Inspector and Highway Superintendent for review.
- C. Review by Planning Board. The Planning Board shall review the preliminary plat for major subdivisions.
- D. Subdivider to attend Planning Board meeting. The subdivider or his duly authorized representative shall attend the meeting of the Planning Board to discuss the preliminary plat.
- E. Study of preliminary plat. The Planning Board shall study the practicability of the preliminary plat, taking into consideration the requirements of the community and the best use of the land being subdivided. Particular attention shall be given to the arrangement, location and width of streets, their relation to the topography of the land, water supply, sewage disposal, drainage, lot sizes and arrangement, the future development of adjoining lands as yet subdivided and the requirements of the Comprehensive Plan and Chapter 247, Zoning, of the Town Code.
- F. When officially submitted. The time of submission of the preliminary plat shall be considered to be the date on which the submission for approval of the preliminary plat, complete and accompanied by the required fee and all data required by Article IV, § 220-19, of this Chapter, has been filed with the Administrative Assistant.
- G. Public hearing. Within 62 days after the receipt of such preliminary plat by the Administrative Assistant, the Planning Board shall hold a public hearing, which hearing shall be advertised at least once in the official newspaper of the Town at least five days before such hearing. Notice by mail will be sent by the Town Clerk five days before a public hearing for the preliminary plat approval of a subdivision to all owners of property immediately adjacent to and immediately across the street from the proposed subdivision.
- H. Approval of the preliminary plat.
- (1) Within 62 days after the date of such hearing, the Planning Board shall approve, with or without modification, or disapprove such preliminary plat, and the ground of a modification, if any, or the ground for disapproval shall be stated upon the

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records of the Planning Board. The time in which the Planning Board must take action on such plat may be extended by mutual consent of the subdivider and the Planning Board. When so approving a preliminary plat, the Planning Board shall state, in writing, modifications, if any, as it deems necessary for submission of the plat in final form. Within five days of the approval of such preliminary plat, it shall be certified by the Administrative Assistant as granting preliminary approval and a copy filed in his/her office and a copy mailed to the subdivider. Failure of the Planning Board to act within such sixty-two-day period shall constitute approval of the preliminary plat.

- (2) When granting approval to a preliminary plat, the Planning Board shall state the terms of such approval, if any, with respect to:
 - i. The modifications to the preliminary plat.
 - ii. The character and extent of the required improvements for which waivers may have been requested and which, in its opinion, may be waived without jeopardy to the public health, safety and general welfare.
 - iii. The amount of improvement or the amount of all the bonds which it will require as prerequisite to the approval of the final subdivision plat.
- (3) Approval of a preliminary plat shall not constitute approval of the final subdivision plat, but rather it shall be deemed an expression of approval of the design submitted on the preliminary plat as a guide to the preparation of the final subdivision plat, which will be submitted for approval of the Planning Board and for recording upon fulfillment of the requirements of this Chapter. Prior to approval of the final subdivision plat, the Planning Board may require additional changes as a result of further study of the subdivision in final form or as a result of new information obtained at the public hearing.

SECTION 220-13. FINAL PLAT FOR MAJOR SUBDIVISION.

- A. Submission and fee. The subdivider shall, within six months after approval of the preliminary plat, file the final plat with the Administrative Assistant. The submission for final plat approval for a major subdivision shall be accompanied by a fee as described in the Town of Pendleton Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time. If not submitted within six months after approval of the preliminary plat, the Planning Board may refuse to approve the final plat and require resubmission of the preliminary plat.
- B. Number and distribution of copies. The subdivider shall provide the Administrative Assistant with 14 copies, plus one copy, in ink on linen or an acceptable equal, of the plat, the original and one true copy of all offers of cession, covenants and agreements and five sets of all construction drawings. The Administrative Assistant shall retain one copy of the final plat and shall immediately forward seven copies to the Planning Board and one copy to the Town Board, Town Engineer, Town Assessor, Code Enforcement Officer/ Building Inspector and Highway Superintendent for review. Construction plans shall be sent to the Code Enforcement Officer/Building Inspector, Highway Superintendent and two sets to the Town Engineer.

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- C. When officially submitted. The time of submission of the final subdivision plat shall be considered the date on which the plat, complete and accompanied by the required fee and all data required by Article IV, § 220-20, of this chapter, has been filed with the Administrative Assistant.
- D. Endorsement of state and county agencies. Submissions for approval of plans for sewer or water facilities will be filed by the subdivider with all necessary Town, county and state agencies. Endorsement and approval by the Niagara County Department of Health shall be secured by the subdivider before official submission of the final subdivision plat.
- E. Review by Planning Board. The Planning Board shall review the final subdivision plat.
- F. Public hearing. Within 62 days of the submission of a plat in final form for approval, a hearing shall be held by the Planning Board. This hearing shall be advertised at least once in the official newspaper of the Town at least five days before such hearing; provided, however, that when the Planning Board deems the final plat to be in substantial agreement with a preliminary plat approved under § 220-12 of this article and modified in accordance with requirements of such approval if such preliminary plat has been approved with modification, the Planning Board may waive the requirement for such public hearing.
- G. Action on proposed final subdivision plat.
 - (1) The Planning Board shall, by resolution, conditionally approve, conditionally approve with or without modification, disapprove or grant final approval and authorize the signing of such plat within 62 days of its receipt by the Administrative Assistant if no hearing is held or, in the event that a hearing is held, within 62 days after the date of such hearing. This time may be extended by mutual consent of the subdivider and the Planning Board. Failure to take action on a final plat within the time prescribed thereafter shall be deemed approval of the plat. The subdivider will be notified of Planning Board actions.
 - (2) Upon resolution of conditional approval of such final plat, the Planning Board shall empower a duly authorized officer to sign the plat upon completion of such requirements as may be stated in the resolution. Within five days of such resolution, the plat shall be certified by the Administrative Assistant as conditionally approved and a copy filed in his/her office and a copy mailed to the subdivider. The copy mailed to the subdivider shall include a statement of such requirements which, when completed, will authorize the signing of the conditionally approved final plat. Upon completion of such requirements, the plat shall be signed by said duly authorized officer of the Planning Board.
 - (3) Conditional approval of a final plat shall expire 180 days after the date of the resolution granting such approval, unless the requirements have been certified as completed within that time. The Planning Board may, however, extend the time within which a conditionally approved plat may be submitted for signature, if in its opinion such extension is warranted in the circumstances, for two additional periods not to exceed 90 days each.

SECTION 220-14. FEES.

Applicable fees shall be as described in the Town of Pendleton Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time.

SECTION 220-15. FILING OF APPROVED SUBDIVISION PLAT.

- A. The Final approval and filing. Upon completion of the requirements in § 220-13 and notation to that effect upon the final subdivision plat, it shall be deemed to have final approval and shall be properly signed by the duly designated officer of the Planning Board and may be filed by the applicant in the office of the County Clerk. Any final subdivision plat not so filed or recorded within 90 days of the date upon which such plat is approved or considered approved by reasons of the failure of the Planning Board to act shall become null and void. The Planning Board may grant two additional ninety-day extensions for filing the final plat.
- B. Plat void if revised after approval. No changes, erasures, modifications or revisions shall be made in any final subdivision plat after approval has been given by the Planning Board and endorsed in writing on the plat, unless the said plat is first resubmitted to the Planning Board and such Board approved any modifications. In the event that any such final subdivision plat is recorded without complying with this requirement, the same shall be considered null and void, and the Planning Board shall institute proceedings to have the plat stricken from the records of the County Clerk.
- C. Vacation of plats.
 - (1) Any plat, or any part of any plat, may be vacated by the owner of the premises, at any time before the sale of any lot therein, by written instrument, to which a copy of such plat shall be vacated.
 - (2) Such an instrument shall be approved by the Planning Board in like manner as plats of subdivisions. The governing body may reject any such instrument which abridges or destroys any public rights in any of its public uses, improvements, streets or driveways.

SECTION 220-16. PUBLIC STREETS AND RECREATION AREAS.

- A. Public acceptance of streets. The approval by the Planning Board of a final subdivision plat shall not be deemed to constitute or be evidence of any acceptance by the Town of any street, easement or other open space shown on such final subdivision plat.
- B. Ownership and maintenance of recreation areas. When a park, playground or other recreation area shall have been shown on a final subdivision plat, the approval of said plat shall not constitute an acceptance by the Town of such area. The Planning Board shall require the plat to be endorsed with appropriate notes to this effect. The Planning Board may also require the filing of a written agreement between the applicant and the Town Board covering future deeds and title, dedication and provision for the cost of grading, development, equipment and maintenance of any such recreation area.

ARTICLE IV

Documents to be Submitted

SECTION 220-17. SKETCH PLAN.

- A. The applicant shall submit an application form for review and approval of a subdivision, including a sketch plan.
- B. The sketch plan initially submitted to the Administrative Assistant shall be based on Tax Map information or some other similarly accurate base map at a scale (preferably not less than 400 feet to the inch) to enable the entire tract to be shown on one sheet. The sketch plan shall be submitted, showing the following information:
 - (1) The location of that portion which is to be subdivided in relation to the entire tract and the distance to the nearest existing street intersection (if not included on map).
 - (2) All existing structures, wooded areas, floodplains, wetlands, streams and other significant physical features within the portion to be subdivided and within 200 feet thereof. Topographic contours shall also be indicated at intervals of not more than five feet based on United States Geological Survey datum.
 - (3) The Tax Map street, block and lot numbers, if available.
 - (4) All the utilities available and all existing streets and zoning districts of all surrounding lands.
 - (5) The proposed pattern of lots (including lot width and depth), street layout, recreation areas, systems of drainage, sewerage and water supply within the subdivided area. See § 220-18(A)(3).

SECTION 220-18. MINOR SUBDIVISION PLAT AND ACCOMPANYING DATA.

- A. In the case of a minor subdivision, the final subdivision plat shall include the following information (Note: A minor subdivision may not require the preliminary plat step.):
 - (1) A copy of such covenants or deed restrictions as are intended to cover all or part of the tract.
 - (2) An actual field survey of the boundary lines of the proposed subdivision, giving complete descriptive data by bearings and distances, made and certified to by a licensed land surveyor. The corners of the tract shall also be located on the ground and marked by monuments as approved by the Highway Superintendent and shall be referenced as shown on the final plat.
 - (3) All on-site sanitation and water supply facilities shall be designed to meet the minimum specifications of the Niagara County Department of Health, and a note to this effect shall be stated on the final subdivision plat signed by a licensed engineer.
 - (4) The proposed subdivision name and name of the Town and county.
 - (5) The date, North point, map scale, name, signature and address of the record owner and/or subdivider.
- B. The plot shall be filed with the Town Assessor. (If more than four lots are created within three years, Niagara County imposes further restrictions.)

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- C. Drainage details of each subdivided lot and of the entire tract shall be submitted. Elevations of at least the lot corners and first floor of the proposed house shall be shown. On-site drainage shall generally require that the finished first-floor elevation or garage floor be within one foot of the existing lot grade and/or within one foot of the elevations of adjacent properties.
- D. The Code Enforcement Officer/Building Inspector and/or Town Engineer shall review both the plan and the site for adequacy prior to issuing any building permits. No occupancy permit shall be issued until all subdivision drainage work is completed and accepted by the Code Enforcement Officer/Building Inspector.
- E. A temporary occupancy permit may be issued for a maximum of 120 days by the Code Enforcement Officer/Building Inspector if weather conditions prohibit completion of drainage grading. Upon expiration, the temporary permit must be replaced with a permanent permit or be revoked.
- F. A stormwater pollution prevention plan (SWPPP), if required for the proposed subdivision under Article XIII of Chapter 247, Zoning, of the Town Code, together with the recommendation of the SMO to approve, approve with modifications, or disapprove the SWPPP pursuant to § 247-85(C) of the Town Code. If a SWPPP is submitted together with a minor subdivision plat pursuant to this section, such SWPPP and plat shall comply with the requirements of Article XIII of Chapter 247, Zoning, of the Town Code.

SECTION 220-19. MAJOR SUBDIVISION PRELIMINARY PLAT AND ACCOMPANYING DATA.

- A. The following documents shall be submitted for approval:
 - (1) Fourteen copies of the preliminary plat prepared at a scale of not more than 100 feet but preferably not less than 50 feet to the inch, showing:
 - (a) Proposed subdivision name, name of Town and county in which it is located, date, true North point, map scale, name, signature and address of the record owner, subdivider and engineer or surveyor, including license number and seal.
 - (b) The name and map cover numbers of all subdivisions immediately adjacent and the name of the owners of record of all adjacent property not in a recorded subdivision.
 - (c) Zoning district (including exact boundary lines, if more than one district) and any proposed changes in the Zoning Ordinance Map or text applicable to the area to be subdivided.
 - (d) All parcels of land proposed to be dedicated to public use and the conditions of such dedication.
 - (e) Location of existing property lines, easements, wetlands, floodplains, buildings, watercourses, marshes, rock outcrops, wooded areas and other significant existing features for the proposed subdivision and adjacent property.

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- (f) Location of existing sewers, water mains, fire hydrants, culverts and drains on the property or in adjacent streets, with pipe sizes, manhole inverts, grades and direction of flow.
 - (g) Contours with intervals of five feet or less as required by the Planning Board, including elevations on existing roads, and approximate grading plan if natural contours are to be changed more than two feet.
 - (h) The width, location, grades and street profiles of all streets or public ways proposed by the developer.
 - (i) The approximate location and size of all proposed waterlines, valves, hydrants and sewer lines, connection to existing lines or alternate means of water supply or sewage disposal and treatment as provided in the Public Health Law and profiles of all proposed waterline and sewer lines.
- (2) Drainage. A storm drainage plan must be submitted showing the drainage of each lot and the overall drainage of the tract. The location and size of proposed lines and their profiles, connection to existing lines or alternate means of disposal shall be shown, including the engineering calculations for the sizing of these facilities. An evaluation of the effect of drainage on adjacent properties shall be included.
- (3) Plans and cross sections showing the proposed location and type of sidewalks, street lighting standards, curbs, water mains, sanitary sewers and storm drains, the character, width and depth of pavements and subbase, the location of manholes, catch basins, receivers and underground conduits.
- (4) Preliminary designs of any bridges or culverts which may be required.
- (5) Preliminary earthwork calculations to determine fill and topsoil needs.
- (6) The proposed lot lines with approximate dimensions and area of each lot.
- (7) Where the topography is such as to make difficult the inclusion of any of the required facilities within the public areas as laid out, the preliminary plat shall show the boundaries of proposed permanent easements over or under private property, which permanent easements shall not be less than 15 feet in width and which shall provide satisfactory access to an existing public highway or other public highway or public open space shown on the subdivision or the Comprehensive Plan.
- (8) An actual field survey of the boundary lines of the tract, giving complete descriptive data by bearings and distances, made and certified to by a licensed land surveyor. The corners of tracts shall also be located on the ground and marked by monuments of such size and type as approved by the Highway Superintendent and shall be referenced and shown on the final subdivision plat.
- (9) Stormwater management.
- (a) A stormwater pollution prevention plan (SWPPP) shall be submitted, if required for the proposed subdivision under Article XIII of Chapter 247, Zoning, of the Town Code, together with the recommendation of the SMO to approve, approve with modifications, or disapprove the SWPPP pursuant to § 247-85(C) of the Town Code. If a SWPPP is submitted together with a major subdivision preliminary plat pursuant to this section, such SWPPP and plat shall comply with the requirements of Article XIII of Chapter 247, Zoning, of the Town Code.

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- B. If the application covers only a part of the subdivider's entire holding, a map of the entire tract, drawn at a scale of not less than 400 feet to the inch, showing an outline of the platted area with its proposed streets and indication of the probable future street system with its grades and drainage in the remaining portion of the tract and the entire tract shall be submitted. The part of the subdivider's entire holding submitted shall be considered in the light of the entire holdings.
- C. A copy of such covenants or deed restrictions as are intended to cover all or part of the tract shall be submitted.

SECTION 220-20. MAJOR SUBDIVISION FINAL PLAT AND ACCOMPANYING DATA.

The following documents shall be submitted for final subdivision plat approval:

- A. The plat to be filed with the County Clerk shall be original ink drawn on linen or tracing cloth or copies made by an Ozalid Machine on linen, tracing cloth or Mylar. The size of the sheets shall be a minimum size of 8 1/2 inches by 11 inches, with a maximum size of 34 inches by 44 inches.
 - (1) The plat shall show:
 - (a) The proposed subdivision name or identifying title and the name of the Town and county in which the subdivision is located; the name, signature and address of the record owner and subdivider; and the name, license number and seal of the licensed land surveyor.
 - (b) Streetlines, pedestrianways, lots, reservations, easements and areas to be dedicated to public use.
 - (c) Sufficient data acceptable to the Highway Superintendent to determine readily the location, bearing and length of every streetline, lot line and boundary line and to reproduce such lines upon the ground. Where applicable, these should be referenced to monuments included in the state system of plane coordinates and, in any event, should be tied to reference points previously established by a public authority.
 - (d) The length and bearing of all straight lines, the radii, length and central angles of all curves and tangent bearings shall be given for each street. All dimensions and angles of the lines of each lot shall also be given. All dimensions shall be shown in feet and decimals of a foot. The plat shall show the boundaries of the property, location, graphic scale and true North point.
 - (2) The plat shall also show, by proper designation thereon, all public open spaces and environmentally sensitive areas such as wetlands, floodplains and unstable soil areas for which deeds are included and those spaces title to which is reserved by the developer. For any of the latter, there shall be submitted with the subdivision plat copies of agreements or other documents showing the manner in which such areas are to be maintained and the provisions made therefor.

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- (3) All offers of cession and covenants governing the maintenance of open space shall bear the certificate of approval of the Town Attorney as to their legal sufficiency.
 - (4) Lots within a subdivision shall be sequentially numbered.
 - (5) Permanent reference monuments to include floodplains and wetland boundary limits shall be shown, as approved by the Planning Board, and shall be constructed in accordance with specification of the Highway Superintendent. When referenced to the state system of plane coordinates, they shall also conform to the requirements of the New York State Department of Transportation. They shall be placed as required by the Highway Superintendent and the Planning Board and their location noted and referenced upon the plat.
 - (6) All lot corner markers shall be permanently located satisfactorily to the Highway Superintendent at least 3/4 inches (if metal) in diameter and at least 24 inches in length and located in the ground to existing grade.
 - (7) Monuments of a type approved by the Highway Superintendent shall be set at all corners and angle points of the boundaries of the original tract to be subdivided and may be required at all street intersections, angle points in streetlines, points of curve and such intermediate points as required by the Highway Superintendent.
 - (8) The Highway Superintendent shall present the number of proposed speed limit and traffic control signs needed within the subdivision with the anticipated cost for the procurement and installation of said signs. The developer shall pay this fee at the same time that public improvement permit fees are due by phases, which will be placed in a fund for this specific use.
- B. Construction drawings, including plans, profiles and typical cross sections, as required, showing the proposed location, size and type of streets, sidewalks, streetlighting standards, curbs, water mains, sanitary sewers and storm drains, pavements and subbase, manholes, catch basins, stormwater erosion control facilities and other features as directed by the Planning Board or Stormwater Management Officer (SMO).
- C. Map, plan and report with all legal documentation submitted to create a stormwater drainage district or districts in consideration of a major subdivision. A district shall be defined as the watershed area under post-development conditions for a specified location where stormwater is discharged from this major subdivision on the public right-of-way.
- D. Stormwater pollution prevention plan (SWPPP), if required for the proposed subdivision under Article XIII of Chapter 247, Zoning, of the Town Code, together with the recommendation of the SMO to approve, approve with modifications, or disapprove the SWPPP pursuant to § 247-85(C) of the Town Code. If a SWPPP is submitted together with a major subdivision final plat pursuant to this section, such SWPPP and plat shall comply with the requirements of Article XIII of Chapter 247, Zoning, of the Town Code.

ARTICLE V

General Requirements and Design Standards for Major Subdivision

SECTION 220-21. STANDARDS TO BE MINIMUM REQUIREMENTS.

In considering applications for subdivision of land, the Planning Board shall be guided by the standards set forth herein. The said standards shall be considered minimum requirements and shall be waived by the Planning Board only under circumstances set forth in Article I herein.

SECTION 220-22. GENERAL PROVISIONS.

- A. Character of land. Land to be subdivided shall be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood or other menace.
- B. Conformity with the Comprehensive Plan. Subdivisions shall be in harmony with the Comprehensive Plan.
- C. Specifications for required improvements. All required improvements shall be constructed or installed to conform to the Town specifications, which may be obtained from the Highway Superintendent or found in this Chapter.
- D. No building permit shall be issued prior to acceptance of a street by the Town Board.

SECTION 220-23. STREET LAYOUT.

- A. Width, location and construction. Streets shall be of sufficient width, suitably located and adequately constructed to conform to the Comprehensive Plan and to accommodate the prospective traffic and afford access for firefighting, snow removal and other road maintenance equipment. The arrangement of streets shall be such as to cause no undue hardship to adjoining properties and shall be coordinated so as to compose a convenient system.
- B. Arrangement. The arrangement of streets in the subdivision shall provide for the continuation of principal streets of adjoining subdivision and for proper projection of principal streets into adjoining properties which are not yet subdivided in order to make possible necessary fire protection, movement of traffic and the construction or extension, presently or when later required, of needed utilities and public services such as sewers, water and drainage facilities. Where, in the opinion of the Town, topographic or other conditions make such continuance undesirable or impracticable, the above conditions may be modified.
- C. Minor streets. Minor streets shall be so laid out that their use by through traffic will be discouraged.

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- D. Provision for future resubdivision. The Board may require that streets be laid out to provide future development in accordance with the requirements contained in this Chapter. Such streets shall be paved.
- E. Dead-end streets. The creation of dead-end or loop residential streets will be encouraged wherever the Planning Board finds that such type of development will not interfere with normal traffic circulation in the area. In the case of dead-end streets, where needed or desirable, the Planning Board may require the reservation of a two-foot-wide easement to provide for continuation of pedestrian traffic and utilities to the next street. Subdivisions containing 20 lots or more may be required to have at least two street connections with existing public streets shown on the construction plan prior to preliminary plat approval.
- F. Block size. Blocks generally shall not be less than 400 feet nor more than 1,200 feet in length. In general, no block width shall be less than twice the normal lot depth. In blocks exceeding 800 feet in length, the Planning Board may require the reservation of a twenty-foot-wide easement through the block to provide for the crossing of underground utilities and pedestrian traffic where needed or desirable and may further specify, at its discretion, that a four-foot-wide paved footpath be included.
- G. Intersections with collector or major arterial roads. Minor or secondary street openings into such roads shall, in general, be at least 500 feet apart.
- H. Street jogs. Street jogs with center-line offsets of less than 125 feet shall be avoided.
- I. Angle of intersection. In general, all streets shall join each other so that for a distance of at least 100 feet the street is approximately at right angles to the street it joins.
- J. Relation to topography. The street plan of a proposed subdivision shall bear a logical relationship to the topography of the property, and all streets shall be arranged so as to obtain as many of the building sites as possible at or above the grade of the streets. Grades of streets shall conform as closely as possible to the original topography.
- K. Culs-de-sac.
 - (1) Culs-de-sac should be discouraged as they have proven to be a burden to the Town taxpayer as the maintenance of the Town property (street area) is far above the normal, snow removal is much more costly and extra consideration must be given to the entering and exiting of fire equipment, school buses and other large vehicles.
 - (2) A cul-de-sac shall not be approved when the Planning Board and the Town Engineer consider an alternative feasible.
 - (3) If it is determined that a subdivision cannot be practically designed without use of a cul-de-sac, cul-de-sac design standards will be determined by the Planning Board on an individual basis.

SECTION 220-24. STREET DESIGN.

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- A. Widths of rights-of-way and pavements. The minimum right-of-way width shall be 90 feet (110 feet for a proposed island in the center of the pavement) where proposed collectors intersect with existing streets. This width shall extend along the proposed collector at least 250 feet from the edge of the right-of-way on the existing street. Afterwards the minimum right-of-way width shall be 60 feet. The center line of the paved area shall be aligned with the center line of the right-of-way, as close as deemed necessary by the Planning Board.
- B. Improvements.
- (1) Streets shall be graded and improved with pavements, curbs and gutters, sidewalks, storm drainage facilities, water mains, sewers, streetlights and signs, street trees and fire hydrants, except that the Planning Board may waive, subject to appropriate conditions, such improvements as it considers may be omitted without jeopardy to the public health, safety and general welfare. Pedestrian easements shall be improved as required by the Highway Superintendent. Such grading and improvements shall conform to any Stormwater Pollution Prevention Plan (SWPPP) submitted pursuant to the provisions of this chapter and shall be approved as to design and specifications by the Highway Superintendent.
 - (2) Fire hydrants. Installation of fire hydrants shall be in conformity with all requirements of standing thread and nut as specified by the New York Fire Insurance Rating Organization and the Division of Fire Safety of the State of New York and located approximately 500 feet apart on any newly dedicated or private street. In addition, a fire hydrant must also be located in any newly dedicated or private cul-de-sac or dead-end street.
- C. Utilities in streets. The Planning Board shall, wherever possible, require that underground utilities be placed in the indirect right-of-way between the paved roadway and street line to simplify location and repair of lines when they require attention. Utilities shall include natural gas, electricity, water lines, public sanitary sewers, public drainage and stormwater sewers, and telephone and cable lines. The subdivider shall install underground service connections to the property line of each lot within the subdivision for such required utilities prior to dedication of the road to the Town.
- D. Utility easements. Where topography is such as to make impractical the inclusion of utilities within the street rights-of-way, perpetual unobstructed easements at least 15 feet in width shall be otherwise provided with satisfactory access to the street. Wherever possible, easements shall be continuous from block to block and shall present as few irregularities as possible. Such easements shall be cleared and graded when required.
- E. Grades. Grades of all streets shall conform in general to the terrain and shall not be less than 1/2 nor more than 6% for major or collector streets or 10% for minor streets in residential zones, but in no case more than 3% within 50 feet of any intersection.
- F. Changes in grade. All changes in grade exceeding 1% in algebraic difference shall be connected by vertical curves of such length and radius as meet with the approval of the Highway Superintendent so that clear visibility shall be provided for a safe distance.

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- G. Curve radii at street intersections. All street right-of-way lines at intersections shall be rounded by curves of at least 40 feet radius, and curbs shall be adjusted accordingly.
- H. Steep grades and curves; visibility at intersections. A combination of steep grades and curves shall be avoided. In order to provide visibility for traffic safety, that portion of any corner lot (whether at an intersection entirely within the subdivision or of a new street with an existing street) shall be cleared of all growth (except isolated trees) and obstructions above the level three feet higher than the center line of the street. If directed, the ground shall be excavated to achieve visibility.
- I. Dead-end streets. Where dead-end streets are designed to be so permanently, they should, in general, not exceed 500 feet in length and shall terminate in a circular turnaround having a minimum right-of-way radius of 60 feet and pavement radius of 50 feet. At the end of temporary dead-end streets, a temporary turnaround shall be paved.
- J. Watercourses.
 - (1) Where a watercourse separates a proposed street from abutting property, provision shall be made for access to all lots by means of culverts or other structures of design approved by the Highway Superintendent.
 - (2) Where a subdivision is traversed by a watercourse, drainageway, channel or stream, these shall be provided a stormwater easement or drainage right-of-way as required by the Highway Superintendent, and in no case be less than 20 feet in width.
- K. Curve radii. In general, streetlines within a block, deflecting from each other at any one point by more than 10°, shall be connected with a curve, the radius of which for the center line of a street shall not be less than 400 feet on major streets, 200 feet on collector streets and 100 feet on minor streets.

SECTION 220-25. STREET NAMES.

- A. Type of name. All street names shown on a preliminary plat or final subdivision plat shall be approved by the Planning Board. In general, streets shall have names and not numbers or letters.
- B. Names to be substantially different. Proposed street names shall be substantially different so as not to be confused in sound or spelling with present names, except that streets that join or are in alignment with streets of an abutting or neighboring property shall bear the same name. Generally, no street should change direction by more than 90° without a change in street name.

SECTION 220-26. LOTS.

- A. Lots to be buildable. The lot arrangement shall be such that, in constructing a building in compliance with Chapter 247, Zoning, of the Town Code, there will be no foreseeable

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difficulties for reasons of topography or other natural conditions. Lots should not be of such depth as to encourage the later creation of a second building lot at the front or rear.

- B. Side lines. All side lines of lots shall usually be at right angles to straight streetlines and radial to curved streetlines, unless a variance from this rule will give a better street or lot plan.
- C. Corner lots. In general, corner lots should be 10 feet wider than interior lots to provide for proper building setback from each street and provide a desirable building site.
- D. Driveway access. Driveway grades between the street and the setback line shall not exceed 10%.
- E. Access from private streets. Access from private streets shall be deemed acceptable only if such streets are designed and improved in accordance with this chapter for minimum pavement construction.

SECTION 220-27. DRAINAGE IMPROVEMENTS.

- A. Spring or surface water. The subdivider may be required by the Planning Board to carry away by pipe or open ditch any spring or surface water that may exist either previous to or as a result of the subdivision. Such drainage facilities shall be located in the street right-of-way where feasible or in perpetual unobstructed easements of appropriate width.
- B. Drainage structure to accommodate potential development upstream. A culvert or other drainage facility shall, in each case, be large enough to accommodate potential runoff from its entire upstream drainage area, whether inside or outside the subdivision. The Highway Superintendent, with concurrence of the Town Engineer, shall approve the design and size of the facility based on anticipated runoff from a twenty-five-year storm under conditions of total potential development permitted by Chapter 247, Zoning, of the Town Code in the watershed.
- C. Responsibility for drainage downstream. The subdivider's engineer shall also study the effect of each subdivision on the existing downstream drainage facilities outside the area of the subdivision; this study shall be reviewed by the Town Engineer. Where it is anticipated that the additional runoff incident to the development of the subdivision will overload an existing downstream drainage facility during a five-year storm, the Planning Board shall not approve the subdivision until provision has been made for the improvement of said condition.
- D. Land subject to flooding. Land subject to flooding or land deemed by the Planning Board to be uninhabitable shall not be platted for residential occupancy nor for such other uses as may increase danger to health, life or property or aggravate the flood hazard.
- E. Individual lot grading. The subdivider shall provide for proper grading of individual lots which will divert water away from buildings, prevent any standing water and soil

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saturation which are detrimental to structures and lot use, provide for disposal of water from the lot, preserve desirable site features, reduce stormwater runoff rates and volumes, erosion, and nonpoint source pollution and provide grades for safe and convenient access to and around buildings and lots. Lot grading illustrations are provided herein. Notwithstanding the foregoing, individual lot grading shall conform to any SWPPP submitted pursuant to the provisions of this Chapter.

- F. Removal of excess (overburden) stone, gravel, sand or topsoil from the area of a major subdivision must be in accordance with plans approved by the Planning Board and permit issued by the Code Enforcement Officer/Building Inspector.

SECTION 220-28. PARKS, OPEN SPACES AND NATURAL FEATURES.

- A. Parks and playgrounds. The Planning Board may require the dedication or reservation of an area or areas for a park or parks, playground, open space or other recreational use. This area or areas shall be not less than 10% of the total subdivision area and shall be of a character, extent and location suitable to the needs created by such developments.
- B. Waiver of reservation of areas.
 - (1) In cases where the Planning Board finds that, due to the size, topography or location of the subdivision, land for park, playground or other recreation purposes cannot be properly located therein or if in the opinion of the Planning Board it is not desirable, the Planning Board may waive the requirements that the plat show land for such purposes, and instead shall require payment of a fee per subdivision lot in lieu of the dedication or reservation of areas or sites for the above uses. Such fee shall be as described in the Town of Pendleton Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time.
 - (2) Such fee shall be paid to the Town at or before the time when the fee for the public improvement permit per Chapter 200 (§ 200-4) of the Town Code is paid. The developer is required to pay at least for the number of lots to be constructed during that phase of the major subdivision. The Town Board may also allow the developer to pay the fee for any or all additional lots on the final plat for that subdivision at the same time. All such fees shall be placed in a reserve account for the acquisition or development of permanent parks or playgrounds available to the residents of the subdivision concerned and may become a part of any fund for general recreation purposes, but shall not become part of the general fund of the Town.
- C. Reserve strips prohibited. Reserve strips of land, which might be used to control access from the proposed subdivision to any neighboring property or to any land within the subdivision itself, shall be prohibited.
- D. Preservation of natural features. The Planning Board shall, wherever possible, establish the preservation of all natural features which add value to residential developments and to the community, such as large trees or groves, watercourses and falls, historic spots, vistas and similar irreplaceable assets.

Section 23: Chapter 222 of the Code is hereby amended to read in its entirety as follows:

CHAPTER 222
Swimming Pools

SECTION 222-1. DEFINITIONS.

As used in this chapter, the following terms shall have the meanings indicated:

SWIMMING POOL

Any body of water (excluding natural bodies of water fed by rivers, streams or brooks) or receptacle for water that is capable of having a depth at any point greater than two feet used or intended to be used for swimming or bathing and constructed, installed or maintained in or above the ground outside or inside any building. This also includes hot tubs and spas.

SECTION 222-2. REQUIREMENTS.

A swimming pool installed or maintained as an accessory use shall require a Building Permit and meet the following requirements:

- A. When permitted. Any such pool shall be used only as an Accessory Use to a Dwelling or a Special Use for the private use of the owner or occupant of such Dwelling or building and his or her family, guests or employees.
- B. Safety measures. Any such pool shall be completely enclosed by a barrier not less than four feet in height, with all gates or doors opening through such enclosure equipped with self-closing and self-latching devices designed to keep and capable of keeping such gates or doors securely closed at all times when not in actual use, of a type approved by the Code Enforcement Officer/Building Inspector. The barrier shall consist of a fence, a wall, a building, or any combination thereof.
- C. Location. Any pool shall be no closer than fifteen (15) feet to any lot line and shall meet building setbacks as established by Chapter 247, Zoning.
- D. Filters. Any such pool shall be equipped with an integral filtration system and filter pumps or other mechanical devices which shall be so located and constructed as not to interfere with the peace, comfort and repose of the occupant of any neighboring property and shall in no case be closer than fifteen (15) feet to any lot line.
- E. Drainage. A request for installation of a pool shall be accompanied by a statement of the proposed method of draining the pool, indicating to the satisfaction of the Code Enforcement Officer/Building Inspector that such drainage shall not interfere with the enjoyment of neighboring properties.

- F. Corrective measures. The Code Enforcement Officer/Building Inspector shall order the immediate correction of any situation which does not meet the requirements or intent of this chapter or for which he receives a written complaint from the County Health Department and shall, when considered necessary, require any pool to be immediately drained.

SECTION 222-3. EXISTING POOLS.

Section 222-2(B) shall apply to all existing pools, and the owners of such existing pools shall have six (6) months from the effective date of this Chapter to comply with said subsection.

SECTION 222-4. ENFORCEMENT.

It shall be the duty of the Code Enforcement Officer/Building Inspector to enforce the regulations and restrictions provided by this Chapter.

SECTION 222-5. PENALTIES FOR OFFENSES.

A violation of this Chapter or of any regulation or provision thereof shall be an offense punishable by a fine not exceeding two hundred fifty dollars (\$250) or imprisonment for not more than fifteen (15) days, or both. Each and every week that a violation of this chapter is permitted to exist shall constitute a separate offense. This penalty shall be in addition to any other penalties or other remedies as may be provided by law.

SECTION 222-6. FEES.

For applicable fees, see the Town of Pendleton Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time.

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Section 24: Section 236-6 of the Code is hereby amended to read in its entirety as follows:

SECTION 236-6
CERTIFIED INSPECTOR'S FEES

The water user may opt to employ the service of a certified operator employed by the Water Department. Fees for inspections by said certified inspectors shall be as described in the Town of Pendleton Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time. All such fees will be billed by and be paid to the Water Department on the next quarterly or the final water bill, as the case may be.

PENDING APPROVAL

Section 25: Section 247-4 of the Code is hereby amended to read in its entirety as follows:

**SECTION 247-4
DEFINITIONS**

Certain words and terms used in this chapter are defined as follows:

ACCESSORY STRUCTURE

An accessory structure is subordinate to and serves a principal residence. It contributes to the comfort, convenience and/or necessities of the occupants of the principal residence.

ACCESSORY USE

The use of land that is subordinate, incidental to, and customarily found in connection with the principal use allowed on a lot by the Zoning Law. A garage is incidental to the principal use of a lot as a single-family residence and is customarily found on a single-family parcel.

AGRICULTURE, LIMITED

The production of crops, plants, vines and/or trees.

AGRICULTURE, UNLIMITED

The production of crops, plants, vines and/or trees or the keeping, grazing or feeding of livestock for animal products (including serums), animal increase or value increase. The raising of hogs as the main or principal occupation shall be prohibited.

AIRPORT

A piece of land that is maintained for the horizontal or vertical landing and takeoff of aircraft used for receiving and discharging passengers and/or cargo that usually has facilities for the shelter, supply and repair of aircraft.

AIRSTRIP

A runway without normal airport facilities.

ALTERATION

As applied to a building or structure, a change or rearrangement of the structural parts or of the exit facilities or an enlargement (whether by extending on a side or increasing in height) or moving from one location or position to another. The term "alter" in its various modes and tenses or its particular form refers to the making of an alteration.

ANTENNA

A device used to collect or transmit telecommunications or radio signals. Examples are panels, microwave dishes and single pole known as whips.

APARTMENT HOUSE

A building arranged, intended or designed to be occupied by three or more families living independently of each other.

APPLICANT

A property owner or agent of a property owner who has filed an application for a land

development activity.

BASEMENT

A portion of a structure partly underground but having at least part of its height above the average level of the adjoining ground. A "basement" shall be counted as a story for the purposes of height measurement and floor area if the vertical distance between the ceiling and the average level of the adjoining ground is more than five feet.

BED-AND-BREAKFAST

A residence with living quarters within the principal building for the temporary lodging of guests of the occupants of the premises, which living quarters shall not be a dwelling unit and which are not rented or otherwise leased as separate dwelling units, and which may provide breakfast meal service.

BILLBOARD

See "sign, advertising."

BUFFER ZONE

Green space designed to protect owners of property from the offensive use of adjoining property, especially when the zoning changes between the two. No structures, pavement, storage or business activity is allowed in this area.

BUILDING

Any structure occupied or intended for supporting or sheltering any occupancy.

BUILDING AREA

The total of areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings, exclusive of uncovered porches, terraces and steps. All dimensions shall be measured between the exterior faces of walls.

BUILDING DEBRIS

Any unusable leftover material from constructed, demolished, wrecked or burnt-out structures. Also all unused or broken concrete, stone or similar material.

BUILDING HEIGHT

The vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof for flat roofs, to the deck line of mansard-type roofs and to the mean height between eaves and ridge for gable-, hip- and gambrel-type roofs.

BUILDING LINE

A line formed by the intersection of a horizontal plane of the average grade level and a vertical plane that coincides with the exterior surface of the building on any side. In case of a cantilevered section of a building or projected roof or porch, the vertical plane will coincide with the most projected surface. All yard requirements are measured to the "building line."

BUILDING PERMIT

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A permit issued by the Code Enforcement Officer/Building Inspector of the Town of Pendleton in accordance with § 247-73(D) of this Chapter.

BUILDING SETBACK LINE

A line parallel to the street line at a distance as regulated by the front yard requirements in this chapter.

CAMPING OR TRAVEL TRAILER PARK

A parcel of land designed, intended or used for the parking, pitching, erection or maintenance of more than one travel trailer, tent, cabin or any temporary recreation shelter.

CAMPING TRAILER

A vehicular, portable structure (whether towed or self-propelled) used as a temporary dwelling for traveling, recreation or seasonal use.

CAMPSITE

A parcel of land (with or without structures) designed, intended or used for one temporary shelter or a seasonal residence.

CELLULAR TELECOMMUNICATIONS FACILITY

Consists of the equipment and structures involved in receiving telecommunication or radio signals from a mobile radio communications source and transmitting those signals to a central switching computer which connects the mobile unit with the land-based or satellite telephone facility.

CERTIFICATE OF OCCUPANCY/CERTIFICATE OF COMPLIANCE

A certificate issued by the Code Enforcement Officer/Building Inspector pursuant to § 247-73(G) of this Chapter.

CHANNEL

A natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

CLEARING

Any activity that removes the vegetative surface cover.

CLUB

An organization catering exclusively to members and their guests (including premises and buildings for recreational or athletic purposes) which is not conducted primarily for monetary gain.

CODE ENFORCEMENT OFFICER/BUILDING INSPECTOR

The person or persons, as appointed by the Town Board, pursuant to the provisions of the Town Law and § 247-73(C)(2) of this Chapter, charged with the responsibility and authority to execute all Town ordinances. Use of the terms “Code Enforcement Officer(s)” or “Building Inspector(s)” in this Chapter shall mean the Code Enforcement Officer/Building Inspector.

CODE ENFORCEMENT PERSONNEL

The Code Enforcement Officer/Building Inspector and all inspectors.

CO-LOCATED ANTENNAS

Telecommunications facilities which utilize existing towers or structures for all or partial antenna height requirements.

COMMERCIAL DISTRICTS

Those districts mentioned in this chapter where retail sales establishments are permitted by right.

COMPLIANCE ORDER

An order issued by the Code Enforcement Officer/Building Inspector pursuant to § 247-(O)(1) of this Chapter.

DECORATIVE/ORNAMENTAL PONDS

A body of water retained by a liner upon one parcel of land and used only for decoration or property enhancement.

DEDICATION

The deliberate appropriation of property by its owner for general public use.

DEPARTMENT

The New York State Department of Environmental Conservation.

DESIGN MANUAL

The New York State Stormwater Management Design Manual (New York State Department of Environmental Conservation), most recent version or its successor, including applicable updates, which serves as the official guide for stormwater management principles, methods and practices.

DEVELOPER

A person who undertakes land development activities.

DOG KENNEL

A lot, with or without a structure, used for the harboring of more than three dogs that are more than six months old.

DUMP

A lot or land (or part thereof) used for the disposal, by abandonment, dumping, burial, burning or any other means (and for whatever purpose), of garbage, sewage, trash, refuse, junk, discarded machinery, vehicles or parts thereof or waste material of any kind.

DWELLING

See, Residence.

DWELLING UNIT

One or more rooms providing living facilities (including equipment and provision for cooking) and sanitary facilities for a single household of one or more persons living as a

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family and having not more than two people who are sheltered and/or fed for profit.

EATING AND DRINKING ESTABLISHMENT

A place where food and/or beverages are prepared and/or sold for consumption on the premises or for takeout, including restaurants, tearooms, cafeterias, bars, taverns and lunchrooms.

ENERGY CODE

The State Energy Conservation Construction Code, as currently in effect and as hereafter amended from time to time.

EROSION CONTROL MANUAL

The New York Standards and Specifications for Erosion and Sediment Control (Empire State Chapter of the Soil and Water Conservation Society, 2004), most current version or its successor, commonly known as the "Blue Book."

ESSENTIAL SERVICES

The erection, construction, alteration or maintenance by public utilities or municipal or other governmental agencies of gas, electrical, steam, water, sewage and communication systems and facilities. Railroad trackage and facilities and bus shelters shall also be considered as providing an "essential service."

EXCAVATION

Any man-made depression one foot or more below the surrounding grade, excluding drainage ditches.

FACTORY-MANUFACTURED HOME

Any manufactured home approved by the State Fire Prevention and Building Code Council and listed as an approved modular home by this Council. These structures may be constructed as single-family residences.

FALL ZONE

The radius around a tower within which all portions of the tower and antenna(s) would fall in the event of a structural failure.

FAMILY

One or more persons related by birth, marriage or other domestic bond occupying a dwelling unit and living as a single, nonprofit housekeeping unit.

FARM

An area of land containing at least seven acres which is used for the commercial growing of the usual farm products, such as vegetables, fruit and/or grain, and for the packing or storage of the products produced on the premises, as well as for the raising of the usual farm animals, such as horses, cattle and sheep (but excluding the raising of fur-bearing animals, riding academies, livery or boarding stables, dog kennels or the commercial raising of swine and/or poultry).

FENCE

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An artificially constructed barrier of wood, masonry, stone, wire, metal or any other manufactured material or combination of materials erected for the enclosure of land and/or dividing one piece of land from another.

FLOOD or FLOODING

A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of streams, rivers or other inland areas of water or abnormally rising lake waters resulting from severe storms or hurricanes.

FLOOD HAZARD BOUNDARY MAP

The official map received from the Federal Insurance Administration.

FLOODPLAIN

A relatively flat or low land area adjoining a river, stream or watercourse which is subject to partial or complete inundation or any area subject to the unusual and rapid accumulation of runoff of surface waters from any source.

FLOODPROOFING

Any combination of structural or nonstructural additions, changes, alterations or adjustments to properties or structures which reduce or eliminate flood damage to land, water and sanitary facilities, structures and contents of buildings.

FLOOD PROTECTION ELEVATION

The level and elevation above which a particular use will be considered safe from flooding. (Such levels or elevations shall be based and updated from the one-hundred-year flood elevation).

FLOODWAY

The designated area on the Flood Hazard Boundary Map of a floodplain required to carry and discharge floodwaters of a given magnitude.

FLOODWAY FRINGE AREA

The designated area on the Flood Hazard Boundary Map of a floodplain adjacent to the floodway and within the one-hundred-year special flood hazard area.

GARAGE, PRIVATE

An accessory enclosed space, either attached or detached from the principal building, for the storage of one or more motor vehicles, provided that no business, occupation, service or other gain is conducted for profit therein nor space therein for more than one car is leased to a nonresident of the premises. Only one garage is allowed per building lot in a residential district.

GARAGE, PUBLIC

Any garage not a private garage which is used for the storage, repair, painting, rental, servicing or supplying of gasoline or oil to motor vehicles.

GARAGE SALE

Shall include all sales entitled "garage sale," "lawn sale," "attic sale," "rummage sale,"

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"flea market sale" or any similar casual sale of personal property which is advertised by any means whereby the public at large is or can be made aware of said sale.

GOVERNING BODY

The Town Board of the Town of Pendleton.

GRADING

Excavation or fill of material, including the resulting conditions thereof.

HIGHWAY ACCESS POINT

The distance between any vehicular entrance or exit to the street.

HOME OCCUPATION

An occupation, profession, activity or use that is clearly a customary, incidental and secondary use of a residential dwelling unit and which does not alter the exterior of the property or affect the residential character of the neighborhood.

HOSPITAL

Unless otherwise specified, the term "hospital" shall be deemed to include a sanitarium, sanatorium, preventorium, clinic, rest home, nursing home, convalescent home and any other care of ailments and shall be deemed to be limited to places for the diagnosis, treatment or other care of human ailments. "Hospitals" are required to obtain and renew annually an operating permit issued by the Town Board.

HOSPITAL, ANIMAL

An establishment for the medical and/or surgical care of sick or injured animals.

IMPERVIOUS COVER

Those surfaces, improvements and structures that cannot effectively infiltrate rainfall, snowmelt and water (e.g., building rooftops, pavement, sidewalks, driveways, etc.).

INDUSTRIAL DISTRICT

Those districts mentioned in this chapter where industrial uses are permitted by right.

INDUSTRIAL STORMWATER PERMIT

A State Pollutant Discharge Elimination System (SPDES) permit issued to a commercial industry or group of industries which regulates the pollutant levels associated with industrial stormwater discharges or specifies on-site pollution control strategies.

INFILTRATION

The process of percolating stormwater into the subsoil.

INSPECTOR

An inspector appointed pursuant to § 247-73(C)(4) of this Chapter.

JUNKYARD

A lot, land or structure (or part thereof) used for the recycling, collection, exchange, storage, packing, disassembly and/or sale of waste, scrap metal, paper, lumber, rags or

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similar materials, including storage of more than one unregistered, uninsured or uninspected motor vehicle.

JURISDICTIONAL WETLAND

An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as "hydrophytic vegetation."

LAND DEVELOPMENT ACTIVITY

Construction activity including clearing, grading, excavating, soil disturbance or placement of fill that results in land disturbance of equal to or greater than one acre, or activities disturbing less than one acre of total land area that is part of a larger common plan of development or sale disturbing one acre or more in the aggregate, even though multiple separate and distinct land development activities may take place at different times on different schedules.

LANDOWNER

The legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

LOADING AND LOADING SPACE, OFF-STREET

An open, hard-surfaced area of land, other than a street or public way, the principal use of which is for the standing, loading and unloading of motor vehicles, tractors and trailers to avoid undue interference with public streets and alleys. Such space shall not be less than 14 feet in width, 60 feet in length and 15 feet in height, exclusive of access aisles and maneuvering space.

LOT

A portion or parcel of land considered as a unit, devoted to a certain use or occupied by a building or a group of buildings that are united by a common interest or use and the customary accessories and open spaces belonging to the same.

LOT AREA

The net area contained within lot lines.

LOT, CORNER

A parcel of land at the junction of and fronting on two or more intersecting streets.

LOT COVERAGE

That percentage of the lot area which is devoted to building area. District regulations refer to the maximum percentage of the lot area devoted to building area.

LOT DEPTH

The shortest distance from the street line to the rear line, measured at right angle to the street line.

LOT LINE

Any line dividing one lot from another.

PENDING APPROVAL

LOT OF RECORD

Any lot which individually or as a part of a subdivision has been officially recorded in the office of the Clerk of Niagara County.

LOT WIDTH MEASUREMENT

Lot width is measured from side lot line to side lot line following the street line and in addition is measured using the shortest distance from side lot line to side lot line at the minimum front yard setback line.

MAINTENANCE AGREEMENT

A legally recorded document that acts as a property deed restriction, and which provides for long-term maintenance of stormwater management practices.

MINING

The extraction of overburden and minerals from the earth; the preparation and processing of minerals, including any activities or processes or parts thereof for the extraction or removal of minerals from their original location and the preparation, washing, cleaning, crushing, stockpiling or other processing of minerals at the mine location so as to make them suitable for commercial, industrial or construction use; exclusive of manufacturing processes at the mine location; the removal of such materials through sale or exchange, or for commercial, industrial or municipal use; and the disposition of overburden tailings and waste at the mine location. Mining shall not include the excavation, removal and disposition of minerals from construction projects, exclusive of the creation of water bodies, or excavations in aid of agricultural activities.

MOBILE HOME

Excluding camping trailers, any piece of mobile equipment designed or constructed to be towed, pulled by a motor vehicle or self-propelled (regardless of whether the wheels are attached or unattached or a permanent or semipermanent foundation is constructed underneath or any structure of a permanent or semipermanent nature is attached thereto). No "mobile home" shall be located within the town, except in a designated mobile home park. The use of the term "mobile home" in this Chapter shall mean "Mobile Home".

MOBILE HOME PARK

A tract of land used or intended to be used for the parking of two or more mobile homes, together with the necessary improvements and facilities on the land.

MOTOR HOME

See "camping trailer."

MOTOR VEHICLE SERVICE STATION

Any use of land, including structures thereon, that is used for the sale of gasoline or any other motor vehicle fuel and oil and other lubricating substances, including any sale of motor vehicle accessories and/ or including facilities for lubricating, washing or otherwise servicing motor vehicles (but not including the painting thereof by any means, body and fender work or the dismantling or replacing of engines).

MUNICIPALITY

PENDING APPROVAL

The Town of Pendleton.

NONCONFORMING USE

A lawful building, structure or use of land existing at the time of enactment of this chapter which does not conform to the regulations of the district in which it is situated.

NONPOINT SOURCE POLLUTION

Pollution from any source other than from any discernible, confined, and discrete conveyances, and shall include, but not be limited to, pollutants from agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources.

OBSTRUCTION

Any wall, dam, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel rectification, culvert, bridge, building, wire, fence, stockpile, refuse, fill or structure in, along, across or projecting into any channel, watercourse or regulatory flood hazard area which may impede, retard or change the direction of the flow of water (either by itself or by catching or collecting debris carried by such water) or that is placed where the flow of water might carry the same downstream to the damage of life or property.

OFFICE

A place which is used to conduct a business or profession and is occupied by a physician, surgeon, dentist, lawyer or person providing similar services or in whose office the functions of consulting, recordkeeping and clerical work are performed.

OPEN SPACE

Common or public or private greens, parks or recreation areas, including playgrounds, woodland conservation areas, walkways, trails, stream crossing and drainage control areas, golf courses, swimming pools, tennis courts, ice-skating rinks and other similar recreational uses, but which may not include any such uses or activities which produce noise, glare, odor, air pollution, fire hazards or other safety hazards, smoke or fumes or any use or activity which is operated for a profit or that would be detrimental to existing or prospective development of the neighborhood.

OPERATING PERMIT

A permit issued by the Code Enforcement Officer/Building Inspector pursuant to § 247-73(J) of this Chapter. The term "operating permit" shall also include an operating permit which is renewed, amended or extended pursuant to any provision of this Chapter.

PARKING SPACE

A required off-street parking space shall be an area of not less than 170 square feet nor less than 8 1/2 feet wide by 20 feet long (exclusive of access drives or aisles, ramps, columns or office and work areas) accessible from streets or alleys, to be used for the storage or parking of passenger automobiles or commercial vehicles under 1 1/2 tons' capacity. Aisles between vehicular parking spaces shall not be less than 12 feet in width when serving automobiles parked at a forty-five-degree angle in one direction nor less than 25 feet in width when serving automobiles parked perpendicular to the aisles and accommodating two-way traffic. Handicapped parking shall be provided according to the

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guidelines of New York State laws.

PERSON

An individual, corporation, limited liability company, partnership, limited partnership, business trust, estate, trust, association, or any other legal or commercial entity of any kind or description.

PHASING

Clearing a parcel of land in distinct pieces or parts, with the stabilization of each piece completed before the clearing of the next.

PLANNING BOARD

Unless otherwise designated, the Planning Board of the Town of Pendleton as established by the Town Board by local law or ordinance, pursuant to the provisions of § 271 of Town Law.

POLLUTANT OF CONCERN

Sediment or a water quality measurement that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the land development activity.

POND

An excavation for the owner's use on a single parcel of land.

PROJECT

Land development activity.

PUBLIC

Owned, operated or controlled by a governmental agency (federal, state, county or local), including a corporation created by law for the performance of certain specialized governmental functions, a public school district or service district.

QUARRY, SANDPIT OR GRAVEL PIT

A lot or land or part thereof used for the purpose of extracting stone, sand or gravel for sale as an industrial operation and exclusive of the process of grading a lot preparatory to the construction of a building for which application for a building permit has been made.

RECHARGE

The replenishment of underground water reserves.

RECREATIONAL VEHICLES

Shall include campers, motor homes and boats, as well as other similar vehicles.

RESIDENCE, MULTIFAMILY

A building used or designed for three or four dwelling units, including apartment houses, townhouses and condominiums. The term "multiple dwellings" as used in this Chapter shall mean Multifamily Residence.

RESIDENCE, SINGLE-FAMILY DETACHED

A detached building designed to contain one dwelling unit.

RESIDENCE, TWO-FAMILY

A detached building containing two dwelling units separated by a fire separation.

RESIDENTIAL DISTRICTS

Those districts mentioned in this chapter where single- family detached, two-family and/or multifamily residences are permitted by right.

SANITARY LANDFILL

A method of disposing of garbage and refuse by spreading, covering and compacting with earth. This is not allowed in the Town.

SECTION

Unless otherwise noted, section and section numbers shall refer to this chapter.

SEDIMENT CONTROL

Measures that prevent eroded sediment from leaving the site.

SEMIPUBLIC

Places of worship, institutions for the aged and children, child- care facilities, nonprofit colleges, hospitals, libraries, cemeteries and institutions of a philanthropic nature and also open space.

SENSITIVE AREAS

Coldwater fisheries, shellfish beds, swimming beaches, groundwater recharge areas, water supply reservoirs, or habitats for threatened, endangered or special concern species.

SETBACK

The distance from the edge of the right-of-way to the part of the structure nearest to the edge of the right-of-way, measured by right angles to the edge of the right- of-way, not including cornices or entrance steps.

SIGN

Any structure or device for visual communication that is used for the purpose of attracting the attention of the public. A "sign" includes any portion of a structure or device attached to a structure upon which is painted or represented or displayed any letter, word, model, banner, flag, pennant, insignia, decoration or representation used to communicate a message to (or attract the attention of) the public. The word "sign" does not include the flag, pennant or insignia of any nation, state, city or other political unit.

SIGN, ADVERTISING

A sign which offers services or goods produced or available somewhere other than on the lot on which the sign is located. The words "advertising sign" include the word "billboard." Neither directional, warning nor other signs posted by public officials in the course of their public duty shall be construed as "advertising signs."

SIGN AREA

The area defined by the outermost portion of the frame, support or edge of a sign (including roof, enhancement, etc.). Where there is not a geometric frame or edge of a sign, the "sign area" shall be defined by a projected, enclosed four-sided (straight sides) geometric shape which most closely outlines the sign. Only one face of a sign shall be used in measuring the "sign area."

SIGN, BUSINESS

A sign for a permitted use conducted on the premises which shall identify the written name and/or the type of business and/or any trademark of an article for sale or rent on the premises and/or communicate the type of service or articles offered on the premises.

SIGN ERECTION

To build, construct, alter, repair, display, relocate, attach, hang, place, suspend, affix or maintain any sign, including the painting of exterior wall signs.

SIGN, NAMEPLATE

Any sign attached directly to the wall of a building occupied by the person to whom such sign indicates the name, occupation and/or address of the occupant. A nameplate shall not exceed two square feet in area.

SIGN, TEMPORARY

A sign which offers a premises for sale, rent or development or announces special events or calls attention to new construction or alteration. Signs advertising sale items are not to be considered as "temporary signs."

SPDES GENERAL PERMIT FOR CONSTRUCTION ACTIVITIES GP-02-01

A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to developers of construction activities to regulate disturbance of one or more acres of land.

SPDES GENERAL PERMIT FOR STORMWATER DISCHARGES FROM MUNICIPAL SEPARATE STORMWATER SEWER SYSTEMS GP-02-02

A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to municipalities to regulate discharges from municipal separate storm sewers for compliance with EPA established water quality standards and/or to specify stormwater control standards.

SPECIAL FLOOD HAZARD AREA

The maximum area designated on the Flood Hazard Boundary Map of the floodplain that, on the average, is likely to be flooded once every 100 years.

SPECIAL USE

A use of land authorized by the Town Board pursuant to § 247-16 of this Chapter subject to requirements imposed by the Town Board to ensure the use does not conflict with this Chapter or other local laws or negatively impact the neighborhood or district.

SPECIAL USE PERMIT

PENDING APPROVAL

Authorization by the Town Board to carry out a Special Use.

STABILIZATION

The use of practices that prevent exposed soil from eroding.

STABLE, PRIVATE

An accessory building in which a horse or horses are kept for private use and not for hire, remuneration or sale.

STABLE, PUBLIC

A building in which horses are kept for remuneration, hire, sale or other gain.²

STOP-WORK ORDER

An order issued by the Code Enforcement Officer/Building Inspector pursuant to § 247-73(F) of this Chapter.

STORMWATER

Rainwater, surface runoff, snowmelt and drainage.

STORMWATER HOTSPOT

A land use or activity that generates higher concentrations of hydrocarbons, trace metals or toxicants than are found in typical stormwater runoff, based on monitoring studies.

STORMWATER MANAGEMENT

The use of structural or nonstructural practices that are designed to reduce stormwater runoff and mitigate its adverse impacts on property, natural resources and the environment.

STORMWATER MANAGEMENT AREA

For use during excessive rainfall or water runoff conditions to prevent property damage. Constructed under subdivision or site plan review regulations.

STORMWATER MANAGEMENT FACILITY

One or a series of stormwater management practices installed, stabilized and operating for the purpose of controlling stormwater runoff.

STORMWATER MANAGEMENT OFFICER (SMO)

An individual designated by the Town Board to accept and review stormwater pollution prevention plans (SWPPPs), forward the plans to such agency, committee, employee, or board of the Town of Pendleton which may be reviewing any application for a construction activity requiring submission of a SWPPP, and inspect stormwater management practices. The Town Board shall appoint such individual to act as the SMO by resolution annually.

STORMWATER MANAGEMENT PRACTICES (SMPs)

Measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing flood damage and preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and water bodies.

PENDING APPROVAL

STORMWATER POLLUTION PREVENTION PLAN (SWPPP)

A plan for controlling stormwater runoff and pollutants from a site during and after construction activities.

STORMWATER RUNOFF

Flow on the surface of the ground resulting from precipitation.

STORY

That portion of a building included between the surface of any floor and the surface of the floor next above it or, if there is no floor above it, then the space between any floor and the ceiling next above it.

STORY, HALF

A story under a gable, hip or gambrel roof, the wall plates of which, on at least two opposite exterior walls, are not more than two feet above the floor of such story.

STREET

A public way which affords the principal means of access to abutting properties.

STREET LINE

The common line joining a street right-of-way to any lot.

STRUCTURE

That which is built or constructed or a portion thereof.

SUBDIVISION

The process of creating more than one parcel from any recognized parcel of property in Pendleton. All "subdivisions" must be approved by the Planning Board.

SURFACE WATERS OF THE STATE OF NEW YORK

Lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial seas of the State of New York and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction. Storm sewers and waste treatment systems, including treatment ponds or lagoons which also meet the criteria of this definition, are not waters of the state. This exclusion applies only to man-made bodies of water which neither were originally created in waters of the state (such as a disposal area in wetlands) nor resulted from impoundment of waters of the state.

TELECOMMUNICATIONS EQUIPMENT BUILDING

The building in which the electronic receiving and relay equipment for a telecommunications facility is housed.

TEMPORARY CERTIFICATE

A certificate issued by the Code Enforcement Officer/Building Inspector pursuant to §

PENDING APPROVAL

247-73(G)(4) of this Chapter.

TOWER

A structure that is intended to support equipment used to transmit and/or receive telecommunications signals. Examples of such structures include monopoles and lattice construction steel structures.

TOWN

The Town of Pendleton.

TOWN BOARD

The Town Board of the Town of Pendleton.

TOWN ENGINEER

Either a consulting or a full-time engineer, New York State licensed as a professional engineer, as appointed by the Town Board.

TOWNHOUSE

A dwelling unit designed to be occupied as a residence for one family which is in a group of three or more attached dwellings, placed side by side, separated by party walls, each containing one or two stories and each having separate front and rear or side and rear or front and side entrances from the outside.

TRACT

A large piece of land under single ownership and developed, or to be developed, as a single entity for two or more units of use.

UNIFORM CODE

The New York State Uniform Fire Prevention and Building Code, as currently in effect and as hereafter amended from time to time.

USE

Any purpose for which land or a building is designed, arranged or intended or for which it is or may be occupied or maintained.

VARIANCE

Permissive waivers from the terms of this chapter granted by the Zoning Board of Appeals.

VARIANCE, AREA

Authorization by the Zoning Board of Appeals to deviate from the dimensional and physical requirements applicable to land pursuant to this Chapter.

VARIANCE, USE

Authorization by the Zoning Board of Appeals for use of land otherwise prohibited by the terms of this Chapter.

WATERCOURSE

PENDING APPROVAL

A permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

WATERWAY

A channel that directs surface runoff to a watercourse or to the public storm drain.

YARD, FRONT

An open unoccupied space on the same lot with the main building between the front line of the building and the front line of the lot and extending the full width of the lot.

YARD, REAR

An open unoccupied space on the same lot with the main building between the rear line of the building and the rear line of the lot and extending the full width of the lot.

YARD, SIDE

An open unoccupied space on the same lot with the main building between the main building and the side line of the lot and extending from the front yard to the rear yard. Any lot line not a rear line or a front line shall be deemed a side line.

ZONING BOARD OF APPEALS

The Zoning Board of Appeals of the Town of Pendleton as established by the Town Board by local law or ordinance, pursuant to the provisions of § 267 of Town Law. The term “Board of Appeals” as used in this Chapter shall mean the Zoning Board of Appeals.

ZONING MAP

The map or maps incorporated into this chapter as a part thereof designating zoning districts, the originals of which are on file with the Town Clerk.

Section 26: Section 247-10 of the Code is hereby amended to read in its entirety as follows:

SECTION 247-10

R1 District: Low-Density Residential

A. Uses permitted by right:

- (1) Farms, limited agriculture, and unlimited agriculture (excluding public stables).
- (2) Home occupations as permitted by § 247-39.
- (3) Single-Family Detached Residences limited to one Residence per building lot (excluding Mobile Homes and Mobile Home Parks).
- (4) Private stables in conjunction with principle Residences subject to the following restrictions:
 - (a) No stable shall be less than 250 feet from the street line and less than 100 feet from the side and rear lot lines.
 - (b) No storage of manure or odor-producing substance shall be permitted within 250 feet from the street line and 100 feet from the side and rear lot lines.
 - (c) See also restrictions in § 247-40, Livestock and livestock buildings and § 247-41, Domestic animals and livestock.
- (5) Accessory Structure in conjunction with a principal Residence as permitted by § 247-34.
- (6) Outdoor recreational uses, including tennis courts, parks, golf courses, and rod and gun clubs. See Article VI, General Regulations, for special requirements.

B. Permitted by Special Use Permit:

- (1) Public uses.
- (2) Semipublic uses.
- (3) Clubs, lodges, and meeting halls.

C. Minimum size requirements:

- (1) Single-Family Detached Residence with sewers: 31,250 square feet with a minimum width of 125 feet and a minimum depth of 250 feet.
- (2) Single-Family Detached Residence without sewers: One acre with a minimum width of 125 feet and a minimum depth of 250 feet.
- (3) Wetlands, wetland buffer areas, ponds (both retention and detention), and easement areas are excluded in calculating minimum square foot, lot width, and lot depth requirements.
- (4) Lot width measurement: 125 feet measured from side lot line to side lot line following the street line and 125 feet measured using the shortest distance from side lot line to side lot line at the minimum front yard setback line.

D. Minimum and maximum front yard setbacks:

- (1) Minimum front yard setback of 75 feet for main structures, 100 feet for detached Private Garages. See § 247-34 for Accessory Structures.
- (2) Exception for minimum front yard setback. Where the front setbacks have been previously established by existing structures, the required minimum front yard

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setback shall be determined by averaging the front setback for all principal structures located within 400 feet from either side of the property.

- (3) Maximum front yard setback of 250 feet for main structures.
- E. Minimum side yard setback: 15 feet for Residence and Private Garages. See § 247-34 for Accessory Structures.
 - (1) Driveway Minimum Side Yard Setback.
 - (a) A minimum side yard setback of five feet is required for all driveways. The minimum side yard setback for driveways is measured from the edge of the driveway to the nearest property line.
 - (b) The intent of the minimum driveway setback is as follows:
 - i. To allow for orderly snow removal and maintenance of driveways without impacting adjacent property.
 - ii. To end the option of “sharing” a driveway with an adjacent property owner.
 - (c) A drawing depicting the location, width, and distance to nearest property line must be presented to the Code Enforcement Officer/Building Inspector prior to issuance of a Building Permit or curb cut permit.
- F. Minimum rear yard setback: 50 feet for main structure and 15 feet for a detached Private Garage. See § 247-34 for Accessory Structures.
- G. Maximum height restrictions:
 - (1) Residences: 35 feet.
 - (2) Detached Private Garages: 20 feet (not to exceed height of primary structure).
 - (3) See § 247-34 for Accessory Structures.
- H. Minimum size of primary Residences:
 - (1) One-story Residence: 1,000 square feet living area.
 - (2) One-and-one-half-story Residence: 1,000 square feet living area.
 - (3) Two-story Residence: 1,200 square feet living area.
- I. Maximum size of detached or attached Private Garage shall be no more than 50% of the floor area of the primary structure, not to exceed 1,200 square feet. Only one Private Garage is allowed per lot.
- J. Structures used in customary farming.
 - (1) Customary farm and/or agricultural buildings on lots (parcels) of seven acres and over may be allowed for customary farming and/or agriculture use.
- K. Also see Article VI, General Regulations, and Article VII, Supplemental Regulations.
- L. Commercial vehicles, other than pickup trucks, weighing in excess of 10,000 pounds Gross Vehicle Weight Rating (“GVWR”) shall not be parked on a residentially zoned lot less than one-and-one-half-acre.

Section 27: Section 247-11 of the Code is hereby amended to read in its entirety as follows:

SECTION 247-11

R2 District: Medium-Density Residential

A. Uses permitted by right:

- (1) Home occupations as permitted by § 247-39.
- (2) Single-Family Detached Residences or one Two-Family Residence on one building lot (excluding Mobile Homes and Mobile Home Parks).
- (3) Farms, limited agriculture, and unlimited agriculture (excluding public stables).
- (4) Private stables in conjunction with principle Residences subject to the following restrictions:
 - (a) No stable shall be less than 250 feet from the street line and less than 100 feet from the side and rear lot lines.
 - (b) No storage of manure or odor-producing substance shall be permitted within 250 feet from the street line and 100 feet from the side and rear lot lines.
 - (c) See also restrictions in § 247-41, Domestic animals and livestock.
- (5) Accessory Structure in conjunction with a principal Residence as permitted by § 247-34.
- (6) Outdoor recreational uses, including tennis courts, parks, golf courses, and rod and gun clubs. See Article VI, General Regulations, for special requirements.

B. Permitted by Special Use Permit:

- (1) Public uses.
- (2) Semipublic uses.
- (3) Clubs, lodges, and meeting halls.
- (4) Two-Family and Multi-family dwellings (see Subsection K for requirements).

C. Minimum size requirements:

- (1) Single-Family Detached Residence with sewers: 31,250 square feet with a minimum width of 125 feet and a minimum depth of 250 feet.
- (2) Single-Family Detached Residence without sewers: One acre with a minimum width of 125 feet and a minimum depth of 250 feet.
- (3) Two-Family Residence/duplex with sewer: 50,000 square feet with a minimum width of 200 feet and minimum depth of 250 feet.
- (4) Two-Family Residence/duplex without sewer: two acres with a minimum width of 200 feet and a minimum depth of 250 feet.
- (5) Wetlands, wetland buffer areas, ponds (both retention and detention), and easement areas are excluded in calculating minimum square foot, lot width, and lot depth requirements.
- (6) Lot width measurement: 125 feet measured from side lot line to side lot line following the street line and 125 feet measured using the shortest distance from side lot line to side lot line at the minimum front yard setback line.

D. Minimum and maximum front yard setbacks:

PENDING APPROVAL

- (1) Minimum front yard setback of 75 feet for main structures, 100 feet for detached Private Garages. See § 247-34 for Accessory Structures.
 - (2) Exception for minimum front yard setback. Where the front setbacks have been previously established by existing structures, the required minimum front yard setback shall be determined by averaging the front setback for all principal structures located within 400 feet from either side of the property.
 - (3) Maximum front yard setback of 250 feet for main structures.
- E. Minimum side yard setback: 15 feet for Residence and Private Garages. See § 247-34 for Accessory Structures.
- (1) Driveway Minimum Side Yard Setback.
 - (a) A minimum side yard setback of five feet is required for all driveways. The minimum side yard setback for driveways is measured from the edge of the driveway to the nearest property line.
 - (b) The intent of the minimum driveway setback is as follows:
 - i. To allow for orderly snow removal and maintenance of driveways without impacting adjacent property.
 - ii. To end the option of “sharing” a driveway with an adjacent property owner.
 - (c) A drawing depicting the location, width, and distance to nearest property line must be presented to the Code Enforcement Officer/Building Inspector prior to issuance of a Building Permit or curb cut permit.
- F. Minimum rear yard setback: 50 feet for main structure and 15 feet for a detached Private Garage. See § 247-34 for Accessory Structures.
- G. Maximum height restrictions:
- (1) Residences: 35 feet.
 - (2) Detached Private Garages: 20 feet (not to exceed height of primary structure).
 - (3) See § 247-34 for Accessory Structures.
- H. Minimum size of primary Residences:
- (1) One-story Residence: 1,000 square feet living area.
 - (2) One-and-one-half-story Residence: 1,000 square feet living area.
 - (3) Two-story Residence: 1,200 square feet living area.
- I. Maximum size of detached or attached Private Garage shall be no more than 50% of the floor area of the primary structure, not to exceed 1,200 square feet. Only one Private Garage is allowed per lot.
- J. Structures used in customary farming.
- (1) Customary farm and/or agricultural buildings on lots (parcels) of seven acres and over may be allowed for customary farming and/or agriculture use.
- K. Also see Article VI, General Regulations, and Article VII, Supplemental Regulations.

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- L. Commercial vehicles, other than pickup trucks, weighing in excess of 10,000 pounds Gross Vehicle Weight Rating (“GVWR”) shall not be parked on a residentially zoned lot less than one-and-one-half-acre.

Section 28: Section 247-12 of the Code is hereby amended to read in its entirety as follows:

SECTION 247-12
CO1 District: Light Commercial

- A. No new single- or two-family residential construction shall be allowed in any commercial districts.
- B. New construction and any modification, alteration, or addition to an existing structure shall be subject to site plan review by the Planning Board before any Building Permit is issued.
- C. Uses permitted by right:
 - (1) Farms, limited agriculture and unlimited agriculture.
 - (2) Antique and art shops.
 - (3) Baker, confectionery, and ice cream shops, including the baking and processing of food products when prepared for retail use on premises only.
 - (4) Banks and financial institutions.
 - (5) Beverage stores, including the sale of beer and liquor.
 - (6) Catalog stores.
 - (7) Clubs, lodges, or meeting halls.
 - (8) Drug stores.
 - (9) Eating and drinking establishments.
 - (10) Florist shops.
 - (11) Gift and novelty shops.
 - (12) Hardware, paint, glass, and wallpaper stores.
 - (13) Laundries, laundrettes, and cleaning and pressing establishments.
 - (14) Mortuaries and funeral parlors.
 - (15) Motor vehicle service stations in accordance with § 247-50 of this Chapter.
 - (16) Multifamily Residences.
 - (17) Newsstands.
 - (18) Nurseries, greenhouses, and garden supplies.
 - (19) Offices.
 - (20) Off-street parking.
 - (21) Pet stores.
 - (22) Personal services.
 - (23) Photography studios.
 - (24) Rental stores.
 - (25) Repair services of household items.
 - (26) Retail sales and service establishments not more objectionable by reason of noise, fumes, vibration, or lights than any permitted use listed herein.
 - (27) Schools or places of instruction for music, dancing, reading, languages, elocution, and similar subjects.
 - (28) Stores selling convenience goods, including food products, hardware, newspapers, magazines, drugs, variety items, apparel, beer, and liquor.
 - (29) Essential services.

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- (30) Accessory Uses.
 - (31) Semipublic and public uses.
- D. Minimum lot area: 50,000 square feet.
- E. Minimum lot width: 200 feet.
- F. Maximum lot coverage by buildings: 45%.
- G. Minimum front yard setback:
 - (1) Thirty feet if no parking lot is in front of the building.
 - (2) Fifty feet if a parking lot is in front of the building.
- H. Minimum side yard setback:
 - (1) Twenty feet adjacent to nonresidential zones.
 - (2) One hundred feet adjacent to any residential zone or use.
- I. Minimum rear yard setback: 50 feet.
- J. Maximum building height: 35 feet.
- K. Multifamily Residences (consisting of three or more Dwelling Units) shall be subject to the following restrictions:
 - (1) Minimum lot width: 200 feet.
 - (2) Minimum lot square footage: 50,000 square feet.
 - (3) Maximum lot coverage by buildings, includes garages: 35%.
 - (4) Minimum side yard setbacks:
 - (a) Adjacent to nonresidential zones: 20 feet.
 - (b) When a lot in a commercial district abuts a residential district: 50 feet. A greenbelt (open space) shall serve as a buffer.
 - (5) Minimum front yard setback: 60 feet.
 - (6) Minimum rear yard setback: 50 feet.
 - (7) Maximum height: 35 feet.
 - (8) Minimum floor area per Dwelling Unit:
 - (a) One bedroom unit: 675 square feet.
 - (b) Two bedroom unit: 850 square feet.
 - (c) Three bedroom unit 1,000 square feet.
 - (d) When any units are more than 3 bedrooms, the minimum square footage shall be determined at the Planning Board's discretion.
 - (e) No more than 20% of the total units within a Multifamily Residence shall be three-bedroom units.
 - (f) All stairways to the second floor shall be located inside the building.
 - (9) Maximum building length: 75 feet. The wall for a structure or parallel walls of adjacent structures shall not continue in the same place for a length of more than 25 feet without an offset of at least 4 feet.
 - (10) Minimum space between buildings: 25 feet.

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- (11) Building grouping or cluster and access. Each group or cluster shall have access to a public or private road. If there are more than 12 Dwelling Units, direct access must be provided to a public road. Within a group or cluster, each Dwelling Unit is accessible by means of a private road or driveway. Standards of this road shall meet Planning Board specifications. If there are more than 50 dwelling units, the Planning Board may require additional access to a public road.
- (12) Sanitary sewer systems.
 - (a) No private sanitary sewer systems allowed.
 - (b) If public sewers will be utilized, the developer shall complete a downstream sewer capacity analysis.
- (13) Planted buffer strip between parking area or accessway and the adjoining property.
- (14) No asphalt to the property line:
 - (a) Side line: 10 feet.
 - (b) Rear yard: 20 feet.
- (15) Storage area: 200 cubic feet for each dwelling unit.
- (16) Every building shall be provided with garbage and refuse storage and collection areas enclosed and screened from view and away from the front of the buildings.
- (17) Every structure shall have a minimum setback of 15 feet from all interior roads, driveways and parking areas. The entire area of a multifamily development not improved for driveways, parking areas or covered by buildings or walkways shall be landscaped and properly maintained at all times.
- (18) Parking.
 - (a) Parking areas shall be subject to site plan review.
 - (b) No driveways along the property line.
 - (c) Minimum parking spaces: three parking spaces per unit.
- (19) Cellar occupancy prohibited.
- (20) All multifamily dwelling projects shall be subject to Planning Board review.

L. See also Article VI, General Regulations, and Article VII, Supplemental Regulations.

M. Permitted by Special Use Permit:

- (1) Small Retail Business/Businesses in Conjunction with Small Contractor Shop. If permitted, the following requirements and restrictions apply:
 - (a) All general setback, area, height, width and depth restrictions found in this Chapter apply.
 - (b) Small Retail Businesses must constitute a minimum of 2,500 square feet of the floor space of the Primary Building of the total Small Business.
 - (c) Retail Space must be at the front of the Primary Building and separated from the Contractor Shop with a permanent wall.
 - (d) If the Contractor Shop has a related retail business, all or part of the required 2,500 square feet of retail space can be utilized by that retail business.
 - (e) A Restroom Facility must be made available for use by the Retail Shop Owner and/or Employee.

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- (f) Retail Space must be aggressively advertised/promoted by use of traditional methods such as signs, media, and the Internet.
- (g) No outside storage of inventory, equipment, or other materials used in conjunction with the Small Contractor Shop is permitted.
- (h) No outdoor overnight parking of Small Contractor Shop Vehicles and or Equipment is permitted.
- (i) Adequate paved parking in front of the Small Retail Shop/Shops must be provided for Small Retail Shop employees and customers.
- (j) Adequate paved parking must be provided for Small Contractor Shop employees and customers.
- (k) Site plan review and approval by the Planning Board under Section 247-54, which shall include environmental review under SEQRA and a public hearing. See Section 247-54, Site plan review; performance and design standards.
- (l) A Special Use Permit issued by the Town Board in accordance with Section 247-16 is required upon approval of the site plan and is subject to an annual review and renewal by the Town Board. Town Board Review will be undertaken to insure that all above listed provisions are being adhered to. The Town Board will have discretion to revoke the Special Use Permit due to noncompliance and establish a time frame to correct the violation(s).

Section 29: Section 247-14 of the Code is hereby amended to read in its entirety as follows:

SECTION 247-14
LI District: Light Industrial

- A. No new Single- or Two-Family/duplex Residences shall be allowed in any Light Industrial Zone.
- B. All new construction and any modification, alteration or addition to an existing structure shall be subject to site plan review by the Planning Board before any Building Permit is issued.
- C. Uses permitted by right:
 - (1) All uses listed in the CO1 and CO2 Districts, except for Multifamily Residences.
 - (2) Farms, limited agriculture and unlimited agriculture.
 - (3) Animal shelters and facilities for raising insects and birds.
 - (4) Automobile painting, upholstering, motor and body work.
 - (5) Bottling works.
 - (6) Building materials sales yard.
 - (7) Building contractor shops.
 - (8) Carpenter and cabinet maker.
 - (9) Electronic and small parts assembly and/or manufacture.
 - (10) Laboratories and research facilities.
 - (11) Locksmiths.
 - (12) Machine shops.
 - (13) Manufacture, compounding, processing or treatment of such products as bakery goods, confectionaries, cosmetics, dairy products, drugs, ice, perfumes, pharmaceuticals, toiletries and food products (except the following: fish, sauerkraut, pickles, vinegar, yeast and the rendering of oils and fats).
 - (14) Manufacture, fabrication, compounding, assembling, treatment and processing of articles of merchandise from the following previously prepared materials: cellophane, ceramics, cloth, film, fiber, glass, leather, paper and paper board, plastic, precious textiles, yarn or paint or wood.
 - (15) Metalsmiths.
 - (16) Off-street parking.
 - (17) Public uses.
 - (18) Radio and television towers.
 - (19) Repair shop.
 - (20) Storage of materials, supplies and equipment in accordance with § 247-54.
 - (21) Wholesale businesses.
 - (22) Essential services.
 - (23) Accessory uses.
 - (24) Semipublic uses.
- D. Uses permitted by Special Use Permit:
 - (1) Airports or airstrips.

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- (2) Dog kennels.
- (3) Public stables.

- E. Minimum lot area: 50,000 square feet.

- F. Minimum lot width: 200 feet.

- G. Maximum lot coverage: 50%

- H. Minimum front yard setback:
 - (1) Thirty feet if no parking lot is in front of the building.
 - (2) Fifty feet if a parking lot is in front of the building.

- I. Minimum side yard setback:
 - (1) Twenty feet adjacent to nonresidential zones.
 - (2) One hundred feet adjacent to residential zones or uses.

- J. Minimum rear yard setback: 50 feet.

- K. Maximum building height: 35 feet.

- L. See also Article VI (General Regulations), and Article VII (Supplemental Regulations).

Section 30: Section 247-15 of the Code is hereby amended to read in its entirety as follows:

SECTION 247-15

SLI District: Special Light Industrial

- A. No new residential construction shall be allowed in the SLI District, except in a designated Mobile Home Park or by approval of a Special Use Permit by the Town Board pursuant to Section 247-16 (Special Use Permits).
- B. All new construction and any modification, alteration, or addition to an existing structure shall be subject to site plan review by the Planning Board before any Building Permit is considered or issued by the Code Enforcement Officer/Building Inspector.
- C. Uses permitted by right:
 - (1) Same as provided in § 247-14 (LI District: Light Industrial).
- D. Permitted by Special Use Permit:
 - (1) Same as provided in § 247-14 (LI District: Light Industrial).
 - (2) Mobile Home Parks (see Section 247-49 (Mobile Home Parks)).
 - (3) Adult Uses (see Chapter 97 (Adult Uses)).
- E. Minimum lot area: 50,000 square feet.
- F. Minimum lot width: 200 feet.
- G. Maximum lot coverage: 50%
- H. Minimum front yard setback: 100 feet.
- I. Minimum side setback:
 - (1) Same as provided in § 247-14 (LI District: Light Industrial).
 - (2) In addition to the above side setback requirements, Adult Uses shall be subject to the additional restrictions of § 97-3 of Chapter 97, Adult Uses.
- J. Minimum rear yard setback: 50 feet.
- K. Maximum building height: 35 feet.
- L. See also regulations in Chapter 97 (Adult Uses), Article VI (General Regulations), and Article VII (Supplemental Regulations).

Section 31: Chapter 247, Article V of the Code is hereby amended to read in its entirety as follows:

**ARTICLE V
Special Use Permits**

§ 247-16. Special Use Permits.

A. GENERAL PROVISIONS.

- (1) The Special Uses for which conformance with additional standards is required shall be deemed to be permitted uses in their respective districts if they satisfy the special requirements and standards set forth in this Article V as well as all the other requirements and restrictions set forth for each Special Use.
- (2) All Special Uses are hereby declared to possess characteristics of such a unique and special form that each specific use shall be considered as an individual case.
- (3) Interpretation of permitted uses. When a use is not specifically listed as a use by right or allowable by Special Use Permit within any zoning district, it shall be assumed to be a prohibited use unless it is determined in a written decision by the Code Enforcement Officer/Building Inspector that said use is similar to permitted uses and not inherently a nuisance, menace, or danger to the health, safety or welfare of the residents of the Town.

B. PROCEDURE.

- (1) Application for a Special Use Permit shall be made to the Town Board, in writing, on the appropriate forms provided by the Town, accompanied by a filing fee as shall be as described in the Town of Pendleton Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time.
- (2) Applications for a Special Use Permit shall be reviewed by the Planning Board, which shall report its findings on the application to the Town Board.
- (3) Hearing and Decision. Following receipt of the Planning Board's report, the Town Board shall hold a public hearing on an application for a Special Use Permit within 62 days of receiving the application, publicly noticed in a printed newspaper of general circulation in the Town at least five days prior to the hearing.
- (4) The Town Board shall decide on such application within 62 days of the public hearing. The Town Board and applicant may mutually consent to extension of these time limits. The Town Board will either approve, approve with modifications, or deny the application, based on the standards listed below, and attach any conditions it deems necessary. The Town Board must file its decision with the Town Clerk within 5 days.
- (5) A Special Use Permit issued by the Town Board is subject to an annual review by the Town Board to insure that all the provisions in this Section 247-16 are being adhered to. The Town Board will have discretion to revoke the Special Use Permit due to noncompliance and establish a time frame to correct the violation(s).

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- (6) A Special Use Permit shall expire if the Special Use shall cease for more than six months for any reason.

C. REQUIRED SITE PLAN REVIEW.

All applications for a Special Use Permit shall be subject to site plan review, which shall include environmental review (SEQR) and a public hearing, as required under Section 245-54. See Section 245-54, Site plan review; performance and design standards.

D. GENERAL STANDARDS

The following standards apply to all Special Uses:

1. The location and size of the Special Use, the nature and intensity of the operations involved, and the location and size of the site with respect to the existing or future streets giving access to it shall be in harmony with the orderly development of the zoning district.
2. The location, nature, and height of buildings, walls, and fences shall not discourage the appropriate development and use of adjacent land and buildings nor impair the value of such adjacent land or buildings.
3. Operations in connection with any Special Use shall not be more objectionable to nearby properties by reason of noise, fumes, vibration, or light than would be associated with the operations of any other permitted use in the zoning district.

E. CONDITIONS.

In granting a Special Use Permit, the Town Board may attach such conditions and safeguards as it deems appropriate under this Chapter. Issuance of a Special Use Permit shall be deemed to authorize only one specific Special Use. The Special Use Permit is revocable for violation of the terms under which it was granted.

F. REFERRAL TO NIAGARA COUNTY PLANNING BOARD.

- (1) A referral shall be made to the Niagara County Planning Board at least 10 days before holding a public hearing on a Special Use Permit application affecting real property within 500 feet of the following:
 - (a) A boundary of the Town;
 - (b) The boundary of any existing or proposed county or state park or other recreation area;
 - (c) The right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway;
 - (d) The existing or proposed right-of-way of any stream or drainage channel owned by the county (or for which the county has established channel lines);
 - (e) The existing or proposed boundary of any county- or state-owned land on which a public building or institution is situated; or

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- (f) The boundary of a farm operation located in an agricultural district, as that term is defined by Article 25-AA of the Agriculture and Markets Law, except this subsection (D)(1)(f) shall not apply to granting of area variances.

- (2) Within 30 days after receipt of a full statement of such referred matter, the Niagara County Planning Board or an authorized agent of the Niagara County Planning Board shall report its recommendations to the Town Board, accompanied by a full statement of the reasons for such recommendations. If the Niagara County Planning Board fails to report within such 30-day period, or within a longer period as may have been agreed upon by it and the Town Board, the Town Board may act without such report. If the Niagara County Planning Board disapproves the proposal or recommends modification thereof, the Town Board shall not act contrary to such disapproval or recommendation, except by a vote of a majority plus one of all the members of the Town Board and after the adoption of a resolution fully setting forth the reasons for such contrary action.

- (3) Within seven days after final action on a referral by the Town Board, the Town Board shall file a report of the final action with the Niagara County Planning Board.

G. EXISTING VIOLATIONS.

No Special Use Permit shall be issued for a Special Use for a property where there is an existing violation of this Chapter. (See Article VIII, Nonconforming Uses and Structures).

Sections 247-17 through 247-21 Reserved.

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Section 32: Section 247-37 of the Code is hereby amended to read in its entirety as follows:

SECTION 247-37

Golf Courses

The Town Board may grant a Special Use Permit for a public golf course, private golf course, nonprofit golf course, commercial golf course or country club on a site of not less than 50 acres in any district, subject to the following conditions and such other conditions as the Planning Board deems necessary or desirable:

- A. Provisions for sanitary facilities shall have prior approval from the Town and County Health Departments.
- B. All buildings, parking areas, greens, tees, swimming pools, and similar sources of noise shall be sufficiently removed from all property lines to assure the quiet enjoyment of adjacent properties and shall not be less than 100 feet from an adjacent property line.
- C. Any artificial lighting shall be shielded so as not to create conditions harmful or annoying to neighbors.
- D. Any signs shall be limited to identifying the use and shall be expressly approved by the Planning Board.
- E. Suitable provision shall be made that any sales or services shall be incidental to the recreation use.
- F. Appropriate control of hours of operation shall be taken where deemed necessary.
- G. Not more than 5% of the site shall be covered by buildings.
- H. Location and design of entrance drives shall be such as to minimize traffic hazard and nuisance factors.
- I. All applications for a Golf Course shall be subject to:
 - (1) Site plan review and approval by the Planning Board under Section 247-54, which shall include environmental review under SEQRA and a public hearing. See Section 247-54, Site plan review; performance and design standards.
 - (2) Special Use Permit approval by the Town Board upon approval of the site plan. The Special Use Permit is subject to annual review by the Town Board to insure all provisions in this Section are adhered to. The Town Board has the discretion to revoke a Special Use Permit due to noncompliance and establish a timeframe to correct the violation(s).

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Section 33: Section 247-38 of the Code is hereby amended to read in its entirety as follows:

SECTION 247-38
Rod and Gun Clubs

The Town Board may grant a Special Use Permit pursuant to Section 247-16 for a private rod and gun club on a site of not less than 150 acres in any district, subject to the following conditions and such other conditions as shall be found necessary or desirable:

- A. Provisions for sanitary facilities shall have prior approval from the Town and County Health Departments.
- B. All building parking areas and similar sources of noise shall be sufficiently removed from all property lines to assure the quiet enjoyment of adjacent properties and shall not be less than 100 feet from an adjacent property line. Firing lines shall be no closer than 200 feet from any lot line.
- C. Any artificial lighting shall be shielded so as not to create conditions harmful or annoying to neighbors.
- D. Any signs shall be limited to identifying the use and shall be expressly approved by the Town Board.
- E. Suitable provision shall be made that any sales or services shall be incidental to the recreational use.
- F. Appropriate control of hours of operation shall be taken where considered necessary. Shooting hours shall be restricted to 10:00 a.m. to sunset. Extra hours shall be approved by the Town Board.
- G. Not more than 5% of the site shall be covered by buildings.
- H. Location and design of entrance drives shall be such as to minimize traffic hazard and nuisance factors.

Section 34: Section 247-39(C) of the Code is hereby amended to read as follows:

SECTION 247-39(C). Permits.

- (1) Application for Type B permits shall be available at the office of the Building Inspector. No use of a residential dwelling, accessory structures on residential property or residential property for a home occupation Type B as described in this chapter shall be established until the issuance of an annual permit by the Town of Pendleton. Application for such a Type B permit shall be made to the Building Inspector and must conform to all ordinances of the Town of Pendleton. The application shall be in writing to the Building Inspector and consist of a description of the premises for which the permit is sought, a plain, concise statement of the use which is proposed, and such additional information as shall be required by the Town.
- (2) At least 30 days prior to the expiration of the annual Type B permit, the permittee shall notify the office of the Building Inspector, in writing, if a one-year renewal of the permit is sought.
- (3) All permittees must immediately notify the Office of the Building Inspector of any changes or circumstances which may affect the classification of the activity as a home occupation under this chapter.
- (4) If, during the application process, it is determined that the intended use would be in violation of the Town Code, the application shall be denied. The applicant may seek recourse through the Zoning Board of Appeals pursuant to Article XI, § 247-74 of the Code of the Town of Pendleton.
- (5) The fee for a home occupation Type B Permit shall be as described in the Town of Pendleton Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time.
- (6) Type B permits issued under the provisions of this section shall not be transferable.

Section 35: Section 247-40 of the Code is hereby amended to read in its entirety as follows:

Section 247-40: Livestock and livestock buildings.

- A. No building in which farm animals are kept shall be less than 100 feet from any lot line or less than 250 feet from the street line. No storage of manure or odor- or dust-producing substance shall be permitted within 100 feet from any lot line or 250 feet of the street line.
- B. The housing of livestock in an existing barn, stable or pen less than 100 feet from any lot line or less than 250 feet from the street line shall not be permitted if the use ceases, is abandoned, or is discontinued for a period of one year (unless granted a Special Use Permit by the Town Board, pursuant to Section 247-16, Special Use Permits).
- C. No livestock pasture shall be permitted within 50 feet of any residential lot line in R1 or R2 Districts. The depth not to exceed 250 feet or 65 feet from a residential dwelling, whichever is greater. Beyond 250 feet from the street line and 65 feet from any residential dwelling, a pasture may extend to the lot line.
- D. Livestock shall be kept in accordance with the provisions of Section 247-41, Domestic animals and livestock.

Section 36: Section 247-47 of the Code is hereby amended to read in its entirety as follows:

SECTION 247-47
Bed-and-Breakfasts

A. PURPOSE.

The Town Board recognizes that popularity has risen with regard to the rental of rooms on a temporary basis and on occasion providing breakfast to the renter, which has become known as a “bed-and-breakfast residence or inn.” The Town Board has determined that the permission for such incidental use of an existing Residence should not create a detriment to surrounding Residences, provided the same is properly regulated. A Bed-and-Breakfast, as that term is used in this Section 247-47, shall have the meaning designated in Section 247-4 (Definitions).

B. REGULATIONS.

- (1) Permits for a Bed-and-Breakfast shall only be granted for Residences in an R2 District and for existing Residences (at the time this Chapter is adopted) in either the CO1 or CO2 Districts which are used solely for residential purposes. Any property in the CO1 or CO2 Districts which has any commercial activity shall not be allowed to operate a Bed-and-Breakfast.
- (2) No Building Permit for an addition to a principal structure may be issued within three years of the granting of a permit for a Bed-and-Breakfast. No Special Use Permits for a Bed-and-Breakfast may be granted within three years of the issuance of a Building Permit for an addition to a principal structure.
- (3) The quarters to be utilized by the guests or the occupants of the premises shall not be permitted in any accessory structure.
- (4) The principal building in which the use is permitted shall be occupied by the owners as their principal residence.
- (5) The use by guests shall be temporary only and limited to a maximum of 14 days for any one guest.
- (6) The Bed-and-Breakfast shall use a maximum of three bedrooms and shall not have more than nine guests.
- (7) The Bed-and-Breakfast shall provide at least one bathroom for each six guests.
- (8) At least one smoke detecting device shall be located in each bedroom.
- (9) At least one fire extinguisher shall be located in every hallway.
- (10) Emergency lighting shall be provided in every hallway leading to an exit.

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- (11) The serving or providing of meals to paying guests shall be limited to breakfast.
- (12) One off-street parking space shall be provided for each room(s) used for the Bed-and-Breakfast, in addition to the off-street parking spaces for the Residence.
- (13) Signs shall be limited by the requirements in this Chapter 247.
- (14) The Bed-and-Breakfast must comply with all state, county and local health and building codes and permits.

C. SITE PLAN REVIEW.

- (1) All Bed-and-Breakfasts shall be subject to the site plan review and approval by the Planning Board under Section 247-54, which shall include environmental review under SEQRA and a public hearing. See Section 247-54, Site plan review; performance and design standards.

D. SPECIAL USE PERMIT.

- (1) A Bed-and-Breakfast shall be considered as a Special Use requiring a Special Use Permit granted by the Town Board in accordance with Section 247-16, following site plan review and approval by the Planning Board. Town Board Review will be undertaken to insure that all provisions in this Section 247-47 are being adhered to. The Town Board has discretion to revoke the Special Use Permit due to noncompliance and establish a timeframe to correct the violation(s).
- (2) The standards and regulations governing this use shall not be construed to exclude the requirement for further conditions and standards as determined necessary by the Town Board for granting a Special Use Permit under Section 247-16.
- (1) Once a Special Use Permit is granted, the Bed-and-Breakfast will be subject to an annual inspection by the Code Enforcement Officer/Building Inspector. An annual inspection fee shall be as described in the Town of Pendleton Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time.

E. PENALTIES FOR OFFENSES.

Every person, firm, or corporation convicted of a violation of any provision of this Section 247-47 shall be punished by a fine of not more \$ 250 or imprisonment for not more than 15 days, or both. Each and every day that a violation of this Section 247-47 is permitted to exist by an owner of a Residence operating a Bed-and-Breakfast shall constitute a separate offense.

Section 37: Section 247-49 of the Code is hereby amended to read in its entirety as follows:

SECTION 247-49
Mobile Home Parks

- A. No Mobile Home shall be located within the Town, except in a designated Mobile Home Park.
- B. A Mobile Home Park cannot be established or created except upon a tract of land used or intended to be used for the parking of at least 50 Mobile Homes, together with the necessary improvements and facilities upon the land. No lot or berth shall be rented or leased for residential uses of a Mobile Home in any such park except for periods of 30 days or more and no Mobile Home shall be admitted to any park unless it can be demonstrated that it meets the requirements of applicable local codes and ordinances and the state code for construction and installation of Mobile Homes.
- C. The following standards shall be applicable in all Mobile Home Parks:
 - (1) Area and bulk. Each Mobile Home lot shall meet the minimum lot area of 25,000 square feet. The minimum lot width shall be 100 feet; the minimum front yard setback shall be 60 feet; the minimum side yard dimension shall be 15 feet each side; the minimum rear yard dimension shall be 50 feet; and the maximum building height for structures shall be 35 feet.
 - (2) Electric. Each mobile home berth shall be provided with an approved electrical connection system. Underground cables are required. All electrical wiring within the Mobile Home Park shall meet all Underwriters Code requirements
 - (3) Fire protection. The Mobile Home Park (including all Mobile Homes and all other structures within the Mobile Home Park) shall be subject to the rules and regulations of the fire protection district authorities.
 - (4) Fires. Fires shall be allowed only in equipment specifically designed for such purposes. Open fires are not permitted.
 - (5) Fuel supply and storage. All fuel oil storage tanks or cylinders shall be securely fastened in place and shall be located at the rear of the Mobile Home and not located less than 10 feet from any Mobile Home exit. Supports or stands for fuel oil storage tanks must be of a noncombustible material. Installation must follow state and other generally accepted standards.
 - (6) General provisions and supplemental regulations. Also see Article IV, District Regulations, of Chapter 247, Zoning, of the Town Code and the other sections of this Article VII, Supplemental Regulations of Chapter 247, Zoning, of the Town Code.
 - (7) Green belt. A Mobile Home Park shall be surrounded by a landscaped green belt of at least 100 feet from each property line. The required green belt shall not be included in the yard requirements for the individual Mobile Home lot or berth.
 - (8) Interior drives. Interior drives shall be designed so as to prevent blockage of vehicles entering or leaving the site. All drives shall be two-way. All accessways to any public street or highway shall be located at least 200 feet from the

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intersection of any street lines and shall be designed with clear visibility and shall be maintained in a manner conducive to safe ingress and egress.

- (9) Lights. All driveways and walkways shall be lighted at night with shielded electric lamps of not less than 100 watts each, spaced at intervals of not more than 100 feet.
- (10) Mobile home support systems. Each mobile home lot or berth shall contain a mobile home stand which shall be constructed to the standards of the appropriate state code.
- (11) Recreation. A recreational area equal to at least 800 square feet for each Mobile Home berth shall be set aside and improved according to an approved recreation plan and shall not be located in any required setback, yard or green belt area. A recreation fee per lot may be charged in lieu of the recreation area as determined by the Town Board.
- (12) Roadway width. All Mobile Home lots or berths within the park shall abut upon a road with a right-of-way of 60 feet having a paved all-weather roadway of not less than 28 feet in width. The entrance to any Mobile Home Park shall have a right-of-way width of at least 90 feet.
- (13) Rubbish. All organic rubbish or storage shall be contained in vermin-proof containers which shall be screened from view of any public right-of-way or abutting property. Refuse containers shall be located not more than 150 feet away from any Mobile Home berth. Rubbish collection must be not less than once weekly and contracted privately by the Mobile Home Park owner.
- (14) Service buildings. All accessory service buildings on the Mobile Home Park site shall be connected to all Mobile Home berths by a walkway of not less than three feet in width. Service buildings shall be provided with emergency sanitary facilities of one lavatory and one flush toilet for each sex for each 20 Mobile Home sites. All maintenance equipment shall be housed within a service building. All utilities shall be connected to Mobile Home sites through a service building.
- (15) Sewage. No on-lot sewage disposal systems shall be permitted. All waste from showers, bathtubs, flush toilets, urinals, lavatories, washing machines and slop sinks in Mobile Homes and service buildings shall be discharged into a public sewerage system.
- (16) Skirting. Each Mobile Home owner shall be required to enclose the bottom portion of the Mobile Home with a metal or other nonflammable material skirt, properly ventilated, within 60 days after arrival in the park.
- (17) Soil and ground cover requirement. Exposed ground surfaces in all parts of every Mobile Home Park shall be paved or covered with stone screenings or other solid material or protected with a vegetative growth that is capable of preventing soil erosion and of eliminating objectionable dust.
- (18) Stabilizing devices. Each mobile home shall be tied down to prevent wind damage and shall follow the appropriate state code.
- (19) Water. All Mobile Homes and service and accessory buildings shall be connected to a central water system. Fire hydrants shall be located at least within 500 feet of all Mobile Homes, service buildings or accessory structures.

D. Permits.

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- (1) It shall be unlawful for any person to construct, alter or extend any Mobile Home Park unless he/she holds a valid permit issued by the Code Enforcement Officer/Building Inspector in the name of the person for whom the specific construction, alteration or extension is proposed.
 - (2) All applications for permits shall be made to the Code Enforcement Officer/Building Inspector and shall contain the following:
 - (a) The name and address of the applicant.
 - (b) Interest of the applicant in the Mobile Home Park.
 - (c) Location and legal description of the Mobile Home Park, including a map showing the physical characteristics of the property (*i.e.*, topography, vegetation and wetlands).
 - (d) Complete plans and specifications of the proposed park showing:
 - [1] The area and dimensions of the tract of land.
 - [2] The number, location and size of all Mobile Home lots.
 - [3] The location of service buildings and any other proposed structures.
 - [4] The location and width of roadways and walkways.
 - [5] The location of water and sewer lines and riser pipes.
 - [6] Plans and specifications of all buildings constructed or to be constructed within the Mobile Home Park.
 - [7] Plans and specifications of the water supply, refuse disposal and sewer disposal facilities.
 - [8] The location and details of lighting and electrical systems.
 - [9] The phasing of the development, if any.
 - [10] Such other information as may be required by the Planning Board.
 - (e) A Stormwater Pollution Prevention Plan (SWPPP), if required for the proposed land development activity under Article XIII of this Chapter, together with the recommendation of the Stormwater Management Officer (SMO) to approve, approve with modifications, or disapprove the SWPPP pursuant to § 247-85(C). If a SWPPP is submitted together with the application to construct, alter or extend any Mobile Home Park pursuant to this section, such SWPPP and application shall comply with the requirements of Article XIII of this Chapter.
 - (3) All applications shall be accompanied by a deposit of a fee (see applicable fees as described in the Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time). The Town Board, upon review by the Planning Board, shall approve, approve with modifications or disapprove such application and shall report its reasoned decision to the Code Enforcement Officer/Building Inspector. When, upon review of the application, the Town Board and the Code Enforcement Officer/Building Inspector are satisfied that the proposed plan meets the requirements of this Chapter, a permit shall be issued.
- E. Performance bond. Each application shall be accompanied by a performance bond or other satisfactory instrument (in the amount required by the Town Board and not less than the total estimated value of the improvements within the Mobile Home Park) guaranteeing the satisfactory performance of the obligations and conditions set forth in

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this Article. No permit hereunder shall become effective until such bond is furnished and approved by the Town Attorney.

F. Licenses.

- (1) It shall be unlawful for any person to operate any Mobile Home Park within the limits of the Town without a valid license issued annually by the Code Enforcement Officer/Building Inspector in the name of such person for the specific Mobile Home Park. All applications for licenses shall be made to the Code Enforcement Officer/Building Inspector, who shall issue a license upon compliance by the applicant with the provisions of this Chapter and of other applicable legal requirements.
- (2) Every person holding a license shall give notice, in writing, to the Code Enforcement Officer/Building Inspector within 24 hours after having sold, transferred, given away or otherwise disposed of interest in or control of any Mobile Home Park. Such notice shall include the name and address of the person succeeding to the ownership or control of such Mobile Home Park. Upon application, in writing, for transfer of the license and deposit of a fee (as shall be described in the Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time), the license shall be transferred if the Mobile Home Parks in compliance with all applicable provisions of this Chapter.
- (3) Application for original licenses shall be in writing, signed by the applicant, accompanied by an affidavit of the applicant as to the truth of the application and by a deposit of a fee (as shall be described in the Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time), and shall contain the location and legal description of the Mobile Home Park and a site plan of the Mobile Home Park showing all Mobile Home lots, structures, roads, walkways and other service facilities.
- (4) Applications for renewals of licenses shall be made in writing by the holders of the licenses, shall be accompanied by the deposit fee (as shall be described in the Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time), and shall contain any change in the information submitted since the original license was issued or the latest renewal was granted.
- (5) Whenever, upon inspection of any Mobile Home Park, the Code Enforcement Officer/Building Inspector finds that conditions or practices exist which are in violation of any provision of this Chapter or its amendments, the Code Enforcement Officer/Building Inspector shall give written notice to the person to whom the license was issued that such conditions or practices shall be corrected within the time specified in the notice. At the end of such time period, the Code Enforcement Officer/Building Inspector shall re-inspect the Mobile Home Park. If the conditions or practices have not been corrected, the Town shall correct the violation and the cost of the correction shall be placed on the owner's tax bill.
- (6) Any person who has received notice from the Code Enforcement Officer/Building Inspector that he/she is in violation of the license issued pursuant to this Section 247-49 because of conditions or practices at the Mobile Home Park may request and be granted a hearing on the matter before the Town Board. If, however, no petition for such hearing shall have been filed within 10 days following the day on

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which the notice of violation was served, the Town Board shall cause corrections to be made.

G. Inspection of Mobile Home Parks.

- (1) The Code Enforcement Officer/Building Inspector shall make any inspections that are necessary to determine satisfactory compliance with this Chapter and regulations issued hereunder. The Code Enforcement Officer/Building Inspector shall have the power to enter upon any private or public property for the purpose of inspecting and investigating conditions relating to the enforcement of this Chapter and regulations issued hereunder. The Code Enforcement Officer/Building Inspector shall have the power to inspect the register containing a record of all residents of the Mobile Home Park.
- (2) It shall be the duty of the owners or occupants of Mobile Home Park and Mobile Homes contained therein, or of the person in charge thereof, to give the Code Enforcement Officer/Building Inspector free access to such premises at reasonable times for the purpose of inspection.
- (3) It shall be the duty of every occupant of a Mobile Home Park to give the owner thereof or his agent or employee access to any part of such Mobile Home Park or its premises at reasonable times for the purpose of making such repairs or alterations as are necessary to effect compliance with this Chapter and regulations issued hereunder or with any lawful order issued pursuant to the provisions of this Chapter, or with the requirements of the state code for construction and installation of Mobile Homes.

H. Miscellaneous requirements.

- (1) Responsibilities of the park management.
 - (a) The person to whom a license for a Mobile Home Park is issued shall operate the park in compliance with this Chapter and regulations issued hereunder and shall provide adequate supervision to maintain the park, its facilities and equipment in good repair and in a clean and sanitary condition.
 - (b) It shall be the responsibility of the park management to notify park occupants of all applicable provisions of this Chapter and inform them of their duties and responsibilities under this Chapter and regulations issued hereunder.
 - (c) The park management shall supervise the placement of each Mobile Home on its mobile home stand, which includes installing all utility connections.
- (2) Responsibilities of park occupants.
 - (a) The park occupant shall comply with all applicable requirements of this Chapter and regulations issued hereunder and shall maintain his Mobile Home lot, its facilities and equipment in good repair and in a clean and sanitary condition.
 - (b) The park occupant shall be responsible for proper placement of his/her Mobile Home on its mobile home stand and proper installation of all utility connections in accordance with the instructions of the park management.

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- (3) Restrictions on occupancy. A Mobile Home shall not be occupied for dwelling purposes unless it is properly placed on a mobile home support system and connected to water, sewage and electrical facilities and receives a certificate of occupancy from the Code Enforcement Officer/Building Inspector for each new connection.

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Section 38: Section 247-53(F)(2) of the Code is hereby amended to read in its entirety as follows:

Section 247-53(F)(2):

Electronic message display signs may be permitted, subject to an electrical permit issued by an approved third party, in the Light Commercial (CO1), Medium Commercial (CO2) and Light Industrial (LI) and Special Light Industrial (SLI) Districts. Electronic message display signs may also be permitted, subject to a Special Use Permit to be issued by the Town Board in accordance with Section 247-16, Special Use Permits, together with an electrical permit issued an approved third party, for the following purposes, in any zoning district.

- (a) Churches and other places of worship.
- (b) Schools and other places of education.
- (c) Emergency services.

Section 39: Section 247-54 of the Code is hereby amended to read in its entirety as follows:

SECTION 247-54

Site Plan Review; performance and design standards

- A. Intent. The intent of site plan review is to evaluate specified land uses in terms of their suitability to natural site conditions, their compatibility with surrounding land uses and their conformance with overall plans for the community, thus minimizing possible adverse effects on the health, safety and welfare of local residents.
- B. Applicability. All applications for Building Permits, including change of use, shall be accompanied by an approved site plan, except for the following: Single-Family Detached and Two-Family Residences, including permitted accessory uses and additions and general farming use.
- C. Reviewing agency. The final site plan shall be subject to the approval of the Planning Board.
- D. Review procedures.
 - (1) Planning Board review; sketch plan.
 - (a) A preliminary sketch plan conference shall be held between the Planning Board and the applicant prior to the preparation and submission of the final site plan. The intent of such a conference is to enable the applicant to inform the Planning Board of his/her proposal prior to the preparation of a detailed site plan and prior to incurring design costs, and for the Planning Board to review the basic site design concept, advise the applicant as to potential problems and concerns and generally determine the information to be required on the site plan. The project's status under State Environmental Quality Review (SEQR) will be determined at this time.
 - (b) In order to accomplish these objectives, the applicant shall provide sketches of the proposed development, together with an area map showing the location of the site in the general area. This step is designed to save the applicant from possible future delays. A sketch plan application must be filed and a sketch plan fee must be paid to the Town Clerk prior to the preliminary sketch plan conference with the Planning Board. Such fee shall be as described in the Town of Pendleton Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time.
 - (c) The Planning Board will review the site plan sketch and advise the applicant on whether to proceed with a final site plan review. If the project does not warrant final site plan action, the Planning Board will take action without a public hearing.
 - (2) Final site plan review.
 - (a) The applicant shall submit to the Planning Board an application for final site plan review approval, which shall be accompanied by 15 copies of the following: Complete plans and specifications of the proposed site showing:

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- [1] A copy of the final plat application form.
- [2] A boundary survey.
- [3] A topographical survey based on United States Geological Survey (USGS) data to extend a reasonable distance beyond the site.
- [4] The location of existing and proposed easements.
- [5] Existing natural features, such as watercourses, water bodies, wetlands, wooded areas, individual large trees and flood hazard areas. Features to be retained in the development should be indicated.
- [6] Soil characteristics, regarding capabilities and/or limitations for development if required.
- [7] The location and design of all existing on-site or nearby improvements, including drains, culverts, water lines, sewers, gas/electric lines and poles, bridges, retaining walls, fences and stormwater management areas.
- [8] The location and design of proposed utilities, including water, sanitary and storm sewer systems.
- [9] The location and design of all streets, parking and service areas, access drives and bicycle and pedestrian ways within and immediately adjoining the site.
- [10] The location and height of proposed buildings, structures and enclosures.
- [11] The location and proposed development of all open space, including parks, playgrounds, screen plantings and other landscaping.
- [12] The location, size and design of all proposed signs and lighting facilities.
- [13] Building elevation drawings.
- [14] A grading and drainage plan showing existing and proposed contours at intervals not exceeding 2.5 feet.
- [15] Other elements integral to the proposed development as considered necessary by the Planning Board.
- [16] Map, plan and report with all legal documentation submitted to create a stormwater drainage district or districts for this site. A district shall be defined as the watershed area for a specified location under post-development conditions where stormwater is discharged from this site on the public right-of-way.
- [17] A stormwater pollution prevention plan (SWPPP), if required for the proposed land development activity under Article XIII of this Chapter, together with the recommendation of the Stormwater Management Officer (SMO) to approve, approve with modifications, or disapprove the SWPPP pursuant to § 247-85(C). If a SWPPP is submitted pursuant to this section, such SWPPP and site plan shall comply with the requirements of Article XIII of this Chapter.

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- (b) Drawings, documents and information are to be prepared by a qualified professional engineer, architect, planner or surveyor, as appropriate and as determined necessary by the Planning Board. This must be submitted within six months of the sketch plan acceptance.
 - (c) Distribution of final site plan. One copy to:
 - [1] Each Planning Board member.
 - [2] The Town Board.
 - [3] The Town Engineer.
 - [4] The Highway Superintendent.
 - [5] The SMO.
 - [6] The Town Assessor.
 - [7] The Town Clerk.
 - [8] The Code Enforcement Officer/Building Inspector.
 - [9] The Niagara County Planning Board.
- (3) Referral to Niagara County Planning Board.
- (a) A referral shall be made to the Niagara County Planning Board at least 10 days before holding a public hearing on a site plan application affecting real property within 500 feet of the following:
 - [1] A boundary of the Town;
 - [2] The boundary of any existing or proposed county or state park or other recreation area;
 - [3] The right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway;
 - [4] The existing or proposed right-of-way of any stream or drainage channel owned by the county (or for which the county has established channel lines);
 - [5] The existing or proposed boundary of any county- or state-owned land on which a public building or institution is situated; or
 - [6] The boundary of a farm operation located in an agricultural district, as that term is defined by Article 25-AA of the Agriculture and Markets Law.
 - (b) Within 30 days after receipt of a full statement of such referred matter, the Niagara County Planning Board or an authorized agent of the Niagara County Planning Board shall report its recommendations to the Planning Board, accompanied by a full statement of the reasons for such recommendations. If the Niagara County Planning Board fails to report within such 30-day period, or within a longer period as may have been agreed upon by it and the Planning Board, the Planning Board may act without such report. If the Niagara County Planning Board disapproves the proposal or recommends modification thereof, the Planning Board shall not act contrary to such disapproval or recommendation, except by a vote of a majority plus one of all the members of the Planning Board and after the adoption of a resolution fully setting forth the reasons for such contrary action.

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- (c) Within seven days after final action on a referral by the Planning Board, the Planning Board shall file a report of the final action with the Niagara County Planning Board.
 - (4) Public hearing. The Planning Board shall conduct a public hearing on the final site plan review within 62 days of receipt of a complete final site plan. This hearing shall be advertised at least once in the official newspaper of the Town at least five days before such hearing. Notification of the public hearing shall be sent to all property owners within 400 feet of the site plan review property.
 - (5) Referrals. Prior to taking action on the site plan, the Planning Board shall review the recommendations received from the Town Board, Town Engineer, Highway Superintendent, Code Enforcement Officer/Building Inspector, Assessor, Niagara County Planning Board and all other officials and agencies deemed necessary.
- E. Review standards. The Planning Board's review of the final site plan shall include as appropriate, but is not limited to, the following considerations:
- (1) Zoning compliance and compatibility with the Master Plan.
 - (2) The location, arrangement, size, design and general site compatibility of buildings, lighting and signs; the adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic control.
 - (3) The location, arrangement, appearance and sufficiency of off-street parking and loading.
 - (4) The adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian convenience.
 - (5) The adequacy of stormwater management facilities, drainage facilities, water supply, and sewage disposal facilities.
 - (6) The adequacy, type and arrangement of trees, shrubs and other landscape constituting a visual and/or noise buffer between the applicant's and adjoining lands, including the maximum retention of existing vegetation. The Planning Board will have authority to determine the need, size, placement and type of buffer and/or barrier.
 - (7) The adequacy of fire lanes and other emergency zones and the provision of fire hydrants.
 - (8) Special attention to the adequacy and impact of structures, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion.
 - (9) The overall impact on the neighborhood, including compatibility of design considerations.
- F. Performance design standards.
- (1) Fire and explosive hazards. All activities and all storage of flammable and explosive material shall be provided with adequate safety devices against the hazards of fire and explosion, and adequate fire-fighting and fire-suppression equipment and devices shall be required.
 - (2) Radioactivity or electrical disturbances. There shall be no activities which emit radioactivity onto adjoining properties. There shall be no electrical disturbance

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adversely affecting the operation of any equipment other than that of the creator of the disturbance.

- (3) Smoke. There shall be no emission from a chimney or other device for longer than five minutes in any hour of visible gray or visible smoke of any other color with a shade darker than No. 3 of the standard Ringelmann Smoke Chart as issued by the United States Bureau of Mines.
- (4) Smoke, ash, dust, fumes, vapor, gases and other forms of air pollution.
- (5) There shall be no emission at any point from any chimney or other device which can cause any damage to health, to animals, to vegetation or to other forms of property or which causes any excessive soiling at any point.
- (6) The erection or use of any building or structure or the use of any land for any purpose which shall be noxious or injurious by the reason of the production or emission of dust, smoke, refuse matter, odor, gas, fumes, noise, vibration or similar substances or conditions shall be prohibited.
- (7) Liquid and soil wastes. There shall be no discharge at any point into any public sewerage system or stream or into the ground of any materials in such a way or of such a nature as can contaminate or otherwise cause the emission of hazardous materials.
- (8) Noise and vibration. There shall be no vibration or noise level at the property line greater than the average noise level occurring on adjacent streets.
- (9) Glare. No direct glare, whether from floodlights or from high-temperature process, shall be visible from adjoining public streets or adjacent lots when viewed by a person standing on ground level.
- (10) Odor. There shall be no emission of odorous gases or other odorous matter in such quantities as to be offensive on adjoining streets or adjacent lots.
- (11) Storage. All materials will be stored inside an enclosed (but not necessarily roofed) structure. All organic rubbish or storage shall be contained in vermin-proof containers, which shall also be screened from public view.
- (12) Shopping cart storage. Any establishment which furnishes carts or mobile baskets as an adjunct to shopping shall provide definite areas within the required parking space areas for storage of said carts. Each designed storage area shall be clearly marked for storage of shopping carts.
- (13) Lighting. All parking areas, driveways and loading areas shall be provided with an adequate lighting system. All lighting shall be completely shielded from traffic on any public right-of-way and from any residential district.
- (14) Building design. Buildings shall be designed to take advantage of the natural terrain and shall not be physically located to unnecessarily concentrate activity in one portion of the lot. At least one entrance shall be at ground level. All pedestrian entrances shall be paved with an all-weather surface. A curbing strip shall be provided to separate parking areas, streets and driveways.
- (15) Vehicles. Any movable structure, trailer, automobile, truck or parts of these items or any other items of similar nature allowed to remain on the premises a longer time than that required to unload or otherwise discharge its normal functions shall be considered subject to all regulations set forth in this chapter.
- (16) Change in occupancy. Any change in occupancy and/or use in an existing building which is used for commercial and/or industrial purposes will require an

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inspection by the Code Enforcement Officer/Building Inspector and a new certificate of occupancy issued for the intended use. If external changes to the structure are required, a site sketch plan will be required before a Building Permit and/or Certificate of Occupancy/Certificate of Compliance is issued.

- G. Planning Board action. Within 62 days of the public hearing for final site plan approval, the Planning Board shall either approve or disapprove the final site plan and notify the applicant, stating the basis if not approved. This time period may be extended by mutual consent of the Planning Board and the applicant to allow all interested parties to comment on or modify the proposal.
- H. Code Enforcement Officer/Building Inspector. Upon approval by the Planning Board, a complete final site plan review package will be sent to the Code Enforcement Officer/Building Inspector before a Building Permit is issued.
- I. Fee. An application for the final site plan review shall be accompanied by a fee as described in the Town of Pendleton Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time.
- I. Reimbursable costs. Costs incurred by the Planning Board for consultation fees or other extraordinary expense in connection with the review of a proposed site plan shall be charged to the applicant.
- J. Improvements.
 - (1) No Certificate of Occupancy/Certificate of Compliance shall be issued until all improvements shown on the site plan are installed or a sufficient performance guarantee has been posted for improvements not yet completed.
 - (2) The Code Enforcement Officer/Building Inspector shall be responsible for the overall inspection of site improvements, including coordination with other officials and agencies as appropriate.
 - (3) The applicant shall provide a map satisfactory to the Code Enforcement Officer/Building Inspector indicating locations of monuments marking all underground utilities as actually installed. No performance bonds shall be released nor Certificates of Occupancy/Certificates of Compliance issued until such map is provided by the developer.
- K. Approvals. Approvals granted by the Planning Board will be honored for one year from the date of approval. A Building Permit for the project must be procured from the Code Enforcement Officer/Building Inspector within the one-year limitation period. Applicants seeking to restart their project subsequent to the one-year limitation period will be referred back to the Planning Board for a new site plan review.

Section 40: Section 247-55 of the Code is amended to read in its entirety as follows:

SECTION 247-55: Oil and Gas Wells

A. REQUIREMENTS.

All oil or gas wells and storage facilities for oil and gas shall be located in accordance with Article IV (District Regulations) and Section 247-29 (Yards). In addition, all laws and regulations enforced by the Oil and Gas Division of the New York State Department of Environmental Conservation shall be observed.

- (1) Oil or gas wells, and storage facilities for oil and gas, shall not be closer than:
 - (a) 150 feet to any public building or area of any such building which may be used as a place of assembly, education, entertainment, lodging, trade, manufacture, repair, storage, traffic or occupancy by the public;
 - (b) 75 feet to any public street, road, or highway
 - (c) 100 feet to any public stream, river, or other body of water.

B. SITE PLAN REVIEW.

- (1) All oil or gas wells and storage facilities for oil and gas shall be subject to site plan review and approval by the Planning Board under Section 247-54, which shall include environmental review under SEQRA and a public hearing. See Section 247-54, Site plan review; performance and design standards.

C. SPECIAL USE PERMIT.

- (1) An oil or gas well and storage facility for oil and gas shall be considered a Special Use requiring a Special Use Permit granted by the Town Board in accordance with Section 247-16, following site plan review and approval by the Planning Board. Town Board Review will be undertaken to insure that all provisions in this Section 247-55 are being adhered to. The Town Board has discretion to revoke the Special Use Permit due to noncompliance and establish a timeframe to correct the violation(s).
- (2) The standards and regulations governing this use shall not be construed to exclude the requirement for further conditions and standards as determined necessary by the Town Board for granting a Special Use Permit under Section 247-16.
- (2) Once a Special Use Permit is granted, the oil or gas well or and storage facilities for oil and gas will be subject to an annual inspection by the Code Enforcement Officer/Building Inspector. An annual inspection fee shall be as described in the Town of Pendleton Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time.

D. FEES.

For appropriate fees, see the Town of Pendleton Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time.

Section 41: Section 247-56 of the Code is amended to read in its entirety as follows:

SECTION 247-56: Airports and Airstrips

A. SITE PLAN REVIEW.

- (1) All airports and airstrips in the Town shall be subject to site plan review and approval by the Planning Board under Section 247-54, which shall include environmental review under SEQRA and a public hearing. See Section 247-54, Site plan review; performance and design standards.

B. SPECIAL USE PERMIT.

- (1) It shall be unlawful for any person to construct, maintain, or operate, within the limits of the Town, any airport or airstrip unless such person shall first obtain a Special Use Permit from the Town Board, following site plan approval from the Planning Board.
- (2) The application for a Special Use Permit shall be accompanied by a plan of the airport or airstrip showing the size of the field, position and size of buildings or structures, runways, number of planes permanently stationed or housed thereon, etc. It shall show the location of the airport or airstrip from two intersecting streets. Any alteration or changes in the length or direction of runways shall require a new Special Use Permit.
- (3) The Special Use Permit shall be valid for a period of three years. Application for a Special Use Permit renewal shall be filed with the Town Clerk, for review and approval by the Town Board pursuant to Section 247-16, not less than 60 days before expiration of the current permit. Any Special Use Permit not renewed within 60 days after the expiration date shall become null and void. A Special Use Permit renewal shall not require a public hearing. A change of ownership and/or operating personnel of the airport or airstrip shall require a new Special Use Permit.
 - (a) The Special Use Permit is subject to an annual review by the Town Board to insure that all the provisions of this Section 247-56 are being adhered to. The Town Board will have discretion to revoke the Special Use Permit due to noncompliance and establish a time frame to correct the violation/violations.
- (4) Application for a special use permit for an airstrip shall be accompanied by a fee as shall be described in the Town of Pendleton Fee Schedule, adopted by the Town Board by Resolution, and as may be amended from time to time, and any engineering costs. A renewal fee, as shall be described in the Town of Pendleton Fee Schedule, shall be collected every three years.

C. REQUIREMENTS.

- (1) No plane other than that of the applicant shall be based permanently at a private airstrip.

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- (2) Spacing requirements between existing and proposed airports shall be the sum of the following radii prescribed for each airport, in accordance with its size classification as defined in this Section 247-56. The size classification of airports under this Section 247-56 shall be in accordance with the standards as established by the Federal Aviation Administration.

Class	Radius (miles)
I or smaller	1
II	2
III	3
IV or larger	4

Section 42: Chapter 247, Article VIIIA is amended to read in its entirety as follows:

Article VIIIA

Cellular Telecommunications Facilities

SECTION 247-68.1: Use Regulations

A. The following provisions are the use regulations for a Cellular Telecommunications Facility. The Town will permit no more than four towers in the existing boundaries of the Town. This number can be increased with a Special Use Permit granted by the Town Board pursuant to Section 247-16 or by existing laws.

- (1) Section 247-68.1(B)(1) below applies to all districts.
- (2) Section 247-68.1(B)(2) below applies to commercial and industrial districts.
- (3) Section 247-68.1(B)(3) below applies to residential districts.

B. Cellular Telecommunications Facilities may be permitted in all districts by Special Use Permit. The Special Use Permit format allows the Town to deal with each application on a case-by-case basis, and through the process will be able to attach reasonable conditions to the granting of the Special Use Permit.

- (1) The following general provisions apply to all Cellular Telecommunications Facilities which include tower and antenna. These general standards are in addition to the provisions for the particular applications specified in Subsections (B)(2) and (B)(3) below:
 - (a) The location of the tower and equipment building shall comply with all natural resource protection standards of this Chapter.
 - (b) All applicants must provide for co-location on their tower and to provide a base of sufficient size, strength and structure to support a one-hundred-sixty-foot tower.
 - (c) A six-to-eight-foot-high security fence shall completely surround the tower and guy wires if used. The equipment and/or equipment building should be located inside the security fence.
 - (d) The following buffer plantings shall be located around the perimeter of the security fence:
 - i. An evergreen screen that consist of either a hedge variety, planted three feet on center maximum, or a row of evergreen trees planted 10 feet on center maximum.
 - ii. Existing vegetation (trees and shrubs) shall be preserved to the maximum extent possible.
 - (e) Tower height. Not to exceed 160 feet in total from ground level or 735 feet above sea level.
 - (f) Towers and antennae shall be designed to withstand inclement weather conditions indigenous of this area, *i.e.* wind gusts, icing caused by freezing rain or melting snow, etc.

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- (g) The Cellular Telecommunications Facility shall be fully automated and unattended on a daily basis and shall be visited only for periodic maintenance.
- (2) Nonresidential districts. A Cellular Telecommunications Facility shall be permitted in the Light Industrial, Special Light Industrial, Light Commercial, and Medium Commercial Districts, subject to the following conditions:
- (a) Sole use on a lot subject to the following:
 - i. Minimum area required: radius of 160 feet.
 - ii. Maximum height:
 - a. Tower: 160 feet.
 - b. Equipment building: 35 feet.
 - (b) Combined with another use. A Cellular Telecommunications Facility is permitted on a property with an existing use.
 - i. The existing use on the property may be any permitted use in the Town or any lawful nonconforming use and need not be affiliated with the cellular telecommunications provider.
 - ii. Minimum lot area. The minimum lot area shall be the area needed to accommodate the tower (guy wires if used), the equipment and/or the equipment building, a fall zone, security fence, and evergreen plantings.
 - iii. Access. The vehicular access to the equipment building and tower shall be provided and maintained by the tower owner and be of sufficient width and thickness to provide access to emergency vehicles.
- (3) Residential districts. A Cellular Telecommunications Facility may be located in a residential district subject to the following conditions:
- (a) Antenna only:
 - i. Combined with a nonresidential use. An antenna may be attached to a nonresidential building or a structure that is a permitted use in the district. This includes but is not limited to a place of assembly, a municipal or governmental building or facility, agricultural building, or a building or structure owned by a utility. If the applicant proposes to locate the telecommunications equipment in a separate building, the building shall comply with all requirements as set forth for that given district.
 - ii. Vehicular access to the building shall not interfere with the parking or vehicular traffic required for the principal use.
 - (b) Tower and antenna.
 - i. All provisions as stated in Subsection (B)(1) shall apply.
 - ii. All provisions as stated in Subsection (B)(2) shall apply.
 - iii. Vehicular access to the building shall not interfere with the parking or vehicular traffic required for the principal use.

SECTION 247-68.2: Tower Permit Application

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Any company or governmental agency considered to be an essential service by federal definition may apply to the Town for a Special Use Permit to construct a tower. Application for a Special Use Permit shall include the following:

- A. Town-supplied site plan review application as required under Section 247-54 (Site plan review; performance and design standards and associated fee. See the Town of Pendleton Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time.
- B. Environmental assessment form pursuant to SEQRA.
- C. Proof of the landowner's consent as demonstrated by a lease agreement or equivalent if the applicant will not own the property. The stated lease agreement or equivalent must be approved by the Town Attorney.
- D. A survey of the property which includes all structures, easements, waterways, ditches (open or piped) on the property on the day of application. The survey should also include:
 - (1) Exact location of tower.
 - (2) Surface dimensions of tower base.
 - (3) Location of guy anchors if applicable.
 - (4) Location with dimensions of any proposed structures and/or equipment.
 - (5) Location and dimension of driveway and/or walkway.
 - (6) Proposed location of any utilities and proposed construction (underground or aboveground).
- E. A detail of the tower including:
 - (1) Type.
 - (2) Color.
 - (3) Lighting, if any, including location and intensity.
 - (4) Initial height and maximum height.

SECTION 247-68.3: Tower Location Requirements

All towers must follow the following order of requirements:

- A. Co-locate on existing tower.
- B. Town-owned property.
- C. County-owned property.
- D. State-owned property.
- E. Light Industrial District.
- F. All others.

SECTION 247-68.4: Restrictions

- A. No tower shall be used for signs or displays of any type.
- B. The Town may require a sufficient distance, in addition to the fall zone, from adjacent property lines and/or structures to prevent damage from falling ice.

SECTION 247-68.5: Permits

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Permit applications shall be reviewed in the same manner as Special Use Permit applications pursuant to Section 247-16. Permit applications shall be subject to initial review by the Planning Board, which shall recommend either approval, approval with modifications, or disapproval of the permit application to the Town Board. Permit applications shall then be subject to review by the Town Board, which shall either approve, approve with modifications, or deny the permit application.

SECTION 247-68.6: Safety

Upon written request from the Town, the applicant shall provide certification from a qualified licensed engineer that the tower meets all applicable structural safety standards.

SECTION 247-68.7: Removal

- A. The applicant will agree to remove the tower in total which includes the base, guy anchors, equipment, and/or buildings within a one-year time frame commensurate with the date said tower ceases to be used and/or termination of aforementioned lease (or equivalent), if applicable.
- B. A demolition or removal bond, or equivalent, will be required at the time of installation.
- C. Prior to removal, a demolition permit must be obtained from the Code Enforcement Officer/Building Inspector.

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Section 43: Section 247-68.13(M) of the Code is amended to read in its entirety as follows:

SECTION 247-68.13: FEES AND COSTS.

For applicable fees, see the Town of Pendleton Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time.

Section 44: Chapter 247, Article VIIC is amended to read in its entirety as follows:

Article VIIC
Solar Energy System Regulations

SECTION 247-68.14: TITLE.

This article shall be known and may be recited as the “Solar Energy Systems Ordinance of the Town of Pendleton.”

SECTION 247-68.15: FINDINGS.

The Town Board of the Town of Pendleton makes the following findings:

- A. The Town Board recognizes that solar energy is a clean, readily available and renewable energy source, and the Town intends to accommodate the use of solar energy systems.
- B. However, the Town Board finds a growing need to properly site solar energy systems within the boundaries of the Town to protect residential, business areas and other land uses, to preserve the overall beauty, nature and character of the Town, to promote the effective and efficient use of solar energy resources, and to protect the health, safety and general welfare of the citizens of the Town.
- C. Prior to the adoption of this article, no specific procedures existed to address the siting of solar energy systems. Accordingly, the Town Board finds that the promulgation of this article is necessary to direct the location and construction of these systems.
- D. Solar energy systems need to be regulated for removal when no longer utilized.

SECTION 247-68.16: PURPOSE.

This article for solar energy is adopted to advance and protect the public health, safety and welfare of the Town, including:

- A. Taking advantage of a safe, abundant, renewable, and nonpolluting energy resource;
- B. Decreasing the cost of energy to owners of commercial and residential properties, including Single-Family Residences; and
- C. Increasing employment and business development in the region by furthering the installation of solar energy systems.

SECTION 247-68.17: DEFINITIONS.

The following definitions shall apply to this article:

APPLICANT

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The person or entity filing an application and seeking an approval under this article; the owner of a solar energy system or a proposed solar energy system project; the operator of solar energy system or a proposed solar energy system project; any person acting on behalf of an applicant, solar energy system or proposed solar energy system. Whenever the terms "applicant" or "owner" or "operator" are used in this article, said term shall include any person acting as an applicant, owner or operator.

BUILDING-INTEGRATED SOLAR ENERGY SYSTEMS

A solar energy system that is a combination of photovoltaic building components integrated into any building envelope system, such as vertical facades, including glass and other facade material, semitransparent skylight systems, roofing materials, and shading over windows.

FOOTPRINT OF LARGE-SCALE SOLAR SYSTEM

The area usually measured in acres which is located within a line drawn around the perimeter of the total project. The total area of all solar panels, areas between panels, all support buildings and access roads to the panels are included in the footprint. Fencing around the footprint of the large-scale solar system must be installed, and all area within that fencing is included in the footprint.

FOOTPRINT OF MINOR SOLAR ENERGY SYSTEM, GROUND-MOUNTED

The area which is located within a line drawn around the perimeter of the total project.

GROUND-MOUNTED SOLAR ENERGY SYSTEM

A solar energy system that is affixed to the ground either directly or by support structures or other mounting devices.

LARGE-SCALE SOLAR ENERGY SYSTEM or SOLAR FARM

Any solar energy system that cumulatively on a lot is designed and intended to supply energy into a utility grid, primarily for sale to the general public.

MINOR SOLAR ENERGY SYSTEM

Any solar energy system which relies upon solar radiation as an energy source and distribution of solar energy for electricity generation or transfer of stored heat, secondary to the use of the premises.

ROOFTOP-MOUNTED SOLAR ENERGY SYSTEM

Any solar energy system that is affixed to the roof of a building and wholly contained within the limits of the roof surface.

SECTION 247-68.18: USE DISTRICTS WHERE ALLOWED.

A. Solar energy systems shall be allowed in zoning districts as follows:

(1) Allowed by right:

(a) Minor solar energy systems, including roof-mounted solar energy systems and ground-mounted energy systems: allowable in all zoning districts. In

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commercial and light industrial zoning districts, roof- or ground-mounted solar energy systems must be used in conjunction with the business located on the same parcel as the solar energy system.

(2) Permitted by Special Use Permit:

- (a) Large-scale solar energy systems or solar farms: allowable in CO2 Medium Commercial, LI Light Industrial and SLI Special Light Industrial Districts only by Special Use Permit.
- (b) Large-scale solar energy systems or solar farms are not permitted by right or by Special Use Permit in the R-1 and R-2 Residential Zoning Districts and CO1 Light Commercial District.

SECTION 247-68.19: GENERAL REGULATIONS.

The placement, construction, and major modification of all solar energy systems within the boundaries of the Town shall be permitted only as follows:

- A. All solar energy systems shall adhere to all applicable federal, state, county and Town of Pendleton laws, regulations and building, plumbing, electrical, and fire codes.
- B. Rooftop-mounted and building-integrated solar energy systems upon issuance of a building permit based on the criteria set out in Section 247-68.18 herein.
- C. Ground-mounted solar energy systems upon issuance of a Building Permit based on the criteria set out at Section 247-68.18 herein.
- D. Large-scale solar energy systems, upon site plan review by the Planning Board and Special Use Permit approval issued by the Town Board, and upon issuance of a Building Permit issued by the Code Enforcement Officer/Building Inspector, shall be subject to all provisions of this article.
- E. All solar energy systems existing on the effective date of this article shall be allowed to continue usage as they presently exist. Routine maintenance (including replacement with a new system of like construction and size) shall be permitted on such existing systems. New construction other than routine maintenance shall comply with the requirements of this article.
- F. No solar energy system shall hereafter be used, erected, moved, reconstructed, changed or altered except in conformity with these regulations.
- G. Any applications (including variance applications) pending for solar energy systems on the effective date of this article shall be subject to the provisions of this article.
- H. This article shall take precedence over any inconsistent provisions of Chapter 247 of the Town Code, Zoning.

SECTION 247-68.20: MINOR SOLAR ENERGY SYSTEMS.

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Rooftop-mounted solar energy systems shall be subject to the following requirements:

- A. Shall not be more than three feet higher than the finished flat roof to which it is mounted.
- B. Shall be flush-mounted parallel to the pitched roof surface and no more than six inches above the surface with an eighteen-inch clearing at the roof ridge and an eighteen-inch clearing path to the ridge.
- C. The Code Enforcement Officer/Building Inspector may require, in his/her sole discretion, at least a three-foot center walkway for safety access purposes.
- D. The proposed solar installation shall be on the roof of a residential building or legal accessory structure with a single layer of roof covering. A waiver may be requested, in writing, from the Code Enforcement Officer/Building Inspector for an installation on a second layer of roof covering.
- E. The proposed solar installation shall create a gravity roof load of no more than five pounds per square foot for a photovoltaic (PV) system.
- F. All equipment and systems must be in full compliance with all current National Electrical Code (NEC) and New York State Building Code requirements.
- G. A professional engineer or registered architect must also certify the load-bearing and wind load sufficiency of the proposed solar installation.
- H. A new survey is not required, but if the solar energy system is proposed for an accessory structure on a residential property, the applicant shall provide an existing survey and demonstrate that the accessory structure is legal.
- I. Building-integrated solar energy systems shall not be more than three feet from the building wall, and in no instance shall any part of the system extend beyond the roofline or parapet wall.
- J. Ground-mounted solar energy systems shall be subject to the following setback requirements:
 - (1) R1 and R2 Districts: front yard: 125 feet; side yard: 30 feet; and backyard: 30 feet.
 - (2) CO1, CO2, LI, and SLI Districts: See §§ 247-12 to 247-15 for the established setback (front yard, side yard and back yard) requirements in prospective zoning districts.
- K. The location of said solar energy system shall be located only in the side or rear yard.
- L. The orientation of said solar energy system shall not be pointed directly at any adjoining residential dwelling.

- M. The height of said solar energy system shall not exceed 15 feet when oriented at maximum tilt.
- N. The total surface area of said solar energy system on a lot which is two acres or less shall not exceed 600 square feet.
- O. The total footprint (see definition of "footprint of minor solar energy system, ground-mounted" in § 247-68.17) of said solar energy system on a lot which is greater than two acres shall not exceed 2.5% of the total square footage of the entire lot.

SECTION 247-68.21: SITE PLAN REVIEW REQUIREMENTS FOR LARGE-SCALE SOLAR ENERGY SYSTEMS.

- A. Applicants for approval to place, construct, and make a major modification to a large-scale solar energy system within the boundaries of the Town shall submit an application for site plan review as provided in Section 247-54 of the Town Code. In addition to the standard requirements in other articles of Chapter 247 of the Town Code, Zoning, the following information shall be contained in the application:
 - (1) Utility interconnection data and a copy of written notification to the utility of the proposed interconnection.
 - (2) One- or three-line electrical diagram detailing the solar energy system installation, associated components, and electrical interconnection methods, with all disconnects and overcurrent devices.
 - (3) Plans and drawings of the solar energy system installation signed by a professional engineer registered in New York State showing the proposed layout of the entire solar energy system along with a description of all components, whether on site or off site, existing vegetation and proposed clearing and grading of all sites involved, and utility lines, both above and below ground, on the site and adjacent to the site.
 - (4) Property lot lines and the location and dimensions of all existing structures and uses on site within 500 feet of the solar panels.
 - (5) Proposed fencing and/or screening for said project.
 - (6) The footprint of the large-scale solar system, outlined in accordance with the definition of "footprint" found in § 247-68.17, Definitions, article, must be provided. A calculation determining total acreage within the footprint must also be provided.
 - (7) A decommissioning plan to ensure the proper removal of large-scale solar energy systems is to be submitted to the Building Department for approval and must specify that after the large-scale solar energy system is no longer in use (as determined by the owner/operator or the Code Enforcement Officer/Building Inspector), it shall be removed by the applicant or any subsequent owner. The plan shall demonstrate how the removal of all infrastructure and restoration shall be conducted to return the parcel to its original state prior to construction. The plan shall also include an expected time line for execution and a cost estimate for decommissioning prepared by a professional engineer or qualified contractor.

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Cost estimates shall take inflation into consideration and be revised every five years during operation of the system. Removal of the large-scale solar energy system must be completed in accordance with the approved decommissioning plan and the standards provided as follows:

- (a) All structures and foundations associated with the large-scale solar energy systems shall be removed to a depth of 36 inches;
- (b) All disturbed ground surfaces shall be restored to original conditions, including topsoil and seeding as necessary;
- (c) All electrical systems shall be properly disconnected, and all cables and wiring buried less than 36 inches in depth shall be removed; and
- (d) A bond or other approved security shall be provided to cover the cost of removal and restoration of the area impacted by the solar energy system. Security shall be in an amount equal to 150% of the construction estimate as presented in the approved decommissioning plan.

SECTION 247-68.22: LARGE-SCALE SOLAR ENERGY SYSTEMS DESIGN CRITERIA.

A. Design of large-scale solar energy systems shall meet the following conditions:

- (1) Setbacks. Any utility-scale solar energy system shall adhere to the following setbacks:
 - (a) A minimum of 200 feet from any property lot line.
 - (b) A minimum of 250 feet from any building or structure on any adjacent lot.
 - (c) A minimum of 500 feet from any dwelling.
 - (d) A minimum of 200 feet from any public road or railroad (measured from the road right-of-way or property line).
 - (e) A minimum of 750 feet from all property lot lines bordering a school or public park.
- (2) Maximum overall height. The height of a large-scale solar energy system shall not exceed 20 feet when oriented at maximum tilt.
- (3) Number of large-scale solar energy systems allowed per lot. There shall be allowed only one large-scale solar energy system per lot.
 - (a) Minimum lot area shall be 15 acres.
 - (b) Maximum lot area shall be 100 acres.
 - (c) The large-scale solar energy system proposed to be located in the CO2 Medium Commercial, LI Light Industrial or SLI Special Light Industrial Zoning Districts shall be subject to a maximum lot coverage area of 25% of the total acreage of property owned or leased on which proposed solar energy system is located, as calculated per the definition of "footprint" found in § 247-68.17 of this article.
- (4) All structures and devices used to support solar collectors shall be non-reflective and/or painted a subtle or earth-tone color.
- (5) All transmission lines and wiring associated with a large-scale solar energy system shall be buried and include necessary encasements in accordance with the National Electrical Code and Town requirements. The applicant is required to show the locations of all proposed overhead and underground electric utility lines,

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including substations and junction boxes and other electrical components for the project on the site plan.

- B. After completion of a large-scale solar energy system, the applicant shall provide to the Code Enforcement Officer/Building Inspector a post-construction certification from a professional engineer registered in New York State that the project complies with applicable codes and industry practices and has been constructed and is operating according to the design plans.
- C. Compliance with regulatory agencies. The applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county, and local agencies having jurisdiction and approval related to the completion of a large-scale solar energy system.
- D. Security fencing: Fencing around the footprint of the large-scale solar energy system must be installed, and all area within that fencing is included in the footprint.

SECTION 247-68.23: MAINTENANCE; PROCEDURES; FEES.

- A. Removal. All solar energy systems shall be dismantled and removed immediately from a lot when the solar energy system has been deemed inoperative or abandoned by the Code Enforcement Officer/Building Inspector for a period of more than 365 days at the cost of the owner. If the owner does not dismantle and remove said solar energy system as required, the Town Board may, after a hearing at which the owner shall be given an opportunity to be heard and present evidence, dismantle and remove said facility and place the cost of removal to the security assigned to the project.
- B. Determination of abandonment or inoperability. A determination of the abandonment or inoperability of a solar energy system shall be made by the Code Enforcement Officer/Building Inspector, who shall provide the owner with written notice by personal service or certified mail. Any appeal by the owner of the Code Enforcement Officer/Building Inspector's determination of abandonment or inoperability shall be filed with the Zoning Board of Appeals within 30 days of the Code Enforcement Officer/Building Inspector causing personal service or mailing, certified mail, his written determination, and the Board shall hold a hearing on same. The filing of an appeal does not stay the following time frame unless the Zoning Board of Appeals or a court of competent jurisdiction grants a stay or reverses said determination. At the earlier of the 366 days from the date of determination of abandonment or inoperability without reactivation or upon completion of dismantling and removal, any approvals for the solar energy system shall automatically expire.
- C. Special Use Permit.
 - (1) All applications shall be subject to Site plan review and approval by the Planning Board under Section 247-54, which shall include environmental review under SEQRA and a public hearing. See Section 247-54, Site plan review; performance and design standards.
 - (2) A Special Use Permit issued by the Town Board is required upon approval of the

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site plan and is subject to an annual review by the Town Board. Town Board review will be undertaken to ensure that all provisions listed herein are being adhered to. The Town Board will have discretion to revoke the special use permit due to noncompliance and establish a time frame to correct the violation/violations.

- D. Application and annual fees. The fee for a large-scale solar energy system shall be as described in the Town of Pendleton Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time.
- E. Any changes or alterations post-construction to a large-scale energy system shall be done only by application to amend the site plan approval, subject to all requirements of this code.

SECTION 247-68.24: INTERPRETATION; CONFLICT WITH OTHER LAWS.

In their interpretation and application, the provisions of this article shall be held to be minimum requirements adopted for the promotion of the public health, safety and general welfare. It is not intended to interfere with, abrogate, or annul other rules, regulations or laws, provided that whenever the requirements of this article are at a variance with the requirements of any other lawfully adopted regulations, rules or laws, the most restrictive, or those which impose the highest standards, shall govern.

SECTION 247-68.25: SEVERABILITY.

If any section, subsection, phrase, sentence, or other portion of this article is for any reason held invalid, void, unconstitutional, or unenforceable by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

Section 45: Chapter 247, Article IX is hereby REPEALED and Chapter 247, Article X is amended to read in its entirety as follows:

ARTICLE X: BUILDING DEPARTMENT ADMINISTRATION

Section 247-73: Building Code Administration and Fire Prevention.

A. PURPOSE AND INTENT.

This Chapter provides for the administration and enforcement of the New York State Uniform Fire Prevention and Building Code (“Uniform Code”) and the State Energy Conservation Construction Code (“Energy Code”) in the Town. This Chapter is adopted pursuant to § 10 of the Municipal Home Rule Law. Except as otherwise provided in the Uniform Code, other state law, or other section of this Chapter, all buildings, structures, and premises, regardless of use or occupancy, are subject to the provisions of this Chapter.

B. DEFINITIONS.

As used in this Chapter, the following terms shall have the meanings indicated:

BUILDING PERMIT

A permit issued by the Code Enforcement Officer/Building Inspector pursuant to § 247-73(D) of this Chapter. The term “building permit” shall also include a Building Permit which is renewed, amended or extended pursuant to any provision of this Chapter.

CODE ENFORCEMENT OFFICER/BUILDING INSPECTOR

The Code Enforcement Officer/Building Inspector appointed pursuant to § 247-73(C)(2) of this Chapter, charged with the responsibility and authority to execute all Town ordinances.

CERTIFICATE OF OCCUPANCY/CERTIFICATE OF COMPLIANCE

A certificate issued by the Code Enforcement Officer/Building Inspector pursuant to § 247-73(G) of this Chapter.

CODE ENFORCEMENT PERSONNEL

The Code Enforcement Officer/Building Inspector and all inspectors.

COMPLIANCE ORDER

An order issued by the Code Enforcement Officer/Building Inspector pursuant to § 247-73(O)(1) of this Chapter.

ENERGY CODE

The State Energy Conservation Construction Code, as currently in effect and as hereafter amended from time to time.

INSPECTOR

PENDING APPROVAL

An inspector appointed pursuant to § 247-73(C)(4) of this Chapter.

OPERATING PERMIT

A permit issued by the Code Enforcement Officer/Building Inspector pursuant to § 247-73(J) of this Chapter. The term "operating permit" shall also include an Operating Permit which is renewed, amended or extended pursuant to any provision of this Chapter.

PERMIT HOLDER

The person to whom a Building Permit or Operating Permit has been issued.

PERSON

An individual, corporation, limited liability company, partnership, limited partnership, business trust, estate, trust, association, or any other legal or commercial entity of any kind or description.

STOP-WORK ORDER

An order issued by the Code Enforcement Officer/Building Inspector pursuant to § 247-73(F) of this Chapter.

TEMPORARY CERTIFICATE

A certificate issued by the Code Enforcement Officer/Building Inspector pursuant to § 247-73(G)(4) of this Chapter.

TOWN

The Town of Pendleton.

UNIFORM CODE

The New York State Uniform Fire Prevention and Building Code, as currently in effect and as hereafter amended from time to time.

C. CODE ENFORCEMENT OFFICER/BUILDING INSPECTOR AND INSPECTORS.

- (1) The office of Code Enforcement Officer/Building Inspector is hereby created. The Code Enforcement Officer/Building Inspector shall administer and enforce all the provisions of the Uniform Code, the Energy Code and this Chapter and shall have the following powers and duties:
 - (a) To receive, review, and approve or disapprove applications for Building Permits, Certificates of occupancy/Certificates of compliance, Temporary Certificates and Operating Permits, and the plans, specifications and construction documents submitted with such applications;
 - (b) Upon approval of such applications, to issue Building Permits, Certificates of occupancy/Certificates of compliance, Temporary Certificates and Operating Permits, and to include in such permits and certificates terms and conditions as the Code Enforcement Officer/Building Inspector may determine to be appropriate;

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- (c) To conduct construction inspections, inspections to be made prior to the issuance of Certificates of occupancy/Certificates of compliance, Temporary Certificates and Operating Permits, fire safety and property maintenance inspections, inspections incidental to the investigation of complaints, and all other inspections required or permitted under any provision of this Chapter;
 - (d) To issue Stop-Work Orders;
 - (e) To review and investigate complaints;
 - (f) To issue compliance orders pursuant to § 247-73(O)(1) of this Chapter;
 - (g) To maintain records;
 - (h) To collect fees as set by the Town Board;
 - (i) To pursue administrative enforcement actions and proceedings;
 - (j) In consultation with the Town Attorney, to pursue such legal actions and proceedings as may be necessary to enforce the Uniform Code, the Energy Code and this Chapter, or to abate or correct conditions not in compliance with the Uniform Code, the Energy Code or this Chapter; and
 - (k) To exercise all other powers and fulfill all other duties conferred upon the Code Enforcement Officer/Building Inspector by this Chapter.
- (2) The Code Enforcement Officer/Building Inspector shall be appointed by the Town Board. The Code Enforcement Officer/Building Inspector shall possess background experience related to building construction or fire prevention and shall, within the time prescribed by law, obtain such basic training, in-service training, advanced in-service training, and any other training as the State of New York shall require for Code Enforcement Personnel, and the Code Enforcement Officer/Building Inspector shall obtain certification from the State Fire Administrator pursuant to the Executive Law and the regulations promulgated thereunder.
- (3) In the event that the Code Enforcement Officer/Building Inspector is unable to serve as such for any reason, an individual shall be appointed by the Town Board to serve as Acting Code Enforcement Officer/Building Inspector. The Acting Code Enforcement Officer/Building Inspector shall, during the term of his or her appointment, exercise all powers and fulfill all duties conferred upon the Code Enforcement Officer/Building Inspector by this Chapter.
- (4) One or more Inspectors may be appointed by the Town Board to act under the supervision and direction of the Code Enforcement Officer/Building Inspector and to assist the Code Enforcement Officer/Building Inspector in the exercise of the powers and fulfillment of the duties conferred upon the Code Enforcement Officer/Building Inspector by this Chapter. Each Inspector shall, within the time prescribed by law, obtain such basic training, in-service training, advanced in-service training, and any other training as the State of New York shall require for Code Enforcement Personnel, and each Inspector shall obtain certification from the State Fire Administrator pursuant to the Executive Law and the regulations promulgated thereunder.

- (5) The compensation for the Code Enforcement Officer/Building Inspector and Inspectors shall be fixed from time to time by the Town Board.

D. BUILDING PERMITS.

- (1) Building Permit required. Except as otherwise provided in Subsection (2) below, a Building Permit shall be required for any work which must conform to the Uniform Code and/or the Energy Code, including, but not limited to, the construction, enlargement, alteration, improvement, removal, relocation, or demolition of any building or structure or any portion thereof, and the installation of a solid-fuel-burning heating appliance, chimney, or flue in any dwelling unit. No person shall commence any work for which a Building Permit is required without first having obtained the same from the Code Enforcement Officer/Building Inspector.
- (2) Exemptions. No Building Permit shall be required for work in any of the following categories:
- (a) Construction or installation of one-story detached structures associated with Single-Family Detached, Two-Family, or Multifamily Residences which are used for tool and storage sheds, playhouses or similar uses, provided the gross floor area does not exceed 50 square feet;
 - (b) Installation of swings and other playground equipment associated with a Single-Family Detached, Two-Family, or Multifamily Residence
 - (c) Installation of swimming pools associated with a Single-Family Detached, Two-Family, or Multifamily Residence where such pools are designed for a water depth of less than 24 inches and are installed entirely above ground;
 - (d) Construction of retaining walls, unless such walls support a surcharge or impound Class I, II, or IIIA liquids;
 - (e) Construction of temporary motion picture, television and theater stage sets and scenery;
 - (f) Installation of window awnings supported by an exterior wall of a Single-Family Detached, Two-Family, or Multifamily Residence;
 - (g) Installation of partitions or movable cases less than five feet, nine inches in height;
 - (h) Painting, wallpapering, tiling, carpeting, or other similar finish work;
 - (i) Installation of listed portable electrical, plumbing, heating, ventilation, or cooling equipment or appliances;
 - (j) Replacement of any equipment, provided the replacement does not alter the equipment's listing or render it inconsistent with the equipment's original specifications; or
 - (k) Repairs, provided that such repairs do not involve:
 - (1) The removal or cutting away of a load-bearing wall, partition, or portion thereof, or of any structural beam or load-bearing component;

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- (2) The removal or change of any required means of egress, or the rearrangement of parts of a structure in a manner which affects egress;
 - (3) The enlargement, alteration, replacement or relocation of any building system; or
 - (4) The removal from service of all or part of a fire protection system for any period of time.
- (3) Exemption not deemed authorization to perform non-compliant work. The exemption from the requirement to obtain a building permit for work in any category set forth in Subsection (2) above shall not be deemed an authorization for work to be performed in violation of the Uniform Code or the Energy Code.
- (4) Applications for Building Permits. Applications for a building permit shall be made in writing on a form provided by or otherwise acceptable to the Code Enforcement Officer/Building Inspector. The application shall be signed by the owner of the property where the work is to be performed or an authorized agent of the owner. The application shall include such information as the Code Enforcement Officer/Building Inspector deems sufficient to permit a determination by him or her that the intended work complies with all applicable requirements of the Uniform Code and the Energy Code. The application shall include or be accompanied by the following information and documentation:
- (a) A description of the proposed work;
 - (b) The Tax Map number and the street address of the premises where the work is to be performed;
 - (c) The occupancy classification of any affected building or structure;
 - (d) Where applicable, a statement of special inspections prepared in accordance with the provisions of the Uniform Code; and
 - (e) At least two sets of construction documents (drawings and/or specifications) which:
 - (1) Define the scope of the proposed work;
 - (2) Are prepared by a New York State registered architect or licensed professional engineer where so required by the Education Law;
 - (3) Indicate with sufficient clarity and detail the nature and extent of the work proposed;
 - (4) Substantiate that the proposed work will comply with the Uniform Code and the Energy Code; and
 - (5) Where applicable, include a site plan that shows any existing and proposed buildings and structures on the site, the location of any existing or proposed well or septic system, the location of the intended work, and the distances between the buildings and structures and the lot lines.
- (5) Construction documents. Construction documents will not be accepted as part of an application for a Building Permit unless they satisfy the requirements set forth in Subsection 4 above. Construction documents which are accepted as part of the

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application for a Building Permit shall be marked as accepted by the Code Enforcement Officer/Building Inspector in writing or by stamp. One set of the accepted construction documents shall be retained by the Code Enforcement Officer/Building Inspector, and one set of the accepted construction documents shall be returned to the applicant to be kept at the work site so as to be available for use by Code Enforcement Personnel. However, the return of a set of accepted construction documents to the applicant shall not be construed as authorization to commence work, nor as an indication that a Building Permit will be issued. Work shall not be commenced unless and until and unless a Building Permit is issued.

- (6) Issuance of Building Permits. An application for a Building Permit shall be examined to ascertain whether the proposed work is in compliance with the applicable requirements of the Uniform Code and Energy Code. The Code Enforcement Officer/Building Inspector shall issue a building permit if the proposed work is in compliance with the applicable requirements of the Uniform Code and Energy Code.
- (7) Building Permits to be displayed. Building Permits shall be visibly displayed at the work site and shall remain visible until the authorized work has been completed.
- (8) Work to be done in accordance with construction documents. All work shall be performed in accordance with the construction documents which were submitted with and accepted as part of the application for the Building Permit. The Building Permit shall contain such a directive. The Permit Holder shall immediately notify the Code Enforcement Officer/Building Inspector of any change occurring during the course of the work, and the Building Permit shall contain such a directive. If the Code Enforcement Officer determines that such change warrants a new or amended Building Permit, such change shall not be made until and unless a new or amended Building Permit reflecting such change is issued.
- (9) Time limits. Building Permits shall become invalid unless the authorized work is commenced within six months following the date of issuance. Building Permits shall expire 12 months after the date of issuance. A Building Permit which has become invalid or which has expired pursuant to this subsection may be renewed upon application by the Permit Holder, payment of the applicable fee, and approval of the application by the Code Enforcement Officer/Building Inspector.
- (10) Revocation or suspension of building permits. If the Code Enforcement Officer/Building Inspector determines that a Building Permit was issued in error because of incorrect, inaccurate or incomplete information, or that the work for which a Building Permit was issued violates the Uniform Code or the Energy Code, the Code Enforcement Officer/Building Inspector shall revoke the Building Permit or suspend the Building Permit until such time as the Permit Holder demonstrates that (1) all work then completed is in compliance with all applicable provisions of the Uniform Code and the Energy Code and (2) all work then

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proposed to be performed shall be in compliance with all applicable provisions of the Uniform Code and the Energy Code.

- (11) Fee. The fee specified in or determined in accordance with the provisions set forth in § 247-73(P) (Fees) of this Chapter must be paid at the time of submission of an application for a Building Permit, for an amended Building Permit, or for renewal of a Building Permit.

E. CONSTRUCTION INSPECTIONS.

- (1) Work to remain accessible and exposed. Work shall remain accessible and exposed until inspected and accepted by the Code Enforcement Officer/Building Inspector or by an Inspector authorized by the Code Enforcement Officer/Building Inspector. The Permit Holder shall notify the Code Enforcement Officer/Building Inspector when any element of work described in Subsection (2) of this section is ready for inspection.
- (2) Elements of work to be inspected. The following elements of the construction process shall be inspected, where applicable:
- (a) Work site, prior to the issuance of a building permit;
 - (b) Footing and foundation;
 - (c) Preparation for concrete slab;
 - (d) Framing;
 - (e) Building systems, including underground and rough-in;
 - (f) Fire-resistant construction;
 - (g) Fire-resistant penetrations;
 - (h) Solid-fuel-burning heating appliances, chimneys, flues or gas vents;
 - (i) Energy Code compliance; and
 - (j) A final inspection after all work authorized by the building permit has been completed.
- (3) Inspection results. After inspection in accordance with this subsection, the work or a portion thereof shall be noted as satisfactory as completed, or the Permit Holder shall be notified as to where the work fails to comply with the Uniform Code or Energy Code. Work not in compliance with any applicable provision of the Uniform Code or Energy Code shall remain exposed until such work shall have been brought into compliance with all applicable provisions of the Uniform Code and the Energy Code, re-inspected, and found satisfactory as completed.
- (4) Fee. The fee specified in or determined in accordance with the provisions set forth in § 247-73(P) (Fees) of this Chapter must be paid prior to or at the time of each inspection performed pursuant to this section.

F. STOP-WORK ORDERS.

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- (1) Authority to issue. The Code Enforcement Officer/Building Inspector is authorized to issue Stop-Work Orders pursuant to this section. The Code Enforcement Officer/Building Inspector shall issue a Stop-Work Order to halt:
 - (a) Any work that is determined by the Code Enforcement Officer/Building Inspector to be contrary to any provision of the applicable building laws, ordinances, rules or regulations or not in conformity with the provisions of the application, and without regard to whether such work is or is not work for which a Building Permit is required, and without regard to whether a Building Permit has or has not been issued for such work; or
 - (b) Any work that is being conducted in a dangerous or unsafe manner in the opinion of the Code Enforcement Officer/Building Inspector, without regard to whether such work is or is not work for which a Building Permit is required, and without regard to whether a Building Permit has or has not been issued for such work; or
 - (c) Any work for which a Building Permit is required which is being performed without the required Building Permit, or under a Building Permit that has become invalid, has expired, or has been suspended or revoked.

- (2) Content of Stop-Work Orders. Stop-Work Orders shall:
 - (a) Be in writing;
 - (b) Be dated and signed by the Code Enforcement Officer/Building Inspector;
 - (c) State the reason or reasons for issuance; and
 - (d) If applicable, state the conditions which must be satisfied before work will be permitted to resume.

- (3) Service of Stop-Work Orders. The Code Enforcement Officer/Building Inspector shall cause the Stop-Work Order, or a copy thereof, to be served on the owner of the affected property (and, if the owner is not the Permit Holder, on the Permit Holder) personally or by certified mail. The Code Enforcement Officer/Building Inspector shall be permitted, but not required, to cause the Stop-Work Order, or a copy thereof, to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other person taking part or assisting in work affected by the Stop-Work Order, personally or by certified mail; provided, however, that failure to serve any person mentioned in this subsection shall not affect the efficacy of the Stop-Work Order.

- (4) Effect of Stop-Work Order. Upon the issuance of a Stop-Work Order, the owner of the affected property, the Permit Holder and any other person performing, taking part in or assisting in the work shall immediately cease all work which is the subject of the Stop-Work Order.

- (5) Remedy not exclusive. The issuance of a Stop-Work Order shall not be the exclusive remedy available to address any event described in Subsection (1) above, and the authority to issue a Stop-Work Order shall be in addition to, and not in substitution for or limitation of, the right and authority to pursue any other

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remedy or impose any other penalty under § 247-73(O) (Enforcement; penalties for offenses) of this Chapter or under any other applicable local or state law. Any such other remedy or penalty may be pursued at any time, whether prior to, at the time of, or after the issuance of a Stop-Work Order.

G. CERTIFICATES OF OCCUPANCY/CERTIFICATES OF COMPLIANCE

- (1) Certificate of occupancy/Certificate of compliance required. A Certificate of occupancy/Certificate of compliance shall be required for any work which is the subject of a Building Permit and for all structures, buildings, or portions thereof which are converted from one use or occupancy classification or sub classification to another. Permission to use or occupy a building or structure, or portion thereof, for which a Building Permit was previously issued shall be granted only by issuance of a Certificate of occupancy/Certificate of compliance.
- (2) Issuance of Certificate of occupancy/Certificate of compliance. The Code Enforcement Officer/Building Inspector shall issue a Certificate of occupancy/Certificate of compliance if the work which was the subject of the Building Permit was completed in accordance with all applicable provisions of the Uniform Code and Energy Code and, if applicable, the structure, building or portion thereof that was converted from one use or occupancy classification or sub classification to another complies with all applicable provisions of the Uniform Code and Energy Code. The Code Enforcement Officer/Building Inspector or an Inspector authorized by the Code Enforcement Officer/Building Inspector shall inspect the building, structure, or work prior to the issuance of a Certificate of occupancy/Certificate of compliance. In addition, where applicable, the following documents, prepared in accordance with the provisions of the Uniform Code by such person or persons as may be designated by or otherwise acceptable to the Code Enforcement Officer/Building Inspector, at the expense of the applicant for the Certificate of occupancy/Certificate of compliance, shall be provided to the Code Enforcement Officer/Building Inspector prior to issuance of the Certificate of occupancy/Certificate of compliance:
 - (a) A written statement of structural observations and/or a final report of special inspections; and
 - (b) Flood hazard certifications.
- (3) Contents of Certificate of occupancy/Certificate of compliance. A Certificate of occupancy/Certificate of compliance shall contain the following information:
 - (a) The Building Permit number, if any;
 - (b) The date of issuance of the Building Permit, if any;
 - (c) The name, address and Tax Map number of the property;
 - (d) If the Certificate of occupancy/Certificate of compliance is not applicable to an entire structure, a description of that portion of the structure for which the Certificate of occupancy/Certificate of compliance is issued;
 - (e) The use and occupancy classification of the structure;
 - (f) The type of construction of the structure;

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- (g) The assembly occupant load of the structure, if any;
 - (h) If an automatic sprinkler system is provided, a notation as to whether the sprinkler system is required;
 - (i) Any special conditions imposed in connection with the issuance of the Building Permit; and
 - (j) The signature of the Code Enforcement Officer/Building Inspector issuing the Certificate of occupancy/Certificate of compliance and the date of issuance.
- (4) Temporary Certificate. The Code Enforcement Officer/Building Inspector shall be permitted to issue a Temporary Certificate allowing the temporary occupancy of a building or structure, or a portion thereof, prior to completion of the work which is the subject of a Building Permit. However, in no event shall the Code Enforcement Officer/Building Inspector issue a Temporary Certificate unless the Code Enforcement Officer/Building Inspector determines (1) that the building or structure, or the portion thereof covered by the Temporary Certificate, may be occupied safely, (2) that any fire- and smoke-detecting or fire protection equipment which has been installed is operational, and (3) that all required means of egress from the building or structure have been provided. The Code Enforcement Officer/Building Inspector may include in a Temporary Certificate such terms and conditions as he or she deems necessary or appropriate to ensure safety or to further the purposes and intent of the Uniform Code. A Temporary Certificate shall be effective for a period of time, not to exceed six months, which shall be determined by the Code Enforcement Officer/Building Inspector and specified in the Temporary Certificate. During the specified period of effectiveness of the Temporary Certificate, the Permit Holder shall undertake to bring the building or structure into full compliance with all applicable provisions of the Uniform Code and the Energy Code.
- (5) Revocation or suspension of certificates. If the Code Enforcement Officer/Building Inspector determines that a Certificate of occupancy/Certificate of compliance or a Temporary Certificate was issued in error because of incorrect, inaccurate, or incomplete information, and if the relevant deficiencies are not corrected to the satisfaction of the Code Enforcement Officer/Building Inspector within such period of time as shall be specified by the Code Enforcement Officer/Building Inspector, he or she shall revoke or suspend such certificate.
- (6) Fee. The fee specified in or determined in accordance with the provisions set forth in § 247-73(P) (Fees) of this Chapter must be paid at the time of submission of an application for a Certificate of occupancy/Certificate of compliance or for a Temporary Certificate.

H. NOTIFICATION REGARDING FIRE OR EXPLOSION.

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The chief of any fire department providing fire-fighting services for a property within the Town shall promptly notify the Code Enforcement Officer/Building Inspector of any fire or explosion involving any structural damage, fuel-burning appliance, chimney, or gas vent.

I. UNSAFE BUILDINGS AND STRUCTURES.

Unsafe structures and equipment in this Town shall be identified and addressed in accordance with the procedures established by § 247-35 of this Chapter, as now in effect or as hereafter amended from time to time.

J. OPERATING PERMITS.

- (1) Operating Permit required.
 - (a) Operating Permits shall be required for conducting the activities or using the categories of buildings listed below:
 - (1) Manufacturing, storing, or handling hazardous materials in quantities exceeding those listed in Tables 2703.1.1(1), 2703.1.1(2), 2703.1.1(3) or 2703.1.1(4) in the publication entitled "Fire Code of New York State" and incorporated by reference in 19 NYCRR 1225.1;
 - (2) Hazardous processes and activities, including, but not limited to, commercial and industrial operations which produce combustible dust as a byproduct, fruit and crop ripening, and waste handling;
 - (3) Use of pyrotechnic devices in assembly occupancies;
 - (4) Buildings containing one or more areas of public assembly with an occupant load of 100 persons or more; and
 - (5) Buildings whose use or occupancy classification may pose a substantial potential hazard to public safety, as determined by resolution adopted by the Town Board.
 - (b) Any person who proposes to undertake any activity or to operate any type of building listed in this Subsection (1) shall be required to obtain an Operating Permit prior to commencing such activity or operation.
- (2) Applications for Operating Permits. An application for an Operating Permit shall be in writing on a form provided by or otherwise acceptable to the Code Enforcement Officer/Building Inspector. Such application shall include such information as the Code Enforcement Officer/Building Inspector deems sufficient to permit a determination by him or her that quantities, materials, and activities conform to the requirements of the Uniform Code. If the Code Enforcement Officer/Building Inspector determines that tests or reports are necessary to verify conformance, such tests or reports shall be performed or provided by such person or persons as may be designated by or otherwise acceptable to the Code Enforcement Officer/Building Inspector, at the expense of the applicant.
- (3) Inspections. The Code Enforcement Officer/Building Inspector or an Inspector authorized by the Code Enforcement Officer/Building Inspector shall inspect the subject premises prior to the issuance of an Operating Permit.

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- (4) Multiple activities. In any circumstance in which more than one activity listed in Subsection (1) above is to be conducted at a location, the Code Enforcement Officer/Building Inspector may require a separate Operating Permit for each such activity, or the Code Enforcement Officer/Building Inspector may, in his or her discretion, issue a single Operating Permit to apply to all such activities.
- (5) Duration of Operating Permits. Operating Permits shall be issued for such period of time, not to exceed one year in the case of any Operating Permit issued for an area of public assembly and not to exceed three years in any other case, as shall be determined by the Code Enforcement Officer/Building Inspector to be consistent with local conditions. The effective period of each Operating Permit shall be specified therein. An Operating Permit may be reissued or renewed upon application to the Code Enforcement Officer/Building Inspector, payment of the applicable fee, and approval of such application by the Code Enforcement Officer/Building Inspector.
- (6) Revocation or suspension of Operating Permits. If the Code Enforcement Officer/Building Inspector determines that any activity or building for which an Operating Permit was issued does not comply with any applicable provision of the Uniform Code, such Operating Permit shall be revoked or suspended.
- (7) Fee. The fee specified in or determined in accordance with the provisions set forth in § 247-73(P) (Fees) of this Chapter must be paid at the time of submission of an application for an Operating Permit, for an amended Operating Permit, or for reissue or renewal of an Operating Permit.

K. FIRE SAFETY AND PROPERTY MAINTENANCE INSPECTIONS.

- (1) Inspections required. Fire safety and property maintenance inspections of buildings and structures shall be performed by the Code Enforcement Officer/Building Inspector or an Inspector designated by the Code Enforcement Officer/Building Inspector at the following intervals:
 - (a) Fire safety and property maintenance inspections of buildings or structures which contain an area of public assembly shall be performed at least once every 12 months.
 - (b) Fire safety and property maintenance inspections of buildings or structures being occupied as dormitories shall be performed at least once every 12 months.
 - (c) Fire safety and property maintenance inspections of all Multifamily Residences not included in this Subsection (1), and all nonresidential buildings, structures, uses, and occupancies not included in this Subsection (1), shall be performed at least once every 36 months.
- (2) Inspections permitted. In addition to the inspections required by Subsection (1) above, a fire safety and property maintenance inspection of any building,

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structure, use, or occupancy, or of any Dwelling Unit, may also be performed by the Code Enforcement Officer/Building Inspector or an Inspector designated by the Code Enforcement Officer/Building Inspector at any time upon:

- (a) The request of the owner of the property to be inspected or an authorized agent of such owner;
- (b) Receipt by the Code Enforcement Officer/Building Inspector of a written statement alleging that conditions or activities failing to comply with the Uniform Code or Energy Code exist; or
- (c) Receipt by the Code Enforcement Officer/Building Inspector of any other information, reasonably believed by the Code Enforcement Officer to be reliable, giving rise to reasonable cause to believe that conditions or activities failing to comply with the Uniform Code or Energy Code exist; provided, however, that nothing in this Subsection (2) shall be construed as permitting an inspection under any circumstances under which a court order or warrant permitting such inspection is required, unless such court order or warrant shall have been obtained.

(3) New York State Office of Fire Prevention and Control (OFPC) inspections. Nothing in this Section 247-73(K) or in any other provision of this Chapter shall supersede, limit, or impair the powers, duties, and responsibilities of OFPC and the New York State Fire Administrator under Executive Law § 156-e and Education Law § 807-b. Notwithstanding any other provision of this Section to the contrary:

- (a) The Code Enforcement Officer/Building Inspector shall not perform fire safety and property maintenance inspections of a building or structure which contains an area of public assembly as required in this this Section 247-73(K) if OFPC performs fire safety and property maintenance inspections of such building or structure at least once every 12 months;
- (b) The Code Enforcement Officer/Building Inspector shall not perform fire safety and property maintenance inspections of a building or structure occupied as a dormitory as required in this this Section 247-73(K) if OFPC performs fire safety and property maintenance inspections of such building or structure at least once every 12 months;
- (c) The Code Enforcement Officer/Building Inspector shall not perform fire safety and property maintenance inspections of a Multifamily Residences not included in this Section 247-73(K) if OFPC performs fire safety and property maintenance inspections of such Multifamily Residences at intervals not exceeding the interval specified in Subsection 1(C) above; and
- (d) The Code Enforcement Officer/Building Inspector shall not perform fire safety and property maintenance inspections of a nonresidential building, structure, use, or occupancy not included this Section 247-73(K) if OFPC performs fire safety and property maintenance inspections of such nonresidential building, structure, use, or occupancy at intervals not exceeding the interval specified in Subsection 1(C) above.

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- (e) Fee. The fee specified in or determined in accordance with the provisions set forth in § 247-73(P) (Fees) of this Chapter must be paid prior to or at the time each inspection is performed pursuant to this section. This Subsection (3)(e) shall not apply to inspections performed by OFPC.

L. COMPLAINTS.

The Code Enforcement Officer/Building Inspector shall review and investigate complaints which allege or assert the existence of conditions or activities that fail to comply with the Uniform Code, the Energy Code, this Chapter, or any other local law, ordinance, or regulation adopted for administration and enforcement of the Uniform Code or the Energy Code. The process for responding to a complaint shall include such of the following steps as the Code Enforcement Officer/Building Inspector may deem appropriate:

- (1) Performing an inspection of the conditions and/or activities alleged to be in violation, and documenting the results of such inspection;
- (2) If a violation is found to exist, providing the owner of the affected property and any other person who may be responsible for the violation with notice of the violation and opportunity to abate, correct, or cure the violation, or otherwise proceeding in the manner described in § 247-73(O) (Enforcement; penalties for offenses) of this Chapter;
- (3) If appropriate, issuing a Stop-Work Order;
- (4) If a violation which was found to exist is abated or corrected, performing an inspection to ensure that the violation has been abated or corrected, preparing a final written report reflecting such abatement or correction, and filing such report with the complaint.

M. RECORDKEEPING.

- (1) The Code Enforcement Officer/Building Inspector shall keep permanent official records of all transactions and activities conducted by all Code Enforcement Personnel, including records of:
 - (a) All applications received, reviewed, and approved or denied;
 - (b) All plans, specifications, and construction documents approved;
 - (c) All Building Permits, Certificates of occupancy/Certificates of compliance, Temporary Certificates, Stop-Work Orders, and Operating Permits issued;
 - (d) All inspections and tests performed;
 - (e) All statements and reports issued;
 - (f) All complaints received;
 - (g) All investigations conducted;
 - (h) All other features and activities specified in or contemplated by § 247-73(D) through § 247-73(L), inclusive, of this Chapter; and
 - (i) All fees charged and collected.

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- (2) All such records shall be public records open for public inspection during normal business hours. All plans and records pertaining to buildings or structures, or appurtenances thereto, shall be retained for at least the minimum time period so required by state law and regulation.

N. PROGRAM REVIEW AND REPORTING.

- (1) The Code Enforcement Officer/Building Inspector shall annually submit to the Town Board a written report and summary of all business conducted by the Code Enforcement Officer/Building Inspector and the Inspectors, including a report and summary of all transactions and activities described in § 247-73(M) (Recordkeeping) of this Chapter and a report and summary of all appeals or litigation pending or concluded.
- (2) The Code Enforcement Officer/Building Inspector shall annually submit to the Secretary of State, on behalf of the Town, on a form prescribed by the Secretary of State, a report of the activities of the Town relative to administration and enforcement of the Uniform Code.
- (3) The Code Enforcement Officer/Building Inspector shall, upon request of the New York State Department of State, provide to the New York State Department of State, from the records and related materials the Town is required to maintain, excerpts, summaries, tabulations, statistics, and other information and accounts of the activities of the Town in connection with administration and enforcement of the Uniform Code.

O. ENFORCEMENT; PENALTIES FOR OFFENSES.

- (1) Compliance Orders. The Code Enforcement Officer/Building Inspector is authorized to order in writing the remedying of any condition or activity found to exist in, on, or about any building, structure, or premises in violation of the Uniform Code, the Energy Code, or this Chapter. Upon finding that any such condition or activity exists, the Code Enforcement Officer/Building Inspector shall issue a Compliance Order. The Compliance Order shall:
 - (a) Be in writing;
 - (b) Be dated and signed by the Code Enforcement Officer/Building Inspector;
 - (c) Specify the condition or activity that violates the Uniform Code, the Energy Code, or this Chapter;
 - (d) Specify the provision or provisions of the Uniform Code, the Energy Code, or this Chapter violated by the specified condition or activity;
 - (e) Specify the period of time which the Code Enforcement Officer/Building Inspector deems to be reasonably necessary for achieving compliance;
 - (f) Direct that compliance be achieved within the specified period of time; and
 - (g) State that an action or proceeding to compel compliance may be instituted if compliance is not achieved within the specified period of time.

The Code Enforcement Officer/Building Inspector shall cause the Compliance Order, or a copy thereof, to be served on the owner of the affected property

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- personally or by certified mail. The Code Enforcement Officer/Building Inspector shall be permitted, but not required, to cause the Compliance Order, or a copy thereof, to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other person taking part or assisting in work being performed at the affected property personally or by certified mail; provided, however, that failure to serve any person mentioned in this sentence shall not affect the efficacy of the Compliance Order.
- (2) Appearance tickets. The Code Enforcement Officer/Building Inspector and each Inspector are authorized to issue appearance tickets for any violation of the Uniform Code.
 - (3) Civil penalties. In addition to those penalties prescribed by state law, any person who violates any provision of the Uniform Code, the Energy Code or this Chapter, or any term or condition of any Building Permit, Certificate of occupancy/Certificate of compliance, Temporary Certificate, Stop-Work Order, Operating Permit, Compliance Order, or other notice or order issued by the Code Enforcement Officer/Building Inspector pursuant to any provision of this Chapter, shall be liable for a civil penalty of not more than \$250 for each day or part thereof during which such violation continues. The civil penalties provided by this Subsection (3) shall be recoverable in an action instituted in the name of the Town.
 - (4) Injunctive relief. An action or proceeding may be instituted in the name of the Town, in a court of competent jurisdiction, to prevent, restrain, enjoin, correct, or abate any violation of, or to enforce, any provision of the Uniform Code, the Energy Code, this Chapter, or any term or condition of any Building Permit, Certificate of occupancy/Certificate of compliance, Temporary Certificate, Stop-Work Order, Operating Permit, Compliance Order, or other notice or order issued by the Code Enforcement Officer/Building Inspector pursuant to any provision of this Chapter. In particular, but not by way of limitation, where the construction or use of a building or structure is in violation of any provision of the Uniform Code, the Energy Code, this Chapter, or any Stop-Work Order, Compliance Order, or other order obtained under the Uniform Code, the Energy Code or this Chapter, an action or proceeding may be commenced in the name of this Town, in the Supreme Court or in any other court having the requisite jurisdiction, to obtain an order directing the removal of the building or structure or an abatement of the condition in violation of such provisions. No action or proceeding described in this Subsection (4) shall be commenced without the appropriate authorization from the Town Board.
 - (5) Remedies not exclusive. No remedy or penalty specified in this § 247-73(O) shall be the exclusive remedy or penalty available to address any violation described in this Section, and each remedy or penalty specified in this Section shall be in addition to, and not in substitution for or limitation of, the other remedies or penalties specified in this Section, in § 247-73(F) (Stop-Work Orders) of this Chapter, in any other section of this Chapter, or in any other applicable law. Any

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remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy or penalty specified in this Section, in § 247-73(F) (Stop-Work Orders) of this Chapter, in any other section of this Chapter, or in any other applicable law. In particular, but not by way of limitation, each remedy and penalty specified in this section shall be in addition to, and not in substitution for or limitation of, the penalties specified in Subdivision (2) of § 382 of the Executive Law, and any remedy or penalty specified in this Section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any penalty specified in Subdivision (2) of § 382 of the Executive Law.

P. FEES.

The fees required pursuant to this Article X shall be as described in the Town of Pendleton Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time. The fees set forth in, or determined in accordance with, such Fee Schedule or amended Fee Schedule shall be charged and collected for the submission of applications, the issuance of Building Permits, amended Building Permits, renewed Building Permits, Certificates of occupancy/Certificates of compliance, Temporary Certificates, Operating Permits, fire safety and property maintenance inspections, and other actions of the Code Enforcement Officer/Building Inspector described in or contemplated by this Chapter.

Q. INTER-MUNICIPAL AGREEMENTS.

The Town Board may, by resolution, authorize the Town Supervisor to enter into an agreement, in the name of the Town, with other governments to carry out the terms of this Chapter, provided that such agreement does not violate any provision of the Uniform Code, the Energy Code, Part 1203 of Title 19 of the NYCRR, or any other applicable law.

Section 46: Chapter 247, Article XI of the Code is amended to read in its entirety as follows:

**ARTICLE XI: ZONING BOARD OF APPEALS AND PLANNING BOARD
ADMINISTRATION**

Section 247-74: Zoning Board of Appeals.

A. APPOINTMENT AND ORGANIZATION.

The Zoning Board of Appeals shall be appointed by the Town Board pursuant to the provisions of Town Law § 267. The Zoning Board of Appeals shall consist of five members. No appointment shall be valid unless the appointee is a resident of the Town. The Zoning Board of Appeals may prescribe rules for its affairs.

B. POWERS AND DUTIES.

The Zoning Board of Appeals shall have all the powers and duties prescribed by law and by this Chapter, which are more particularly specified as follows:

- (1) Interpretation. To decide any question involving the interpretation of any provision of this Chapter following an appeal filed by an aggrieved person from a decision made by the Code Enforcement Officer/Building Inspector or the Planning Board. This includes the determination of the exact location of any district boundary, if there is uncertainty with respect thereto.
- (2) Use Variances.
 - (a) The Zoning Board of Appeals, on appeal from the decision or determination of the Code Enforcement Officer/Building Inspector, shall have the power to grant use variances authorizing a use of the land otherwise prohibited by the terms of this Chapter.
 - (b) No use variance shall be granted by the Zoning Board of Appeals unless it finds, based on demonstration from the applicant, that:
 - (1) Under applicable zoning regulations the applicant is deprived of all economic use or benefit from the property in question, which deprivation must be established by competent financial evidence;
 - (2) The alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood;
 - (3) The requested use variance, if granted, will not alter the essential character of the neighborhood and will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
 - (4) The alleged hardship has not been self-created.
 - (c) The Zoning Board of Appeals, in granting a use variance, shall grant the minimum variance it deems necessary and adequate to address the

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unnecessary hardship of the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety, and welfare of the community.

(3) Area variances.

- (a) The Zoning Board of Appeals shall have the power, upon an appeal from a determination of the Code Enforcement Officer/Building Inspector, to grant area variances from the dimensional and physical requirements of this Chapter.
- (b) The Zoning Board of Appeals, in making a decision on an area variance application, shall consider the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community from such grant. The Zoning Board of Appeals shall consider:
 - (1) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
 - (2) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
 - (3) Whether the requested area variance is substantial;
 - (4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
 - (5) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision, but shall not necessarily preclude the granting of the area variance.
- (c) The Zoning Board of Appeals shall grant the minimum variance it deems necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety, and welfare of the community.

(4) Conditions. The Zoning Board of Appeals shall, in the granting either a use or area variance, has the authority to impose reasonable conditions and restrictions directly related to, and incidental to, the proposed use of the property, or the period of time such variance shall be in effect. Such conditions shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

(5) Expiration. Unless construction is commenced and diligently pursued within one year of the date of the granting of a variance, such variance shall become null and void, unless renewed upon application to the Zoning Board of Appeals.

C. PROCEDURE.

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- (1) The Zoning Board of Appeals shall act in strict accordance with procedure specified by law and by this Chapter. All meetings shall be open to the public. The Zoning Board of Appeals shall not act on any variance application or interpretation request without first holding a public hearing, notice of which shall be given by publication in the official newspaper of the Town at least five (5) days before the date of such hearing.
 - (a) In addition, the Zoning Board of Appeals shall send notice by mail, phone, or personal contact to all property owners as shown on the tax rolls of the Town who reside within 250 feet of all boundary lines of the premises for which such application is made. In the absence of bad faith or deliberate intent, the failure to send such notice to less than 50% of the property owners shall not invalidate the action of the Zoning Board of Appeals.
 - (b) If the applicant files with the Zoning Board of Appeals a signed consent for such interpretation request or variance application signed by more than 50% of the affected property owners or if the applicant files an affidavit stating that he has served notice by mail or in person to all such property owners, the Zoning Board of Appeals shall be relieved of the duty to mail or send notice to such property owners.
- (2) The Secretary or a member of the Zoning Board of Appeals shall keep minutes of the proceedings showing the vote of each member upon every question or, if absent or failing to vote, indicating such fact. The Zoning Board of Appeals shall keep records of its examinations and official actions, all of which shall be filed within five (5) business days and shall be a public record.
- (3) All appeals and applications made to the Zoning Board of Appeals shall be in writing on forms prescribed by the Zoning Board of Appeals. Every appeal or application shall:
 - (a) Refer to the specific provision of this Chapter involved;
 - (b) In the case of an interpretation request, set forth exactly the interpretation that is claimed;
 - (c) In the case of a variance application, state the details of the variance that is applied for and the grounds on which it is claimed and which the variance should be granted.
- (4) If the Zoning Board of Appeals so determines, a request for an advisory recommendation may be sent to the Planning Board.

D. REFERRAL TO NIAGARA COUNTY PLANNING BOARD.

- (1) A referral shall be made to the Niagara County Planning Board at least 10 days before holding a public hearing on a Variance application affecting real property within 500 feet of the following:
 - (a) A boundary of the Town;

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- (b) The boundary of any existing or proposed county or state park or other recreation area;
 - (c) The right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway;
 - (d) The existing or proposed right-of-way of any stream or drainage channel owned by the county (or for which the county has established channel lines);
 - (e) The existing or proposed boundary of any county- or state-owned land on which a public building or institution is situated; or
 - (f) The boundary of a farm operation located in an agricultural district, as that term is defined by Article 25-AA of the Agriculture and Markets Law, except this subsection (D)(1)(f) shall not apply to granting of area variances.
- (2) Within 30 days after receipt of a full statement of such referred matter, the Niagara County Planning Board or an authorized agent of the Niagara County Planning Board shall report its recommendations to the Zoning Board of Appeals, accompanied by a full statement of the reasons for such recommendations. If the Niagara County Planning Board fails to report within such 30-day period, or within a longer period as may have been agreed upon by it and the Zoning Board of Appeals, the Zoning Board of Appeals may act without such report. If the Niagara County Planning Board disapproves the proposal or recommends modification thereof, the Zoning Board of Appeals shall not act contrary to such disapproval or recommendation, except by a vote of a majority plus one of all the members of the Zoning Board of Appeals and after the adoption of a resolution fully setting forth the reasons for such contrary action.
- (3) Within seven days after final action on a referral by the Zoning Board of Appeals, the Zoning Board of Appeals shall file a report of the final action with the Niagara County Planning Board.

E. FEES.

Any application for an amendment or variance filed by or on behalf of the owner(s) of the property affected shall be accompanied by a fee as described in the Town of Pendleton Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time.

Section 247-75: Planning Board.

A. APPOINTMENT.

The Town Board shall appoint a Planning Board consisting of seven members as prescribed in Section 271 of Town Law. No appointment shall be valid unless the appointee is a resident of the Town. The Town Board shall appoint the Chair of the Planning Board.

B. DUTIES.

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The Planning Board shall have all the powers and duties prescribed by law and by this Chapter, provided that none of the following provisions shall be deemed to limit any power of the Planning Board that is conferred by law. The Planning Board shall have the following duties:

- (1) To review and approve site plan applications for all development in the Town requiring such approval. *See* Section 247-54 (Site plan review; performance and design standards).
- (2) To investigate, study, hold hearings upon, and submit reports on all appeals and matters referred to it by the Zoning Board of Appeals, Code Enforcement Officer/Building Inspector, and/or Town Board.
- (3) To submit reports within 30 days after referral to it of any appeal or other matter, unless the time shall be extended by the Code Enforcement Officer/Building Inspector or agency making the referral.
- (4) To hold monthly meetings on a regularly prescribed date and time and at such other times as the Chairman of the Planning Board may deem necessary. All meetings of the Planning Board shall be open to the public. The Secretary of the Planning Board shall keep minutes of all meetings.
- (5) To recommend changes to the comprehensive master plan and map for the development of the entire area of the Town, to be considered by the Town Board.
- (6) To review, recommend, and approve (prior to the issuance of a Building Permit or Certificate of Occupancy/Certificate of Compliance) site plans for Mobile Home Parks. Such site plans shall be submitted through the Code Enforcement Officer/Building Inspector to the Planning Board at least 10 days prior to its next scheduled meeting and shall consist of the following:
 - (a) A survey drawn to scale prepared by an engineer or surveyor (registered by the State of New York) showing the exact size, shape, and dimensions of the lot to be built upon;
 - (b) The exact size and location on the lot of all existing buildings and structures;
 - (c) The exact size and location on the lot of the structure or building proposed to be erected, moved, repaired, or altered;
 - (d) All adjacent streets or alleys with traffic flow patterns;
 - (e) Areas to be utilized for storage of materials and type of architectural screen to be used; and
 - (f) Such other information as may be required by the Planning Board to make its recommendation or decision.
- (7) To review and approve subdivision plans.
- (8) To review and approve site plans for commercial and industrial development.

Section 247-76: Planning Board and Zoning Board of Appeals Alternate Members.

A. APPLICABILITY.

This Section shall apply to the appointment, terms, functions and powers of alternate members appointed to serve on the Planning Board and on the Zoning Board of Appeals.

B. DECLARATION OF POLICY.

It is hereby determined that it is in the best interest of the Town that an alternate member position be established for the Planning Board and the Zoning Board of Appeals because of the necessity for acting expeditiously on matters pending before both boards; to enhance the ability to establish a quorum; to enable full board participation in decisions whenever possible; to attract quality board members, without preventing public service because of travel commitments, vacations, sickness, and possible conflicts; and to provide for greater flexibility in the scheduling of meetings.

C. DEFINITIONS.

As used in this Section 247-76, the following terms shall have the meanings indicated:

ALTERNATE MEMBER

An individual appointed by the Town Board to serve on the Planning Board or Zoning Board of Appeals when a regular member of either board is unable to participate on an application or matter before either board, as provided herein.

MEMBER

An individual appointed by the Town Board to serve on the Planning Board or the Zoning Board of Appeals pursuant to the provisions of the local law or ordinance which first established such board.

PLANNING BOARD

The Planning Board of the Town of Pendleton as established by the Town Board by local law or ordinance, pursuant to the provisions of § 271 of Town Law.

ZONING BOARD OF APPEALS

The Zoning Board of Appeals of the Town of Pendleton as established by the Town Board by local law or ordinance, pursuant to the provisions of § 267 of Town Law.

D. AUTHORIZATION; EFFECT.

The Town of Pendleton hereby enacts this Section 247-76 to provide a process for appointing Alternate Members to the Planning Board and the Zoning Board of Appeals. These individuals would serve when current members of either board are absent or unable to participate on an application or matter before either board.

E. SUBSTITUTION PROVISIONS.

The Alternate Member shall substitute for any Member of either the Planning Board or Zoning Board of Appeals in the event such Member does not attend or participate because of:

- (1) A conflict of interest;
- (2) Personal illness;
- (3) Family illness;
- (4) Vacation;
- (5) Family and professional obligations; or
- (6) Failure to attend a scheduled meeting for any reason.

F. PLANNING BOARD ALTERNATE MEMBERS.

- (1) Alternate Members of the Planning Board shall be appointed by the Town Board for a term of one year. Alternate Members shall be appointed at the first Town Board meeting of January and their tenure shall terminate on December 31 of the same year.
- (2) The Alternate Member of the Planning Board shall be entitled to attend all meetings of the Planning Board and to sit with the Planning Board; provided, however, that the Alternate Member shall only participate by substituting for a Member where a regular Member of the Planning Board does not participate for one of the reasons set forth in § 247-76(E) above. The Alternate Member shall receive the same compensation as regular Members of the Planning Board for every meeting attended, whether or not the Alternate Member actually participates.
- (3) The Chairperson of the Planning Board may designate an Alternate Member to substitute for a Member when such Member is absent or unable to participate on an application or matter before the Planning Board. When so designated, the Alternate Member shall possess all the powers and responsibilities of such Member of the Planning Board. Such designation shall be entered into the minutes of the initial Planning Board meeting at which the substitution is made.
- (4) All provisions of state law relating to Planning Board member eligibility, vacancy in office, removal, compatibility of office, and service on other boards, as well as any provisions of a local law or ordinance relating to training, continuing education, compensation, and attendance, shall also apply to Alternate Members.

G. ZONING BOARD OF APPEALS ALTERNATE MEMBERS.

- (1) Alternate Members of the Zoning Board of Appeals shall be appointed by the Town Board for a term of one year. Alternate Members shall be appointed at the first Town Board meeting of January and their tenure shall terminate on December 31 of the same year.

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- (2) The Alternate Member of the Zoning Board of Appeals shall be entitled to attend all meetings of the Zoning Board of Appeals and to sit with the Zoning Board of Appeals; provided, however, that the Alternate Member shall only participate by substituting for a Member where a regular Member of the Zoning Board of Appeals does not participate for one of the reasons set forth in § 247-76(E) above. The Alternate Member shall receive the same compensation as regular Members of the Zoning Board of Appeals for every meeting attended, whether or not the Alternate Member actually participates.
- (3) The Chairperson of the Zoning Board of Appeals may designate an Alternate Member to substitute for a Member when such Member is absent or unable to participate on an application or matter before the Zoning Board of Appeals. When so designated, the Alternate Member shall possess all the powers and responsibilities of such Member of the Zoning Board of Appeals. Such designation shall be entered into the minutes of the initial Zoning Board of Appeals meeting at which the substitution is made.
- (4) All provisions of state law relating to Zoning Board of Appeals member eligibility, vacancy in office, removal, compatibility of office, and service on other boards, as well as any provisions of a local law or ordinance relating to training, continuing education, compensation, and attendance, shall also apply to Alternate Members.

H. SUPERSESSION OF TOWN LAW

This Section 247-76 is enacted pursuant to the authority set forth in the Municipal Home Rule Law §§ 10(1)(ii)(a)(1) and 10(1)(ii)(d)(3) and Town Law §§ 267(11) and 271(15). To the extent that any provision of this Section 247-76 is inconsistent with any other Town Law, including §§ 267(11) and 271(15), such law is expressly superseded by the provisions of this Section 247-76. It is the intent of this Section 247-76 to increase and set forth additional reasons for participation by an Alternate Member in decisions by the Planning Board and Zoning Board of Appeals than are set forth in Town Law §§ 267(11) and 271(15).

Section 47: Chapter 122 of the Code is hereby REPEALED in its entirety and Chapter 247, Article XIII of the Code is amended to read in its entirety as follows:

ARTICLE XIII: STORMWATER MANAGEMENT REGULATIONS AND DRAINAGE

Section 247-85: Stormwater Management.

A. FINDINGS; PURPOSE.

(1) Findings. It is hereby determined that:

- (a) Land development activities and associated increases in site impervious cover often alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, stream channel erosion, or sediment transport and deposition;
- (b) This stormwater runoff contributes to increased quantities of waterborne pollutants, including siltation of aquatic habitat for fish and other desirable species;
- (c) Clearing and grading during construction tends to increase soil erosion and add to the loss of native vegetation necessary for terrestrial and aquatic habitat;
- (d) Improper design and construction of stormwater management practices can increase the velocity of stormwater runoff, thereby increasing streambank erosion and sedimentation;
- (e) Impervious surfaces allow less water to percolate into the soil, thereby decreasing groundwater recharge and stream baseflow;
- (f) Substantial economic losses can result from these adverse impacts on the waters of the Town;
- (g) Stormwater runoff, soil erosion, and nonpoint source pollution can be controlled and minimized through the regulation of stormwater runoff from land development activities;
- (h) The regulation of stormwater runoff discharges from land development activities in order to control and minimize increases in stormwater runoff rates and volumes, soil erosion, stream channel erosion, and nonpoint source pollution associated with stormwater runoff is in the public interest and will minimize threats to public health and safety;
- (i) Regulation of land development activities by means of performance standards governing stormwater management and site design will produce development compatible with the natural functions of a particular site or an entire watershed and thereby mitigate the adverse effects of erosion and sedimentation from development.

(2) Purpose. The purpose of this Article XIII is to establish minimum stormwater management requirements and controls to protect and safeguard the general health, safety, and welfare of the public residing within the Town and to address

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the findings of fact in § 247-85(A)(1) above. This Article XIII seeks to meet those purposes by achieving the following objectives:

- (a) Meet the requirements of minimum measures 4 and 5 of the New York State Department of Environmental Conservation (DEC) State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Municipal Separate Stormwater Sewer Systems (MS4s), Permit No. GP-02-02, or as amended or revised;
- (b) Require land development activities to conform to the substantive requirements of the DEC SPDES General Permit for Construction Activities, Permit No. GP-02-01, or as amended or revised;
- (c) Minimize increases in stormwater runoff from land development activities in order to reduce flooding, siltation, increases in stream temperature, and streambank erosion and maintain the integrity of stream channels;
- (d) Minimize increases in pollution caused by stormwater runoff from land development activities which would otherwise degrade local water quality;
- (e) Minimize the total annual volume of stormwater runoff which flows from any specific site during and following development to the maximum extent practicable; and
- (f) Reduce stormwater runoff rates and volumes, soil erosion, and nonpoint source pollution, wherever possible, through stormwater management practices and ensure that these management practices are properly maintained and eliminate threats to public safety.

B. APPLICABILITY; EXEMPTIONS; REQUIREMENTS.

- (1) Applicability. This Article XIII shall be applicable to all land development activities.
- (2) Exemptions. The following activities shall be exempt from review under this Article XIII:
 - (a) Agriculture, except that the construction of new structures associated with unlimited agriculture and the operation of a dude ranch or similar operation shall not be exempt from review under this Article XIII;
 - (b) Silvicultural activity, except that landing areas and log haul roads are subject to this Article XIII;
 - (c) Routine maintenance activities that disturb less than five acres and are performed to maintain the original line and grade, hydraulic capacity, or original purpose of a facility;
 - (d) Repairs to any stormwater management practice or facility deemed necessary by the Stormwater Management Officer (SMO);
 - (e) Any part of a subdivision if a plat for the subdivision has been approved by the Town on or before the effective date of this Article XIII;
 - (f) Land development activities for which a Building Permit has been approved on or before the effective date of this Article XIII;
 - (g) Cemetery graves;

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- (h) Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles;
 - (i) Emergency activity immediately necessary to protect life, property, or natural resources;
 - (j) Activities of an individual engaging in home gardening by growing flowers, vegetables, or other plants primarily for use by that person and his or her family;
 - (k) Landscaping and horticultural activities in connection with an existing structure.
- (3) Conflict. Where the conditions imposed by any provisions of this Article XIII are either more restrictive or less restrictive than comparable conditions imposed by any other applicable law, ordinance, resolution, rule, or regulation of any kind, the regulations which are more restrictive and impose higher standards or requirements shall govern.
- (4) All land development activities subject to review and approval by the Code Enforcement Officer/Building Inspector, Town Highway Superintendent, Planning Board, or Town Board under a floodplain development permit, public improvement permit, mobile home park development, subdivision or site plan approval, or drainage regulations shall be reviewed subject to the standards contained in this Article XIII. The applicant shall submit a Stormwater Pollution Prevention Plan (SWPPP) prepared in accordance with the standards contained in this Article XIII to the SMO, who shall forward the SWPPP, together with his or her written recommendation to approve, approve with modifications, or disapprove the SWPPP, to such agency, committee, employee, or board of the Town which may be reviewing any application for approval of a land development activity requiring submission of a SWPPP. Approval shall only be given if the SWPPP meets the requirements of this Article XIII. In making a recommendation to approve with modifications or disapprove the SWPPP, the SMO shall state the reasons for the decision in writing. In order to be approved, an applicant shall revise a SWPPP that has been approved with modifications or disapproved in accordance with the recommendations of the SMO and shall submit the revised SWPPP to the SMO for review.
- (5) For all land development activities not subject to review by the Code Enforcement Officer/Building Inspector, Town Highway Superintendent, Planning Board, or Town Board as stated in § 247-85(B)(4) of this Article, the applicant or developer shall be required to submit a SWPPP prepared in accordance with the standards contained in this Article to the SMO. The SMO shall approve, conditionally approve, or disapprove the SWPPP. Approval shall only be given if the SWPPP meets the requirements of this Article. In conditionally approving or disapproving the SWPPP, the SMO shall state the reasons for the decision in writing. In order to be approved, an applicant shall revise a conditionally approved or disapproved SWPPP in accordance with the recommendations of the SMO and shall submit the revised SWPPP to the SMO for review.

C. STORMWATER POLLUTION PREVENTION PLANS.

- (1) Stormwater Pollution Prevention Plan requirement. No application for approval of a land development activity shall be reviewed until the SMO or such agency, committee, employee, or board of the Town which may be reviewing any application for approval of a land development activity requiring submission of a SWPPP has received a SWPPP prepared in accordance with the specifications of this Article XIII.
- (2) Contents of a Stormwater Pollution Prevention Plans. All SWPPPs shall provide the following background information and erosion sediment controls:
 - (a) Background information about the scope of the project, including the location, type, and size of the project;
 - (b) Site map/construction drawing(s) for the project, including a general location map. The site map should be at a scale of no smaller than one inch to 100 feet. At a minimum, the site map should show the total site area; all improvements; areas of disturbance; areas that will not be disturbed; existing vegetation; onsite and adjacent off-site surface water(s); wetlands and drainage patterns that could be affected by the land development activity; existing and final slopes; locations of off-site material, waste, borrow, or equipment storage areas; and location(s) of the stormwater discharges(s);
 - (c) Description of the soil(s) present at the site;
 - (d) Construction phasing plan describing the intended sequence of construction activities, including clearing and grubbing, excavation and grading, utility and infrastructure installation, and any other activity at the site that results in soil disturbance. Consistent with the Erosion Control Manual, not more than five acres shall be disturbed at any one time unless pursuant to an approved SWPPP;
 - (e) Description of the pollution prevention measures that will be used to control litter, construction chemicals, and construction debris from becoming a pollutant source in stormwater runoff;
 - (f) Description of construction and waste materials expected to be stored on site with updates as appropriate and a description of controls to reduce pollutants from these materials, including storage practices to minimize exposure of the materials to stormwater and spill prevention and response;
 - (g) Temporary and permanent structural and vegetative measures to be used for soil stabilization, runoff control, and sediment control for each stage of the project, from initial land clearing and grubbing to project closeout;
 - (h) A site map/construction drawing(s) specifying the location(s), size(s) and length(s) of each erosion and sediment control practice;
 - (i) Dimensions, material specifications, and installation details for all erosion and sediment control practices, including the siting and sizing of any temporary sediment basins;

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- (j) Temporary practices that will be converted to permanent control measures;
 - (k) Implementation schedule for staging temporary erosion and sediment control practices, including the timing of initial placement and duration that each practice should remain in place;
 - (l) Maintenance schedule to ensure continuous and effective operation of the erosion and sediment control practice;
 - (m) Name(s) of the receiving water(s);
 - (n) Delineation of SWPPP implementation responsibilities for each part of the site;
 - (o) Description of structural practices designed to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable; and
 - (p) Any existing data that describes the stormwater runoff at the site.
- (3) Land development activities meeting Condition A, B, or C below shall also include water quantity and water quality controls (post construction stormwater runoff controls) as required in § 247-85(C)(4) below, as applicable:
- (a) Condition A: stormwater runoff from land development activities discharging a pollutant of concern to either an impaired water identified on DEC's 303(d) list of impaired waters or a total maximum daily load (TMDL) designated watershed for which pollutants in stormwater have been identified as a source of the impairment.
 - (b) Condition B: stormwater runoff from land development activity disturbing five or more acres.
 - (c) Condition C: stormwater runoff from land development activity disturbing between one and five acres of land during the course of the project, exclusive of the construction of Single-Family Detached Residences and construction activities at agricultural properties.
- (4) Stormwater Pollution Prevention Plan requirements for Conditions A, B, or C:
- (a) All information in § 247-85(C)(2) above;
 - (b) Description of each post-construction stormwater management practice;
 - (c) Site map/construction drawing(s) showing the specific location(s) and size(s) of each post construction stormwater management practice;
 - (d) Hydrologic and hydraulic analysis for all structural components of the stormwater management system for the applicable design storms;
 - (e) Comparison of post-development stormwater runoff conditions with predevelopment conditions;
 - (f) Dimensions, material specifications, and installation details for each post-construction stormwater management practice;
 - (g) Maintenance schedule to ensure continuous and effective operation of each post-construction stormwater management practice;
 - (h) Maintenance easements to ensure access to all stormwater management practices at the site for the purpose of inspection and repair. Easements

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- shall be recorded on the plan and shall remain in effect with transfer of title to the property; and
- (i) Inspection and maintenance agreement binding on all subsequent landowners served by the on-site stormwater management measures in accordance with § 247-85(E).
- (5) The SWPPP shall be prepared by a landscape architect, certified professional or professional engineer, and must be signed by the professional preparing the plan, who shall certify that the design of all stormwater management practices meets the requirements in this Article XIII.
- (6) Other environmental permits. The applicant shall assure that all other applicable environmental permits have been or will be acquired for the land development activity prior to approval of the final stormwater design plan.
- (7) Contractor certification.
- (a) Each contractor and subcontractor identified in the SWPPP who will be involved in soil disturbance and/or stormwater management practice installation shall sign and date a copy of the following certification statement before undertaking any land development activity: “I certify under penalty of law that I understand and agree to comply with the terms and conditions of the Stormwater Pollution Prevention Plan. I also understand that it is unlawful for any person to cause or contribute to a violation of water quality standards.”
 - (b) The certification must include the name and title of the person providing the signature, address, and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.
 - (c) The certification statement(s) shall be included with and become part of the SWPPP for the land development activity.
- (8) A copy of the SWPPP shall be retained at the site of the land development activity during construction from the date of initiation of construction activities to the date of final stabilization.

D. PERFORMANCE AND DESIGN CRITERIA.

All land development activities shall be subject to the following performance and design criteria:

- (1) Technical Standards. For the purpose of this Section, the following documents shall serve as the official guides and specifications for stormwater management. Stormwater management practices that are designed and constructed in accordance with these technical documents shall be presumed to meet the standards imposed by this Section:
 - (a) The Design Manual; and
 - (b) The Erosion Control Manual.

- (2) Equivalence to technical standards. Where stormwater management practices are not in accordance with technical standards, the applicant or developer must demonstrate equivalence to the technical standards set forth in § 247-85(D)(1) above.
- (3) Water quality standards. Any land development activity shall not cause an increase in turbidity that will result in substantial visible contrast to natural conditions in surface waters of the State of New York.

E. MAINTENANCE, INSPECTION, AND REPAIR OF STORMWATER FACILITIES.

- (1) Maintenance and inspection during construction.
 - (a) The applicant or developer of the land development activity or his or her representative shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the applicant or developer to achieve compliance with the conditions of this Article XIII. Sediment shall be removed from sediment traps or sediment ponds whenever their design capacity has been reduced by 50%.
 - (b) For land development activities meeting Condition A, B, or C in § 247-85(C)(3) above, the applicant shall have a qualified professional conduct site inspections and document the effectiveness of all erosion and sediment control practices every seven days and within 24 hours of any storm event producing 0.5 inch of precipitation or more. Inspection reports shall be maintained in a site logbook.
- (2) Maintenance easement(s). Prior to the issuance of any approval that has a stormwater management facility as one of the requirements, the applicant or developer must execute a maintenance easement agreement that shall be binding on all subsequent landowners served by the stormwater management facility. The easement shall provide for access to the facility at reasonable times for periodic inspection by the Town to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this section. The easement shall be recorded by the grantor in the office of the County Clerk after approval by the Town Attorney.
- (3) Maintenance after construction. The owner or operator of permanent stormwater management practices (SMPs) installed in accordance with this Article XIII shall ensure they are operated and maintained to achieve the goals of this Article XIII. Proper operation and maintenance also includes, at a minimum, the following:
 - (a) A preventive/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances) which are installed or used by the owner or operator to achieve the goals of this Article XIII.

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- (b) Written procedures for operation and maintenance and training new maintenance personnel.
- (c) Discharges from the SMPs shall not exceed design criteria or cause or contribute to water quality standard violations in accordance with § 247-85(D) above.
- (d) Maintenance agreements. The Town shall approve a formal maintenance agreement for stormwater management facilities binding on all subsequent landowners and recorded in the office of the County Clerk as a deed restriction on the property prior to final plan approval. The maintenance agreement shall be consistent with the terms and conditions of Appendix B of this Article XIII, entitled “Sample Stormwater Control Facility Maintenance Agreement.” The Town, in lieu of a maintenance agreement, at its sole discretion, may accept dedication of any existing or future stormwater management facility, provided such facility meets all the requirements of this section and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

F. ADMINISTRATION AND ENFORCEMENT.

- (1) Construction inspection.
 - (a) Erosion and sediment control inspection.
 - (b) The SMO may require such inspections as necessary to determine compliance with this article and may either approve that portion of the work completed or notify the applicant wherein the work fails to comply with the requirements of this article and the SWPPP as approved. To obtain inspections, the applicant shall notify the SMO at least 48 hours before any of the following, as required by the SMO:
 - (1) Start of construction;
 - (2) Installation of sediment and erosion control measures;
 - (3) Completion of site clearing;
 - (4) Completion of rough grading;
 - (5) Completion of final grading;
 - (6) Close of the construction season;
 - (7) Completion of final landscaping; or
 - (8) Successful establishment of landscaping in public areas.
 - (c) If any violations are found, the applicant and developer shall be notified in writing of the nature of the violation and the required corrective actions. No further work shall be conducted except for site stabilization until any violations are corrected and all work previously completed has received approval by the SMO.
 - (d) Stormwater management practice inspections. The SMO is responsible for conducting inspections of SMPs. All applicants are required to submit as-built plans for any SMPs located on site after final construction is completed. The plan must show the final design specifications for all

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stormwater management facilities and must be certified by a professional engineer.

- (e) Inspection of stormwater facilities after project completion.
 - (1) Inspection programs shall be established on any reasonable basis, including but not limited to:
 - a. Routine inspections;
 - b. Random inspections;
 - c. Inspections based upon complaints or other notice of possible violations;
 - d. Inspection of drainage basins or areas identified as higher-than-typical sources of sediment or other contaminants or pollutants;
 - e. Inspections of businesses or industries of a type associated with higher-than-usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the SPDES stormwater permit; and
 - f. Joint inspections with other agencies inspecting under environmental or safety laws.
 - (2) Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other stormwater management practices.
 - (f) Submission of reports. The SMO may require monitoring and reporting from entities subject to this Article XIII as are necessary to determine compliance therewith.
 - (g) Right-of-entry for inspection. When any new stormwater management facility is installed on private property or when any new connection is made between private property and the public storm water system, the landowner shall grant to the Town the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection as specified in this Section 247-85(F)(1).
- (2) Performance guarantee.
- (a) Construction completion guarantee. In order to ensure the full and faithful completion of all land development activities related to compliance with all conditions set forth by the Town in its approval of the SWPPP, the Town may require the applicant or developer to provide, prior to construction, a performance bond, cash escrow, or irrevocable letter of credit from an appropriate financial or surety institution which guarantees satisfactory completion of the project and names the Town as the beneficiary. The security shall be in an amount to be determined by the Town based on submission of final design plans, with reference to actual construction and landscaping costs. The performance guarantee shall

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remain in full force until the surety is released from liability by the Town, provided that such period shall not be less than one year from the date of final acceptance or such other certification that the facility has been constructed in accordance with the approved plans and specifications and that a one-year inspection has been conducted and the facility has been found to be acceptable to Town. Per annum interest on cash escrow deposits shall be reinvested in the account until the surety is released from liability.

- (b) Maintenance guarantee. Where stormwater management and erosion and sediment control facilities are to be operated and maintained by the developer or by a corporation that owns or manages a commercial or industrial facility, the developer, prior to construction, may be required to provide the Town with an irrevocable letter of credit from an approved financial institution or surety to ensure proper operation and maintenance of all stormwater management and erosion control facilities both during and after construction, and until the facilities are removed from operation. If the developer or landowner fails to properly operate and maintain stormwater management and erosion and sediment control facilities, the Town may draw upon the account to cover the costs of proper operation and maintenance, including engineering and inspection costs.
- (c) Record keeping. The Town may require entities subject to this Article XIII to maintain records demonstrating compliance with this Article XIII.

(3) Enforcement and penalties.

- (a) Notice of violation. When the Town determines that a land development activity is not being carried out in accordance with the requirements of this Article XIII, it may issue a written notice of violation to the landowner. The notice of violation shall contain:
 - (1) The name and address of the landowner, developer or applicant;
 - (2) The address, when available, or a description of the building, structure or land upon which the violation is occurring;
 - (3) A statement specifying the nature of the violation;
 - (4) A description of the remedial measures necessary to bring the land development activity into compliance with this Article XIII and a time schedule for the completion of such remedial action;
 - (5) A statement of the penalty(ies) that shall or may be assessed against the person to whom the notice of violation is directed; and
 - (6) A statement that the determination of violation may be appealed to the Town by filing a written notice of appeal within 15 days of service of notice of violation.
- (b) Stop-Work Orders. The Town may issue a Stop-Work Order for violations of this Article XIII. Persons receiving a Stop-Work Order shall be required to halt all land development activities, except those activities that address the violations leading to the Stop-Work Order. The Stop-Work Order shall be in effect until the Town confirms that the land development activity is in compliance and the violation has been satisfactorily addressed. Failure

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to address a Stop-Work Order in a timely manner may result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this Article XIII.

- (c) Violations. Any land development activity that is commenced or is conducted contrary to this Article XIII may be restrained by injunction or otherwise abated in a manner provided by law.
- (d) Penalties. In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this article shall be guilty of a violation punishable by a fine not exceeding \$350 or imprisonment for a period not to exceed six months, or both, for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of five years, punishable by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense, all of which were committed within a period of five years, punishable by a fine not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this Article XIII shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.
- (e) Withholding of Certificate of occupancy/Certificate of compliance. If any building or land development activity is installed or conducted in violation of this article, the SMO may prevent the occupancy of said building or land.
- (f) Restoration of lands. Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the Town may take necessary corrective action, the cost of which shall become a lien upon the property until paid.

G. FEES.

Fees for services. The Town may require any person undertaking land development activities regulated by this Article XIII to pay reasonable costs at prevailing rates for review of SWPPPs, inspections, or SMP maintenance performed by the Town or performed by a third party for the Town. The fee shall be as described in the Town of Pendleton Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time.

SECTION 247-86
Drainage

A. DEFINITIONS.

As used in this Section 247-86, the following terms shall have the meanings indicated:

MINOR DRAINAGE IMPACT

Proposed action will not significantly alter existing drainage patterns; redirecting stormwater runoff to adjacent properties or Town's drainage system is not anticipated to have an adverse impact. (*i.e.*, positive e drainage from the improvement to the public drainage system is provided; surface runoff will not pool on adjacent properties).

MAJOR DRAINAGE IMPACT

Proposed action will significantly alter drainage patterns, potentially result in an adverse impact existing public drainage collection and conveyance, or result in a potential significant impact to adjacent properties.

B. PROHIBITED ACTS.

It shall be unlawful for any person, firm, entity or corporation without a Drainage Permit issued by the Code Enforcement Officer/Building Inspector to:

1. Place, deposit or permit to be placed or deposited any debris, fill, sand, stone or other solid materials of any kind or nature or construction of any kind into or across any stream, ditch, culvert, pipe, watercourse or other drainage system.
2. Construct and/or place any ditch, pipe, culvert or artificial watercourse of any kind or nature which shall collect and direct the flow of natural surface waters or drainage or increase in intensity or quantity the flow of surface waters or drainage from paved surfaces, structures, roads or improvements directly into any stream, ditch, culvert, pipe or watercourse or other drainage system.
3. Fill, obstruct, dam, divert or otherwise change or alter the natural or artificial flow of waters or drainage or the intensity or quantity of flows through any stream, ditch, pipe, culvert, watercourse or other improvement of drainage system.
4. Construct, erect or replace bridges and culverts on all watercourse ditches, streams or sluices which affect adjoining properties.
5. Do any construction, soil movement and/or regrading where alteration of the natural drainage pattern results.

C. EXCEPTIONS.

The above restrictions shall not apply to work or construction done under a permit issued by the State of New York or County of Niagara.

D. APPLICATION AND PLANS TO BE SUBMITTED.

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All applicants for a Drainage Permit to do any of the acts set forth above shall present plans to the Code Enforcement Officer/Building Inspector, which plans shall be inclusive of, but not limited to, a description of the existing and subsequent drainage patterns together with a description of the affected adjoining properties. Such plans shall be accompanied by a Stormwater Pollution Prevention Plan (SWPPP), if required for the proposed land development activity under Article XIII of this Chapter, together with the written recommendation of the Stormwater Management Officer (SMO) to approve, approve with modifications, or disapprove the SWPPP pursuant to § 247-85(C) of this Chapter. After review of the complete Drainage Permit Application package the Code Enforcement Officer/Building Inspector will make a determination if the Application reflects a Minor Drainage Impact or a Major Drainage Impact.

1. If deemed a Minor Drainage Impact, the Code Enforcement Officer/Building Inspector will have the responsibility of handling the Drainage Permit Application process.
2. If deemed a Major Drainage Impact, the Code Enforcement Officer/Building Inspector will forward the Drainage Permit Package to the Planning Board for site plan review, which shall include environmental review (SEQR) and a public hearing, as required under Section 245-54 of this Chapter. See Section 245-54, Site plan review; performance and design standards.

The Code Enforcement Officer/Building Inspector or Planning Board (if site plan review is warranted) may solicit the help and or expertise of the Town Highway Superintendent to aid in the Drainage Permit Application process and or for post construction inspection.

E. EFFECT OF PERMIT ISSUANCE.

The issuance of a Drainage Permit by the Town shall not obligate the Town to any costs in connection with the work performed under the permit and shall not obligate the Town to maintain any such improvements.

F. DUTIES OF THE CODE ENFORCEMENT OFFICER/BUILDING INSPECTOR AND HIGHWAY SUPERINTENDENT.

In the exercise of his/her discretion to grant or deny the Drainage Permit, the Code Enforcement Officer/Building Inspector in conjunction with the Town Highway Superintendent when warranted shall give consideration to the effect such proposed construction may have on the drainage, health, beauty, preservation of natural resources and control of pollution and welfare of the Town and shall deny any such Drainage Permit where in his/her judgment the Code Enforcement Officer/Building Inspector determines such proposed construction is detrimental to the drainage, health, beauty, preservation of natural resources and control of pollution and welfare in the Town. If the plans submitted pursuant to § 247-86(D) above were accompanied by a SWPPP, the Town Highway Superintendent shall deny the Drainage Permit if such SWPPP and plans do not comply with the requirements of Article XIII of this Chapter. Furthermore, the

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Code Enforcement Officer/Building Inspector and/or the Highway Superintendent shall limit the installation of bridges and culverts along Town highways to a length not to exceed 40 feet, in the interest of ensuring adequate road drainage maintenance.

G. ENFORCEMENT; PENALTIES FOR OFFENSES.

1. Any person, firm entity or corporation found to be violating any provisions of this chapter shall be served with a written notice at the direction of the Code Enforcement Officer/Building Inspector stating the nature of the violation and providing for a thirty-day time limit for the satisfactory correction thereof. The offender shall, within the period stated in such notice, correct or remove all violations.
2. Any person, firm, entity or corporation who or which shall continue any violation beyond the time limit provided for in Subsection (1) above shall be guilty of a violation and, upon conviction thereof, be fined in an amount not exceeding \$2,500 or imprisoned for a term not exceeding 15 days, or both, for each violation. Each week in which such violation shall continue shall be deemed a separate offense.
3. In the event that any person, firm, entity or corporation shall continue any violation beyond the time limit provided for in Subsection (1) above, the Town Board may direct the Town Attorney to apply to the Supreme Court for any order directing that the violation be corrected or removed and that all costs and expenses incurred by the Town in connection with the proceedings, including the actual cost of correction or removal, shall be assessed against the offenders.
4. Any person, firm, entity or corporation violating any of the provisions of this Section shall become liable to the town for any expense or loss or damage occasioned by the town by reason of such violation.

H. FEES.

For appropriate fees see the Town of Pendleton Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time.

APPENDIX B
Sample Stormwater Control Facility Maintenance Agreement

Whereas, the Town of Pendleton ("Town") and the owner of the stormwater control facility ("Facility Owner") wish to enter into an agreement to provide for the long term maintenance and continuation of stormwater control measures approved by the Town for the below named project; and

Whereas, the Town and the Facility Owner desire that the stormwater control measures be built in accordance with the approved project plans and thereafter be maintained, cleaned, repaired, replaced and continued in perpetuity in order to ensure optimum performance of the components.

Therefore, the Town and the Facility Owner agree as follows:

1. This agreement binds the Town and the Facility Owner, its successors and assigns, to the maintenance provisions depicted in the approved project plans which are attached as Schedule A of this agreement.
2. The Facility Owner shall maintain, clean, repair, replace and continue the stormwater control measures depicted in Schedule A as necessary to ensure optimum performance of the measures to design specifications. The stormwater control measures shall include, but shall not be limited to, the following: drainage ditches, swales, dry wells, infiltrators, drop inlets, pipes, culverts, soil absorption devices and retention ponds.
3. The Facility Owner shall be responsible for all expenses related to the maintenance of the stormwater control measures and shall establish a means for the collection and distribution of expenses among parties for any commonly owned facilities.
4. The Facility Owner shall provide for the periodic inspection of the stormwater control measures, not less than once every five years, to determine the condition and integrity of the measures. Such inspection shall be performed by a Professional Engineer licensed by the State of New York. The inspecting engineer shall prepare and submit to the Town within 30 days of the inspection, a written report of the findings including recommendations for those actions necessary for the continuation of the stormwater control measures.
5. The Facility Owner shall not authorize, undertake or permit alteration, abandonment, modification or discontinuance of the stormwater control measures except in accordance with written approval of the Town.
6. The Facility Owner shall undertake necessary repairs and replacement of the stormwater control measures at the direction of the Town or in accordance with the recommendations of the inspecting engineer.

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7. The Facility Owner shall provide to the Town within 30 days of the date of this agreement, a security for the maintenance and continuation of the stormwater control measures in the form of a bond, letter of credit or escrow account).
8. This agreement shall be recorded in the Office of the County Clerk, County of Niagara, together with the deed for the common property and shall be included in the offering plan and/or prospectus approved pursuant to _____.
9. If ever the Town determines that the Facility Owner has failed to construct or maintain the stormwater control measures in accordance with the project plan or has failed to undertake corrective action specified by the Town or by the inspecting engineer, the Town is authorized to undertake such steps as reasonably necessary for the preservation, continuation or maintenance of the stormwater control measures and to affix the expenses thereof as a lien against the property.
10. This agreement is effective _____.

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SCHEDULE A

Section 48: Chapter 247, Article XIV of the Code is amended to read in its entirety as follows:

**CHAPTER XIV
Excavation and Fill; Property Maintenance**

Section 247-87: Excavation and Fill

A. FINDINGS.

It is hereby determined that:

1. Excavation and/or fill activities creates pits, holes or hollows in the earth, leaving it in a hazardous or dangerous state, or causes soil erosion, which deletes the land of its natural vegetative cover and supply of organic materials, and renders such land unproductive and unsuitable for agricultural purposes or undesirable for building homes.
2. Excavation and/or fill activities can be controlled and their impacts minimized through the regulation of these activities.

B. PURPOSE.

The purpose of this Section is to establish the management of excavation and/or fill activities within the Town boundaries and to protect and safeguard the general health, safety, and welfare of the public residing within this jurisdiction. This section seeks to meet those purposes by achieving the following objectives:

1. The orderly operation of all excavations and/or fill activities and related soil disturbances;
2. he restoration of affected lands;
3. The retention of taxable value of property;
4. The retention of natural beauty and aesthetic values in the affected areas;
5. The preservation of the quality of life for residents;
6. The retention of topsoil with the Town of Pendleton.

C. DEFINITIONS.

As used in this Section 247-87, the following terms shall have the meanings indicated:

APPLICANT

That person making application for a permit and who is responsible for fulfilling the requirements for the restoration plan and all rules and regulations promulgated hereunder. If the applicant is other than the property owner, written proof must be presented showing authorization from the property owner the applicant.

EXCAVATION

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A cavity, hole, or pit on land formed by digging, for the purpose of extracting clay, stone, gravel, sand, or other natural materials or the topsoil therefrom.

FILL

The placement of natural materials on any land surface.

MINING

The extraction of overburden and minerals from the earth; the preparation and processing of minerals, including any activities or processes or parts thereof for the extraction or removal of minerals from their original location and the preparation, washing, cleaning, crushing, stockpiling or other processing of minerals at the mine location so as to make them suitable for commercial, industrial or construction use; exclusive of manufacturing processes at the mine location; the removal of such materials through sale or exchange, or for commercial, industrial or municipal use; and the disposition of overburden tailings and waste at the mine location. Mining shall not include the excavation, removal and disposition of minerals from construction projects, exclusive of the creation of water bodies, or excavations in aid of agricultural activities.

TOPSOIL

Surface earth, including the organic layer in which most plants have their roots.

D. PROHIBITED ACTS.

1. The following are prohibited acts and are not to be considered a use by right or allowable by Special Use Permit in any zoning district within the Town:
 - a. Placing, depositing or permitting to be placed or deposited any debris, fill, sand, stone or other solid materials of any kind or nature or construction of any kind into or across any stream, ditch, culvert, pipe, watercourse or other drainage system which result in an adverse impact.
 - b. Construction, soil movement and/or regrading where alteration of the natural drainage patterns which result in an adverse impact.
 - c. Conducting any Excavation for purposes of Mining, as those terms are defined in Section 247-(87)(C).

E. EXCEPTIONS.

The following operations and uses are hereby accepted from the application of this Section:

1. Excavations or removal of stone, gravel, clay, sand, shale or other natural materials, subsoil or topsoil incident to highway, sidewalk, or driveway construction to the extent that said material are removed solely from the bed of said, highway, sidewalk or driveway.
2. Excavations or removal of stone, gravel, clay, sand or other natural materials, subsoil or topsoil from one part of the same premises incident to the construction

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- of a building or other improvement of land or incident to landscaping. The moving in excess of one hundred (100) yards or more of such materials will be subject to approval by the Code Enforcement Officer/Building Inspector.
3. Removal of excess stone, gravel, clay, sand or other natural materials, subsoil or topsoil from the area of a subdivision granted final approval by the Planning Board, provided any such removal is in accordance with the plans and specifications approved by said Planning Board. See Chapter 220, Subdivision of Land.
 4. Excavations or removal of stone, gravel, clay, sand or other natural materials, subsoil or topsoil incident to the construction and/or repair of privately owned water, sanitary or storm sewer systems.
 5. The above restrictions shall not apply to work or construction done under a permit issued by the State of New York or County of Niagara.

F. APPLICATION.

All applicants for a permit to do any of the acts set forth above shall present plans to the Code Enforcement Officer/Building Inspector which plans shall be inclusive of, but not limited to, the following:

1. Application form
2. A narrative description of the proposed excavation and/or fill activities including a restoration plan for the disturbed area. For fill activities, the source of the natural material must be identified
3. A duly acknowledged, notarized consent in writing of the owner of the premises, including his/her address
4. Certificate from the receiver of taxes of the Town and the County Treasurer showing payment of all taxes or assessments to date against the property described in the application
5. A certified estimate, prepared by a professional engineer or land surveyor licensed in the state, showing the total number of cubic yards of materials to be generally regraded, excavated, removed from or brought to the property during each of the described stages or the proposed operation and time schedule.
6. A drawing at a scale of one hundred (100) feet to an inch or larger on a sheet not larger than thirty-six (36) by forty-eight (48) inches prepared by a professional engineer or land surveyor licensed in the state showing the following information:
 - a. The location and survey data of the premises where it is proposed to generally regrade, excavate, remove, or fill earth products.
 - b. All streets adjoining and within two hundred (200) feet of the premises.
 - c. All existing buildings or structures on the premises or within two hundred (200) feet of the premises.
 - d. Existing and proposed elevations at each described stage in the proposed operation for the premises and all land within two hundred (200) feet of its boundaries, shown on a horizontal grid system with a fifty-foot interval, and also on a cross section derived from that grid system. Additional

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- elevations shall be shown at each break in the grades and along the center line of all adjoining streets.
- e. Present and proposed surface water drainage and natural drainage features.
 - f. A key map at the scale of six hundred (600) feet to one (1) inch indicating the relationship to the highway pattern, school and town boundaries and zoning districts.
7. A certification by a duly licensed professional engineer or land surveyor in the state that the existing grades and elevations are based on an actual field survey.
 8. Any project, including excavation and/or fill activities, which will disturb greater than one (1) acre of surface area, shall comply with the regulations under Article XIII Stormwater Management Regulations of Chapter 247, Zoning, of the Town Code and requires the preparation of a SWPPP as defined in that Article and Section. If coverage under the NYS SPDES permit program and preparation of a SWPPP is required, then application for site plan review and approval by the Planning Board is required.
 9. The Code Enforcement Officer/Building Inspector may require additional data or waive any requirements in appropriate cases.
 - a. After receipt and review of the complete Application package, the Code Enforcement Officer/Building Inspector will make a determination of whether the Application reflects a minor or major impact.
 1. If determined to be minor, the Code Enforcement Officer/Building Inspector will have the responsibility of handling the Application process.
 2. If determined to be major, the Code Enforcement Officer/Building Inspector will forward the Application Package to the Planning Board for Site Plan Review in accordance with Section 247-54 of the Town Code, which shall include environmental review under SEQRA and a public hearing. See Section 247-54, Site plan review; performance and design standards.

The Code Enforcement Officer/Building Inspector or Planning Board (if Site Plan Review is warranted) may solicit the help and or expertise of the Town Highway Superintendent to aid in the process and or for post construction inspection.)

G. EFFECT OF PERMIT ISSUANCE.

The issuance of a permit by the Town pursuant to this Section 247-87 shall not obligate the Town to any costs in connection with the work performed under the permit and shall not obligate the Town to maintain any such improvements.

H. DUTIES OF THE BUILDING INSPECTOR/CODE ENFORCEMENT OFFICER.

In the exercise of his/her discretion to grant or deny any permit, the Code Enforcement Officer/Building Inspector shall give consideration to the effect such proposed construction may have on the drainage, health, beauty, preservation of natural resources and control of pollution and welfare of the Town and shall deny any such permit where in his/her judgment he/she determines such proposed construction is detrimental to the

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drainage, health, beauty, preservation of natural resources and control of pollution and welfare in the Town. If the plans submitted pursuant to Section 247-87(F), above, were accompanied by a SWPPP, the Code Enforcement Officer/Building Inspector shall deny the permit if such SWPPP and plans do not comply with the requirements of Article XIII of Chapter 247, Stormwater Management Regulations and Drainage.

I. EXPIRATION; RENEWAL.

Excavation and/or fill permits, other than those for topsoil stripping and removal only, shall expire by limitation one (1) year from the date of issuance unless extended by the Town Board.

1. Permits for topsoil stripping and removal only shall expire by limitation sixty (60) days from the issuance unless extended by the Town Board.
2. The renewal of an expired permit for topsoil stripping and removal without change in the extent of the work may be approved by the Town Board.
3. The renewal of an expired permit for other excavation and/or fill projects without change in the extent of the work may be approved by the Town Board with the payment of a permit fee (same as original Application Fee) as described in Section 247-87(K), Fees, below.
4. The renewal of any permit, which extends the project scope of the work, shall be processed as a new application.

J. ENFORCEMENT; PENALTIES FOR OFFENSES:

1. Any person, firm entity or corporation found to be violating any provisions of this Article XIV shall be served with a written notice at the direction of the Town Board stating the nature of the violation and providing for a thirty-day time limit for the satisfactory correction thereof. The offender shall, within the period stated in such notice, correct or remove all violations.
2. Any person, firm, entity or corporation who or which shall continue any violation beyond the time limit provided for in Subsection (1) above shall be guilty of a violation and, upon conviction thereof, be fined in an amount not exceeding \$2,500 or imprisoned for a term not exceeding 15 days, or both, for each violation. Each week in which such violation shall continue shall be deemed a separate offense.
3. In the event that any person, firm, entity or corporation shall continue any violation beyond the time limit provided for in Subsection (1) above, the Town Board may direct the Town Attorney to apply to the Supreme Court for any order directing that the violation be corrected or removed and that all costs and expenses incurred by the Town in connection with the proceedings, including the actual cost of correction or removal, shall be assessed against the offenders.
4. Any person, firm, entity or corporation violating any of the provisions of this Article XIV shall become liable to the Town for any expense or loss or damage occasioned by the town by reason of such violation.

K. FEES.

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For appropriate fees, see the Town of Pendleton Fee Schedule, adopted by the Town Board by Resolution, as may be amended from time to time.

Section 247-92: Property Maintenance & Safety – Residential Construction

A. FINDINGS AND DETERMINATION.

1. The Town Board hereby finds it is aware of the importance and impact the construction of new homes and improvement of existing homes have on the orderly growth of the Town. The Town Board is also aware that proper maintenance and safety along with consideration to nearby property owners are an important part of all new residential construction.
2. The Town Board hereby determines that in order to ensure that the Town grows with minimal impacts to the existing neighborhood, it is necessary to monitor all residential construction requiring a Building Permit to be sure that the owner is performing proper property maintenance and adhering to standard safety practices so that the construction site does not become a public nuisance.

B. REQUIRED UPON MAKING A BUILDING PERMIT APPLICATION.

1. Tentative Time Schedule for completion of Residential Building Construction along with Related Construction as follows:
 - a. Installation of a traditional Driveway (Concrete, Blacktop, Stone).
 - i. Installation of a traditional driveway will be completed within a reasonable time after procurement of a Building Permit and or Curb Cut permit. Weather as a factor will be taken into consideration.
 - b. Grading and seeding of lot in accordance with an approved drainage plan.
 - i. Grading and seeding will be done within a reasonable time after completion of digging and pouring the foundation. Weather as a factor will be taken into consideration.
 - c. Home, garage and/or accessory structure completion.
 - i. Building Permit applicant has an obligation to commence and complete construction in a reasonable time frame in order to minimize adverse impacts on the neighborhood.
2. All Residential Building Permit Applications also require submittal of a Drainage Plan subject to the approval of the Code Enforcement Officer/Building Inspector. See Section 247-86, Drainage.

C. MAINTENANCE AND SAFETY

1. This Chapter applies to all residential buildings and land under construction or demolition. This includes Single-Family, Two-Family, and Multifamily Residences as well as Private Garages and Accessory Structures.
2. Grass, weeds or other plant growth must be cut on a regular basis. See also Chapter 198, Property Maintenance, of the Town Code.
3. See also Chapter 198, Property Maintenance, of the Town Code.
4. Steps, walks, and driveways must be maintained for safe passage and access.

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5. Accumulations of garbage, trash and construction debris must be controlled and disposed of. Care must be taken to assure that such accumulations are not unsightly and must be removed/disposed of expeditiously.

D. INSPECTION AND REPORT.

1. Whenever it shall appear that the provisions of this Chapter have been violated, the Code Enforcement Officer/Building Inspector is authorized inspect the property involved and prepare a written report of the conditions found. If, at the discretion of the Code Enforcement Officer/Building Inspector, abuse of the submitted tentative construction schedule is determined, the original Building Permit may be voided and a new Building Permit required. The fee for the new Building Permit can be up to ten times the fee charged on the original Building Permit based on the severity of the abuse.

E. NOTICE OF VIOLATION.

1. If conditions existing on the inspected property violate the provisions of this Chapter, the Code Enforcement Officer/Building Inspector is authorized to serve or cause to be served a written notice of such violation, either personally or by certified mail, upon the owner or owner's agent as well as upon the lessee or occupant of said premises. Failure to serve either an owner or an occupant or lessee shall not prevent enforcement against any party served.
 - a. Said written notice shall contain substantially the following:
 - i. the name of the owner, lessee, or occupant of the premises, if known;
 - ii. the address or location of the premises;
 - iii. the identification of the premises as the same appears on the current assessment roll;
 - iv. a statement of the conditions on the property deemed upon inspection to be in violation of this Chapter;
 - v. a demand that the motor vehicle, solid waste, rubbish, debris, weeds, or vegetation determined to be in violation of this Chapter be removed from the property within five days of service or mailing of such notice; and
 - vi. a statement that a failure or refusal to comply with the provisions of this Chapter and the notice given pursuant thereto within the time specified may result in the Code Enforcement Officer/Building Inspector, or any authorized officer, agent or employee of the Town, entering the property to remove and dispose of such motor vehicle, solid waste, rubbish debris, weeds, or vegetation.
 - b. The Code Enforcement Officer/Building Inspector, or any authorized officer, agent or employee of the Town performing such work, shall keep an accurate and itemized account of the expenses incurred for all labor, equipment, and materials furnished plus any other incidental costs. All bills shall reflect work completed on the property, plus a charge of 20 percent to cover the costs and disbursements and administrative handling.

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2. The water billing clerk, upon receiving the invoice(s) described in Subsection (1)(B) above regarding a property, shall be responsible to charge the unpaid bill to the most current water bill for that property. In the event that collection is not made within 30 days, the water billing clerk shall forward the unpaid account to the Town Assessor, who shall charge the cost of such expenditure against the owner(s) of said property on the next regular tax bill.
3. The Code Enforcement Officer/Building Inspector, or any authorized officer, agent or employee of the Town, shall have the right, at reasonable times, upon notification, to enter upon lands within the Town for the purpose of inspection to determine compliance with this Chapter. The right of inspection herein granted shall apply to the exterior of the buildings and grounds only.

F. EMERGENCY ACTIONS.

1. Nothing in this Chapter shall prohibit a municipality from entering onto private property to remove any motor vehicle, solid waste, rubbish, debris, weeds, or vegetation whenever an imminent threat to the life or safety of persons does exist. Municipal authority pursuant to this Chapter may only be exercised where there is an immediate necessity to protect life and safety. Any municipal action taken pursuant to this section must be reasonably calculated to alleviate or prevent the crisis condition.
2. A property owner shall be given notice and an opportunity to be heard prior to any costs and expenses incurred pursuant to this section being placed on the property's tax bill.

G. PENALTIES FOR OFFENSES; ENFORCEMENT.

See Chapter 198, Property Maintenance, of the Town Code.

H. CONFLICTS WITH OTHER LAWS.

When the provisions of this Chapter conflict with the provisions of any other local law or ordinance of the Town, the provisions of this Chapter shall prevail.

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Section 49: Repealer. All local laws and ordinances, or parts of such local laws or ordinances, inconsistent with the provisions contained in the Town Code adopted by this Local Law are hereby repealed as of the adoption and filing of this Local Law as set forth in Section 51; provided, however, that such repeal shall only be to the extent of such inconsistency, and any valid legislation of the Town of Pendleton which is not in conflict with the provisions of the Code shall be deemed to remain in full force and effect.

Section 50: Conflict. In the event of a conflict between this Local Law and any other Local Law of the Town, the provisions of this Local Law shall supersede and govern.

Section 51. Severability Clause. If any part of this Local Law is for any reason held to be unconstitutional or invalid, such decision shall not affect the remainder of this Local Law. The Town Board of the Town of Pendleton hereby declares that it would have passed this Local Law and each section and subsection thereof, irrespective of the fact that any one or more of these sections, subsections, sentences, clauses, or phrases may be declared unconstitutional or invalid.

Section 52: Effective Date. This Local Law shall be effective immediately upon filing with the New York Secretary of State pursuant to the Municipal Home Rule Law.